STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 670 and Repeal Section 678
Title 14, California Code of Regulations (CCR)
Re: Practice of Falconry

I. Date of Initial Statement of Reasons: October 30, 2012

II. Date of Pre-adoption Statement of Reasons: February 14, 2013

III. Date of Final Statement of Reasons: April 15, 2013

IV. Dates and Locations of Scheduled Hearings:

(a)	Notice Hearing:	Date: November 7, 2012 Location: Los Angeles
(b)	Discussion Hearing	Date: February 6, 2013 Location: Sacramento
(c)	Adoption Hearing:	Date: March 6, 2013 Location: Mt. Shasta

V. Update: Non-substantial and substantial modifications were made to the originally proposed regulatory language of the Initial Statement of reasons in response to public comments received, and in order to clarify the regulations and make them comply with the federal regulations to the greatest extent feasible, while considering the unique aspects of California's raptor populations, existing threats to those populations, and the conservation needs of the various species. A fifteen day notice was mailed on February 15, 2013 and posted on the Fish and Game Commission's website. Public comments from stakeholders made in writing and orally at the Commission's February 6th meeting were evaluated and those that were accepted were incorporated for consideration and provided to the commission as a Pre-Adoption Statement of Reasons.

The Pre-Adoption Statement of Reasons (Pre-Adopt) was also provided to the U.S. Fish and Wildlife Service (Service) to ensure necessary compliance for this rule-making. The Service has to approve our state regulation as described in the ISOR.

On March 6, 2013, the Commission adopted the preferred alternative as proposed by the Department. Including the following recommended changes noticed on February 15, 2013 and published in the Pre-Adopt as follows:

Subsection 670(a) General Provisions

Clarification is provided on the types of documentations required to be carried for the practice of falconry.

Subsection 670(b) Falconry Definitions

Clarification is provided that the term “Hybrid Raptor” means offspring of two or more species.

Subsection 670(d) Take of State or Federal Listed Species

This subsection has been revised to make it clear that state and federal listed species are those species designated as “threatened or endangered,” and that take associated with falconry is “without intent.”

Subsection 670(e) Licensing

The waiting period for failed license applicants has been reduced from three months to “the day following.” The change accommodates applicants that must travel a great distance for the examination and is consistent with other department administered exams.

Subsection 670(e)(8) Denial; and, Subsection 670(e)(9) Suspension and Revocation

Clarification is provided regarding the applicable sections of the Fish and Game Code which, if violated, may result in the department denying the issuance of a license or renewing a lapsed license. Rather than a violation of any section of the Fish and Game Code, the revised language makes it clear that failure to comply with Section 1054 (false statements to obtain a license), California Penal Code Section 597 (animal cruelty), or any regulations adopted pursuant to Fish and Game Code sections related to raptors may result in denial of a license application.

Subsection 670(g) Capturing Raptors from the Wild.

The application due date for Special Raptor Capture Drawing Applications has been modified from May 1 to January 31 to better fit the appropriate season for raptor capture.

Subsection 670(h) Possession, Transfer, and Disposition of Raptors.

Subsection 670(h)(4)(A) clarifies that a rehabilitation letter or “legible copies” to be in the possession of the falconer while flying a raptor for rehabilitation.

Subsection 670(h)(6)(C) clarifies that the intentional release of a non-native, hybrid, or native captive-bred raptor is prohibited “unless authorized by the department.”

Subsection 670(h)(7) clarifies the requirement of “one functioning transmitter” for hacking of native captive-bred raptors. This revision is needed to be consistent with federal requirements.

Subsection 670(h)(8) clarifies that a licensee may attempt to recover a raptor lost to the wild for up to 30 days before reporting the loss.

Subsection 670(h)(9)(B) removes the option of sending the carcass of a raptor to a pathologist.

Subsection 670(h)(14) clarifies certain requirements for other uses of raptors and provides that a Master Falconer may receive payment for abatement services.

Subsection 670(i) Banding and Tagging.

