

the bird does not acclimate well and cannot be placed.

*Service response:* We disagree with this comment. Birds should not be subjected to amputations only to be euthanized later due to failure to acclimate. That is why the rule states that birds must be euthanized rather than undergo amputation.

*Comment:* Euthanasia requirements should not be different for listed species. Rehabilitators should be authorized to euthanize any bird that is suffering due to an injury too serious to heal without having to call the Service for permission.

*Service response:* The final rule continues to require rehabilitators to contact the issuing office before euthanizing listed species. The reason for this difference in treatment is that a rare situation could arise in which the suffering of the bird might be outweighed by a critical need to recover its species. For example, the addition of a blind endangered bird could be significant to a dwindling gene pool. The rule continues to provide that the rehabilitator may proceed with euthanasia if Service personnel are not available and the euthanasia is warranted because of humane considerations for the bird.

*Placement and Transfer of Birds § 21.31(e)(4)(v) and § 21.31(e)(4)(vi).*

*Comment:* Rehabilitators should not have to get prior approval from the Service before placing nonreleasable birds or their parts or feathers with another permittee authorized to hold migratory birds.

*Service response:* The requirement to obtain approval from the issuing office before transferring nonreleasable birds will ensure that birds are transferred to persons authorized to possess such birds, and not to someone whose permit has expired, or who already has the maximum number of birds authorized by his or her permit.

*Comment:* Rehabilitators should be required—not just allowed—to donate dead specimens to institutions authorized by permit to possess migratory bird specimens or exempted from the permit requirements under § 21.12.

*Service response:* We encourage permittees to transfer dead specimens to other permit holders or exempt institutions who can use them. However, many rehabilitators are already stretched to their limits trying to care for the live birds they hold under their permit, and the Service believes they should not be burdened with an additional requirement to locate authorized persons to receive each dead specimen.

*Comment:* The rule should not require that all dead eagles be sent to the National Eagle Repository. Rather, it should require permittees to notify the State so the State can do necropsy, and then send the birds to the Repository.

*Service response:* Not all States wish to be contacted by rehabilitators with eagle carcasses. The rule has been revised to clarify that permittees must comply with State requirements requiring State notification and necropsy—where such requirements exist.

*Imping Feathers § 21.31(e)(4)(viii).*

*Comment:* The rule does not specify what the Service considers to be a “reasonable” number of feathers that a rehabilitator may keep for imping purposes.

*Service response:* We do not believe the regulation should establish a specific number of feathers that may be legally retained for imping purposes. Based on location, populations of species, and specialization, rehabilitators will need varying numbers of feathers of particular species. The final regulation states that a “reasonable number” will be based on the numbers and species for which the permittee regularly provides care.

*Taking blood samples*

*§ 21.31(e)(4)(ix). Comment:* The rule should allow rehabilitators to take blood and tissue samples for research that would aid rehabilitators and the species with which they work, as long as doing so does not jeopardize the individual bird. For example, blood may be drawn to establish normal values for particular species, or to research contagious diseases that are not human health hazards.

*Service response:* We have modified this provision to clarify that samples may be taken for purposes of diagnosis and recovery not just of the individual bird, but of the birds under the permittee’s care, generally. For broader research purposes, the rehabilitator should obtain a migratory bird scientific collecting permit issued under 50 CFR 21.23.

*Recall of birds § 21.31(e)(4)(xi).*

*Comment:* The proposed rule states that migratory birds held under a rehabilitation permit remain under the stewardship of the Service and may be recalled at any time. Under what circumstances would the Government recall birds? What is the justification?

*Service response:* The rule has been revised to clarify that permittees do not own the migratory birds they hold under this permit. The language concerning recall has been removed because we do not believe it is necessary that this regulation state that

the Service would and does remove birds from the possession of permittees when the quality of care provided to the birds is not adequate or when a permittee violates wildlife laws, regulations, or the terms of the permit.

*Notification to the Service*

*§ 21.31(e)(5) and throughout. Comment:* The rule contains too many notification requirements. The requirements for permittees to contact the Service so often are too burdensome.

*Service response:* The proposed regulation contained 11 discreet requirements for the permittee to notify the Service and/or gain additional authorization under certain circumstances. Ten of those notification requirements are not new in this regulation, but are carried over from the current standard conditions attached to all existing permits. Seven apply only to threatened and endangered species, and are needed so that the Service can determine the best placement for these birds. The Service is engaged in active recovery efforts for many listed migratory bird species, and because of the relative scarcity of listed species, the placement of each individual can have greater ramifications for the conservation of the species than is the case for non-listed species. Because listed species are relatively rare, most rehabilitators do not routinely encounter them, so these notification requirements will not be used often and should not create a burden for rehabilitators.

Of the remaining three notifications, two should seldom be needed: the requirement to contact a Service law enforcement officer when there is reason to believe that a bird has been injured as the result of criminal activity; and the requirement to gain approval from the issuing office to keep a bird longer than 180 days. The final requirement—to obtain authorization from the issuing office before transferring a nonreleasable bird to another person—is an important safeguard to ensure that birds are placed with persons who are legally authorized to possess migratory birds.

The only new notification provision the proposed rule contained was the requirement to contact the Service if the rehabilitator suspects that a bird has an avian virus or other contagious disease. We have revised that provision to require the permittee to contact his or her State or local authority that is responsible for monitoring the particular health threat, rather than notify the Service. In the case of West Nile Virus, for example, the public is usually advised to contact their county public health agency to report diseased