

this provision. It's too open-ended and could be abused.

*Service response:* We have revised this provision to clarify its meaning and scope. Our intent is to provide that permits may be tailored so that they differ from one another according to the circumstances of the applicants (e.g., what kind of experience and facilities they have). If all rehabilitation permits had exactly the same set of standard conditions and no additional conditions, every permittee would be qualified to rehabilitate any number of all types of migratory birds, without exception. For example, rehabilitators who intend to rehabilitate only nestlings do not need extensive caging. The Service needs to be able to differentiate what types of birds these nestling rehabilitators are authorized to rehabilitate from those a passerine rehabilitator is authorized to rehabilitate or those a large facility with flight cages or pools for waterbirds may rehabilitate. This can be done only if permits can be further conditioned on their face at the time of issuance (or later, if the permittee demonstrates that he or she has expanded the facilities and/or gained additional experience).

*Comment:* The "additional conditions" provision would be more palatable if there existed some kind of review/appeal process for applicants to appeal.

*Service response:* Regulations addressing the process for challenging permit decisions, including permit conditions, are set forth in 50 CFR 13.29. These regulations address procedures for all Service permits, and cover how to file a Request for Reconsideration to the issuing office. They also set forth procedures for filing a written appeal to the Regional Director if the applicant/permittee is dissatisfied with the determination made on the Request for Reconsideration.

*Comment:* To avoid the creation of additional conditions, the Service should establish a multi-tiered permit incorporating different levels of experience and facilities standards, where each level has standardized conditions.

*Service response:* We do not believe such a system could adequately capture all the variables and particulars that make one situation different from another. Additional conditions would still be necessary in order to accommodate these variables, or else some permits would simply have to be denied—which we do not view as a good alternative.

*Liability Clause § 21.31(e)(10).*

*Comment:* As worded, the provision of the proposed rule that indemnifies the

Service from liability could confer unreasonable liability to the permittee, resulting in lawsuits against rehabbers.

*Service response:* We have removed this provision from the rule because permit liability for all Service permits is already set forth at 50 CFR 13.50, which reads: "any person holding a permit under this subchapter B assumes all liability and responsibility for the conduct of any activity conducted under the authority of such permit."

*Oil Spill Provisions § 21.31(ff).*

*Comment:* Why does the Service want to be notified whenever a dead bird is found at the site of an oil spill?

*Service response:* There are a variety of legal aspects relating to oil spills, including the ability of the government to recover damages for birds and other wildlife killed or injured, and in some cases to bring criminal charges. In such cases, the Service must be able to document the number and locations of dead birds and other wildlife before they are removed from the site. Since it is not generally possible to determine until after the immediate cleanup or site stabilization whether this information will be needed, we collect it routinely.

*Comment:* How can the public get copies of *Best Practices for Care of Migratory Birds During Oil Spill Response*, the document referenced in the rule?

*Service response:* We have inserted a footnote into the rule, providing information on how to obtain this document.

*Term of Permit § 21.31(h). Comment:* Permit tenure should be 1 year only. If a 5-year tenure is included in the final regulation, the wording should be more clear as to whether all rehabilitation permits will be issued for 5 years, or whether some will have shorter terms.

*Service response:* Because the majority of rehabilitators' circumstances will not substantially change from year to year, we do not see any purpose in renewing permits annually. We believe that the annual report requirement will allow the Service to monitor the factors that are most important to safeguard the welfare of birds held under rehabilitation permits. We do not wish to burden the permittees with an annual permit renewal, nor do we believe that processing every permittee's renewal every year is a good use of limited Service resources. Although most permits will have a tenure of 5 years under the final regulation, the wording "No rehabilitation permit will have a term exceeding five (5) years" allows the Service the flexibility to issue some rehabilitation permits for less than 5 years, if appropriate.

*Comment:* The rule does not contain any provisions for the renewal process.

*Service response:* Regulations covering permit renewal for all Service-issued permits are set forth in 50 CFR 13 (General Permit Procedures). For the rehabilitation permit, as for other migratory bird permits, the permittee need not submit all of the information required in an original permit application. Instead, he or she should submit a Service permit renewal form, which is mailed to all permittees when their permits are nearing expiration. The form asks the permittee to certify that the information previously submitted (through either the original permit application or a subsequent renewal or amendment) is still accurate. If any required information has changed, the permittee must submit the updated information.

*Comment:* The annual report/permit renewal process is not timed smoothly, with permits expiring at the end of the calendar year, but annual reports due at the end of the following January. Renewal permits should be sent separately (first), so the rehabilitator does not have to operate under an expired permit.

*Service response:* We have adjusted the timing of the permit renewal process to address this problem. Rehabilitation permits will be issued to be valid starting on April 1, rather than January 1. As existing permits are renewed, they will be re-issued with a 5-year tenure, as provided by this rule. Permits will expire on March 31st rather than December 31st. This will result in a more logical, coordinated process wherein permittees can submit their annual reports and renewal requests together, and the renewal request will be received well before the expiration of the permit.

*Comment:* Renewal should be correlated with State permit renewal.

*Service response:* Permit tenure and renewal dates vary widely from State to State. Federal permits would have to have different tenures depending on the State in which the permittee resides. Tracking and maintaining renewals under these circumstances would be very difficult for the Service. Therefore, we will continue to process renewals at the same time each year.

*Will I need to apply for a new permit if I already have a Special Purpose—Rehabilitation permit? § 21.31(i)*

*Comment:* The rule does not say whether current permit holders will be "grandfathered," or whether they will have to reapply under the new regulations.

*Service response:* Current permit holders need not take any special action