Clarification is provided regarding which raptors must be banded with USFWS leg bands including: “goshawk, peregrine, gyrfalcon or Harris hawk”. Captive-bred raptors shall be banded with seamless bands.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those considerations:

Response to Public Comments
Regarding Changes to Title 14, Section 670, Falconry Regulations

	Name of Commenter	Type	Date	Codes Used to categorize the comments
1	Roy Pisetsky	Letter	4Feb2013	F, PRFA, NG, LL, W
2	Melanie Wirtanen	Letter	26Jan2013	T, B, C, H, F, PRFA, W, E, EF
3	William Rhinehart	Letter	5Feb2013	S, F, W, B, C, IP
4	Mark Maxcy	Letter	31Jan2013	TE, LL, H, FEHA, PRFA, B
5	Debby Kroeger	Letter	26Jan2013	L, E, W, RR, B, NG
6	Robert Helsom	Letter	28Jan2013	PRFA, PF/D, NG, B, F, H, W
7	William Ferrier	Letter	25Jan2013	B, PRFA, NR, C, W, T

8	Bill Feldt	Letter	24Jan2013	F, W, B, C
9	Geneva Coats	Letter	1Feb2013	S, AA, RH, AR
10	Paula Cain	Letter	2Jan2013	S, AA
11	Noel Amherd	Letter	7Feb2013	W, LL, B, C, W, F, E, PRFA, NG, H, T
12	Amanda Ausman	e-mail	4Feb2013	S
13	Dianne Rose	e-mail	4Feb2013	S
14	Kent Carnie	e-mail	2Feb2013	S, AR, AA, IR
15	Gregory Dennis	e-mail	3Feb2013	S
16	Keith Mack	e-mail	3Feb2013	S
17	Garrett Brooks	e-mail	2Feb2013	S
18	Claire Mancha	e-mail	2Feb2013	S, AR, V, IP
19	Douglas Cummins	e-mail	2Feb2013	S
20	Rory Brooks	e-mail	1Feb2013	S, AR, AA, V, ED
21	Kristina Hedin	e-mail	1Feb2013	S, AR, RH, PEFA, IP
22	Kaliko Wright	e-mail	1Feb2013	S
23	Davis Banks	e-mail	1Feb2013	S, FR
24	Anita Megas-Robinson	e-mail	1Feb2013	S, AR
25	Jeremy Bornstein	e-mail	1Feb2013	S
26	Greg Thomas	e-mail	1Feb2013	PRFA, LL, B, C, W, F, T, H
27	Diane Amandola	e-mail	1Feb2013	S, AR
28	John Gallaway	e-mail	1Feb2013	S
29	Jacqui Lasley	e-mail	1Feb2013	S, FR
30	Angie Chong	e-mail	1Feb2013	S, I
31	Ken McKowen-Taves	e-mail	1Feb2013	S
32	Annette Sterritt	e-mail	1Feb2013	S, AA, I
33	Robin Webster	e-mail	1Feb2013	S, AR, PRF, B, W, F, H, IP, IR
34	Clayton Wyatt	e-mail	1Feb2013	S, I, IP, IR
35	Teddy Moritz	e-mail	1Feb2013	S
36	Emily Fisk	e-mail	1Feb2013	PRFA, LL, NG, B, C, W, F, E, EF, T, H, PEFA, I
37	Claire Apple	e-mail	1Feb2013	I, S
38	Kathy Johnson	e-mail	1Feb2013	S, ED
39	Adriane Harm	e-mail	1Feb2013	S, IR, IP, ED
40	Milo Weaver	e-mail	1Feb2013	S, ED, AA
41	Gina Spadafori	e-mail	1Feb2013	AR, PEFA
42	Heather Houlahan	e-mail	1Feb2013	S, PEFA
43	Kathleen Knowles	e-mail	1Feb2013	S, AR
44	Robert Fadem	e-mail	1Feb2013	S, I
45	John Pittman	e-mail	1Feb2013	S, I, AR, AA
46	Magnolia Farm	e-mail	1Feb2013	S, AA, IR
47	Frank Crabtree	e-mail	1Feb2013	S, I, FR

