

as a result of the new rule. When it is time to renew their permits, if they wish to continue rehabilitating migratory birds, they should apply for renewal using the Service permit renewal form mailed to them by the issuing office. Rehabilitation permits will be renewed under the new permit category created by this rule. In addition, the final rule contains a "grandfather clause," which states, in part: "If your facilities have already been approved on the basis of photographs and diagrams, and authorized under a valid § 21.27 special purpose permit, then they are preapproved to be authorized under your new permit issued under this section, unless those facilities have materially diminished in size or quality from what was authorized when you last renewed your permit, or unless you wish to expand the authorizations granted by your permit (e.g., the number or types of birds you rehabilitate)."

**Inspections.** *Comment:* The rule does not address rehabilitation facility inspections.

*Service response:* Inspection of permittees' facilities is addressed in 50 CFR 13.47. The regulations provide that a Service Law Enforcement official ("the Director's agent") may inspect the premises, wildlife, and records at "any reasonable hour."

*Comment:* Facility inspections should be conducted before issuing each permit and then at regular intervals during the term of the permit to ensure that facilities maintain standards.

*Service response:* Although we will conduct site visits prior to issuing some permits, we do not have the resources to inspect all applicants' facilities. As part of the application process, the applicant must submit photographs and diagrams of his or her facilities. These should provide enough information to determine whether most applicants' facilities are adequate. Many State conservation agencies have more resources available to them than we do, and are able to send officers out to perform inspections more regularly. Coordination between State agencies and the Service allows us to identify situations where problems exist and Federal inspection may be warranted.

#### Additional Comments

*Comment:* Permitted rehabilitators should not be allowed to raise, rehabilitate, or release non-native species such as European starlings and house sparrows because these negatively affect native migratory bird species.

*Service response:* The Service does not have the authority to prohibit possession or rehabilitation of birds that

are not protected by the Federal laws we are charged with implementing. We agree that rehabilitation of common invasive species such as starlings and house sparrows could have a minor negative impact on conservation of native species, and we would prefer that exotic species not be released to the wild. However, this issue is the jurisdiction of State governments, which have primary regulatory authority on most matters concerning wildlife.

*Comment:* The Service should transfer permitting authority to the States to administer, where States demonstrate they meet certain Federal standards.

*Service response:* At this time, the majority of the States have not developed specific regulations regarding migratory bird rehabilitation. As of 1999, according to a study conducted by Allan M. Casey III and Shirley J. Casey (*A Study of the State Regulations Governing Wildlife Rehabilitation During 1999*), only 33 States had regulations addressing wildlife rehabilitation. These vary widely in terms of scope and the level of detail addressed. State regulations pertaining specifically to migratory bird rehabilitation are virtually nonexistent.

*Comment:* The rule should require that the permittee be a member of either the National Wildlife Rehabilitators Association (NWRA), the International Wildlife Rehabilitation Council (IWRC), or both.

*Service response:* We do not agree that membership in the NWRA or the IWRC should be a prerequisite for obtaining or maintaining a Federal migratory bird rehabilitation permit. Both associations have contributed to the increasing quality of wildlife rehabilitation, and they have much to offer rehabilitators in the way of continuing education, networking, and other services.

However, both the NWRA and the IWRC are nongovernmental organizations and are not affiliated with the Service. The criteria of this rule should ensure that permittees have basic competence and qualifications necessary for migratory bird rehabilitation. As with any profession, rehabilitators will always be in a position to gain additional knowledge and skills. Membership in the NWRA and/or IWRC may provide a means of attaining this growth and improvement, should rehabilitators elect to join either or both associations.

*Comment:* The rule should require permittees to provide evidence of continuing education every 2 years.

*Service response:* While we strongly encourage permittees to attend classes, conferences, seminars, and presentations in order to increase knowledge and improve skills, we

believe that the qualifications for obtaining the Federal permit, together with the experience gained by putting the permit to use, will guarantee a basic level of knowledge and experience sufficient to rehabilitate migratory birds, without our mandating additional formal training.

*Comment:* Some provisions of the rule will interfere with recovery operations of chemical companies that operate under special purpose rehabilitation permits. The troubling provisions include the following requirements: listing all individuals on the permit (helpers at the chemical company recovery operations are usually seasonal college students and other temporary labor), conforming to facility requirements, maintaining a working relationship with veterinarians, and establishing a working relationship with another permitted rehabilitator. These recovery operations only hold birds long enough to clean off sodium carbonate ( $\text{Na}_2\text{CO}_3$ ) or to allow fresh water to rinse off dilute phosphoric acid.

*Service response:* Because such recovery efforts operate under parameters much different from those governing the activities of "typical" migratory bird rehabilitators, the Service will continue to issue permits for this type of recovery operation under the Special Purpose permit (§ 21.27) rather than the permit category created by this rule.

*Comment:* The rule has far too many new paperwork requirements.

*Service response:* This rule does not introduce any new paperwork requirements. All reporting requirements remain unchanged from what has been required under the Special Purpose—Rehabilitation permit category.

#### Endangered Species Act Consideration

Section 7(a)(2) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531, *et seq.*), requires all Federal agencies to "insure that any action authorized, funded, or carried out \* \* \* is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat." The Service underwent intra-Service consultation pursuant to section 7 of the ESA and determined that the activities authorized by this rule will not jeopardize listed species or result in destruction or adverse modification of critical habitat.

#### Required Determinations

*Responsibilities of Federal Agencies To Protect Migratory Birds (Executive*