48	Bonnie DelCourt	e-mail	1Feb2013	S, PRFA, LL, NG, B, C, W, F, E, EFT, H
49	Terence Wright	e-mail	1Feb2013	AA, PEFA, S
50	Clee Sealing	e-mail	1Feb2013	S, PEFA, ED
51	Ben Campbell	e-mail	1Feb2013	S
52	Amanda Steidle	e-mail	1Feb2013	S, I, PEFA
53	Ray Gilbertson	e-mail	1Feb2013	S, AR
54	Andrea Fadem	e-mail	31Jan2013	S, I, WF, PRFA, LL, NG C, W, F, E, EF, T, H, FR
55	Nathan Elkins	e-mail	31Jan2013	AA, S
56	Andrea Keskey	e-mail	31Jan2013	S, AA, RH
57	Anna Lewis	e-mail	31Jan2013	S, AA, PEFA, V, ED, RH
58	Donna Sweet	e-mail	31Jan2013	S, AR, ED, RH, I, IP, IR
59	Denis Clarke	e-mail	31Jan2013	S, FR
60	Paul White	e-mail	31Jan2013	S
61	Donald Wheeler	e-mail	31Jan2013	S, FR, AA
62	Ricky Gutierrez	e-mail	31Jan2013	S, I
63	Stephen Barkley	e-mail	31Jan2013	S, PEFA, ED, I
64	Robert Fadem	e-mail	31Jan2013	S, I
65	M Skopes	e-mail	31Jan2013	S, I
66	Drew Cheney	e-mail	31Jan2013	S, RH, AA, I
67	Andy Outdoor	e-mail	31Jan2013	S
68	Carole Raschella	e-mail	31Jan2013	S, AR
69	Celine DiBernardo	e-mail	31Jan2013	S, I, AA
70	Andrew Height	e-mail	31Jan2013	S, AA, PEFA, RH, IR, IP
71	Patricia Murphy	e-mail	31Jan2013	S, I, RH
72	Unmar Gardarsson	e-mail	31Jan2013	S, FR, I
73	Erik Haupt	e-mail	31Jan2013	S, I
74	Donna Kelley	e-mail	31Jan2013	AA, I
75	Raul Marroquin	e-mail	31Jan2013	S, I
76	Heidi Goldsberry	e-mail	31Jan2013	S, IR, RH
77	Beth Rowan	e-mail	31Jan2013	S
78	Laurie Lehman	e-mail	31Jan2013	S, I, IP
79	Victoria Chiang	e-mail	31Jan2013	PEFA, I, ED
80	Janinne Chadwick	e-mail	31Jan2013	S, I, FR, PEFA, RH
81	Marie Christopher	e-mail	31Jan2013	S
82	Bertha Figard	e-mail	31Jan2013	S, I
83	Laura McFarland-Taylor	e-mail	31Jan2013	S, FR, PEFA
84	Karen Downey	e-mail	31Jan2013	S, I, ED
85	Oli Thordarson	e-mail	31Jan2013	S
86	Katherine Kubicek	e-mail	31Jan2013	S, FR

87	Tiffany Wolff	e-mail	31Jan2013	S, PEFA
88	Carynn Milne	e-mail	31Jan2013	S, I
89	Patricia McGriff	e-mail	31Jan2013	FR, S
90	Chanel Haupt	e-mail	31Jan2013	S, FR
91	Michael Clark	e-mail	31Jan2013	S, FR
92	Suzzane Heitzman	e-mail	31Jan2013	S, I, RH, PEFA
93	Sigrid Thordarson	e-mail	31Jan2013	S, FR
94	Leonard Galasso	e-mail	31Jan2013	S, FR
95	Sveinn Thordarson	e-mail	31Jan2013	S, FR
96	Gunnar McGriff	e-mail	31Jan2013	S, AR
97	Heather Murphy	e-mail	31Jan2013	S, I, FR
98	Ronnie Road Runner	e-mail	31Jan2013	S, I, FR
99	Ann Guepe	e-mail	31Jan2013	S, I, FR
100	Robert LeRoy	e-mail	31Jan2013	S
101	Rebecca O'Connor	e-mail	31Jan2013	S, PRFA, LL, NG, B, C, W, F, E, EF, H
102	Sandra Weaver	e-mail	31Jan2013	FR, S
103	Alan Garver	e-mail	31Jan2013	S, I
104	Clyde Cambell	e-mail	31Jan2013	S
105	Courtney Santos	e-mail	31Jan2013	S, I
106	Craig Sharrow	e-mail	31Jan2013	S, I, V
107	Cynthia Maxwell	e-mail	31Jan2013	S, PEFA, I
108	Dave Wood	e-mail	31Jan2013	S, I
109	Diane Pfeidfer	e-mail	31Jan2013	S
110	Hank Shaw	e-mail	31Jan2013	S, I, IP, FR, E, EF
111	Helga Thordarson	e-mail	31Jan2013	S
112	Jackie Barry	e-mail	31Jan2013	S, I, PEFA
113	James Compton	e-mail	31Jan2013	I
114	James Yu	e-mail	31Jan2013	S, IP
115	Jennifer Phillips	e-mail	31Jan2013	S, RH
116	Joyce Wise	e-mail	31Jan2013	S, ED, RH
117	Katherine Franke	e-mail	31Jan2013	S, I
118	Kathleen Eubanks	e-mail	31Jan2013	S, I, IP
119	Debra Ochoa	e-mail	31Jan2013	S
120	Lance Brady	e-mail	31Jan2013	S
121	Morgan Cambell	e-mail	31Jan2013	S, AA, PEFA, IR
122	Neil Hunt	e-mail	31Jan2013	S, AR
123	Nia Hansen	e-mail	31Jan2013	S, FR
124	Pam Curry	e-mail	31Jan2013	S, I, IP
125	Patricia Green	e-mail	31Jan2013	S, I, FR
126	Rebecca Altman	e-mail	31Jan2013	S

127	Ranada	e-mail	31Jan2013	S, I
128	Shawn Hansen	e-mail	31Jan2013	S, I, FR
129	Shelly Swanland	e-mail	31Jan2013	S, I, FR
130	Stephen Willen	e-mail	31Jan2013	S, I
131	Caroline Smith	e-mail	31Jan2013	S, I
132	Tony Johnson	e-mail	31Jan2013	S, I
133	Keith Richman	e-mail	31Jan2013	PRFA, B, LL, NG, C, W, F, E, EF, T, H
134	Frederick Holderman	Letter	19Jan2013	LL, L, W,
135	Alex Metea	Letter	11Jan2013	PRFA, NG, FEHA, W
136	Noel Amherd	Letter	7Feb2013	S, AA, LL, B, C, W, E, FE, T, H, NG, PRF
137	Adam Chavez	Letter	28Jan2013	PRFA, W, B
138	Elizabeth Christiansen	Letter	11Jan2013	W
139	Wayne	Letter	16Jan2013	PRFA, B, W, FR
140	Ryan English	Letter	29Jan2013	S, PRFA, NOGO, B, LL, C, W, F, E, EF, T, H, RS
141	Agnes Forshey	Letter	10Jan2013	PRFA, B, W
142	Aness Forshey	Letter	10Jan2013	PRFA, B, W
143	Jim Forshey	Letter	10Jan2013	PRFA, B, W
144	John Hawley	Letter	29Jan2013	W, PRF, LL, H, B, NG,
145	Walter Imfield III	Letter	11Jan2013	L, PRFA, B, NG, FR, TR
146	KM	Letter	19Jan2013	LL, B, C, W, F
147	Carl Lea	Letter	29Jan2013	PRFA, LL, NG, B, C, W, F, E, EF, T, H
148	Michael Maxey	Letter	28Jan2013	PRFA, LL, NG, B, C, W, F, E, EF, T, H
149	Cynthia Maxwell	Letter	18Jan2013	B, W
150	Bill Murphy	Letter	18Jan2013	B
151	Erlinda Rafael	Letter	29Jan2013	PRFA, LL, NG, B, C, W, F, H
152	Barbara Roff	Letter	28Jan2013	PRFA, LL, NG, B, C, W, F, E, EF, T, H,
153	Caryln Smith	Letter	18Jan2013	B
154	Joseph Alvarado	Letter	13Feb2013	S, PRFA, LL, NG, B, C, W, F, E, EF, H
155	Chad Carvey	e-mail	20Feb2013	S, A
156	Anthony Scott	e-mail	12Feb2013	S, AA, I
157	Rocky Montgomery	Letter	28Feb2013	LL, P, FM, B, PRFA,APNG/G
158	Jim DeRoque	e-mail	21Feb2013	LL, RS, P, RS, NGL, DD, MBTA, FM
159	Victor Kwasnikow	e-mail	23Feb2013	LL, P, RS, NGL, DD, MBTA

160	Robert Diebold	e-mail	26Feb2013	FM, LL, P, RS, NGL, DD, MBTA
161	Monica Engebretson	e-mail	26Feb2013	BA, MC, WA, RO
162	Marten Benatar	e-mail	22Feb2013	LL, P, RS, NGL, DD, MBTA, FM, RO
163	Rick Watts	e-mail	21Feb2013	C, W, PRFA, TEPrey
164	Keith Richman	Letter	30Jan2013	B, C, FR
165	Andrea Chen	e-mail	31Jan2013	S, I, C, H, NR, A4, W, FEHA, PRFA, B, AC
166	Hans Peeters	e-mail	31Jan2013	RP, VR, SE, B, TR, LL
167	Larry Dickerson	Letter	25Jan2013	FR, B, C, T, LL, H, IP, W, PRFA
168	Richard Smiley	e-mail	1Feb2013	PRFA, W, F, LL, IP, H, B, FR
169	Phil Ferrell	Letter	10Jan2013	W
170	John Ferronato	Letter	15Jan2013	PRFA, RA
171	Troy Morris	Letter	1Feb2013	W
172	John Hawley	Letter	29Jan2013	W, F, PRFA, LL, H, B, NG
173	Sina McGriff	e-mail	31Jan2013	S, FR, I, AA, PEFA, RH
174	Bridget Maguire	Letter	11Jan2013	B, DNA, PRFA
175	Nicole Perretta	e-mail	31Jan2013	S, FR, PRFA, B
176	Shawna Protze	e-mail	31Jan2013	S, AA, PEFA, IP, RH
177	Ken Ebert	Letter	20Jan2013	PRFA, RA, B
178	Beau Parks	e-mail	31Jan2013	S, PRFA, FEHA, B, W
179	Mish Burke	e-mail	31Jan2013	S, PEFA, RH, AA, V
180	Mike Bordonaro	e-mail	31Jan2013	S, I, V
181	Emily Vincent	e-mail	31Jan2013	S, I, RH, AA
182	Glenn Stewart	Letter	22Jan2013	PRFA, LL, NG, B, C, W, F, E, EF, T, H, PEFA
183	Kate Marden	e-mail	31Jan2013	V, IR, ED
184	James Roush	Letter	18Jan2013	CI, FR
185	Rick Holderman	Commission meeting	6Feb2013	LL, TR
186	Will O'Diear	Commission meeting	6Feb2013	W
187	George Bristol	Commission meeting	6Feb2013	RS, WF, RA, Feathers, GOEA disposition, FM, W, F
188	Steven Wood	Commission meeting	6Feb2013	F
189	Paul Hutcheson	Commission meeting	6Feb2013	NR
190	Marten Benetar	Commission meeting	6Feb2013	C, H
191	Liz Smith-Oettinger	Commission meeting	6Feb2013	I
192	Morgan Campbell	Commission	6Feb2013	E

		meeting		
193	Glenn Stewart	Commission meeting	6Feb2013	PRFA
194	Bill Murphy	Commission meeting	6Feb2013	FR, AA, BAprior, L, LL, E, EF, T, P, F, W, RS, C, H, NG, NOGO, PRFA, DD, TR, B, LT, PUPV, VP, OU, TC, RNCB, TI
195	Jim deRoque	Commission meeting	6Feb2013	RS
196	Walter Imfeld	Commission meeting	6Feb2013	F
197	Jana Barkley	Commission meeting	6Feb2013	F
198	Kate Marden	Commission meeting	6Feb2013	AR, IR
199	Keith Richman	Commission meeting	6Feb2013	B
200	Kim Mauch	Commission meeting	6Feb2013	W
201	Richard Smiley	Commission meeting	6Feb2013	T
202	Andy McBride	Commission meeting	6Feb2013	RHP
203	Chris Cameron	Commission meeting	6Feb2013	AP
204	Mark Hennelly	Commission meeting	6Feb2013	S, A
205	Monica Engebretson	Commission meeting	6Feb2013	BA, MC, WA, RO, PM
206	Bill Gaines	Commission meeting	6Feb2013	S, A
207	Bill Gaines	Commission meeting	6Mar2013	A
208	George Bristol	Commission Meeting	6Mar2013	FR, F, P, RS, RO, MF, RH
209	Monica Engebretson	Commission Meeting	6Mar2013	BA, MC, WA, WE, RO, NTP, RP, SE
210	Jennifer Fearing	Commission Meeting	6Mar2013	BA, MC, WA, WE, RO, NTP, RP, SE
211	Steve Sanders	Letter	16Jan2013	SE
212	Chris & Christine Avalos	Letter	5Feb2013	A, AA, S
213	Irene Lopez	Letter	12March2013	BA, PM, VR

<u>Public comments and comment codes (in bold), and California Department of Fish and Wildlife (DFW) Responses (in italics):</u>

A: Approve of proposed falconry regulations.

<u>DFW Response</u>: Comment noted.

AA: Falconry has been practiced for thousands of years, is an ancient art that is beneficial to California falconers and raptors.

<u>DFW Response</u>: Comment noted. The historical background of falconry was included in the Draft Environmental Document (DED) and the Final Environmental Document (FED) for background on the proposed project and the setting for the proposed project. Historical background on the proposed project is in the body of the DED and FED on pages 8-10, and in Appendix C, acknowledging falconry's significant role in many cultures and its influence today. It should be noted that although falconry is an ancient art in other parts of the world, it has only been established (post-World War II) and regulated more recently (1957) in California.

AP: Would like to see a continued connection between Apprentice and Master falconers.

<u>DFW Response</u>: Currently, DFW requires Apprentice falconers to have a sponsor and to complete the Apprentice Falconer's Annual Progress Report in accordance with subsection 670(e)(6)(a) of the falconry regulations adopted March 6, 2013. The Apprentice sponsor program is intensive and requires oversight by the sponsor. Advancement from one class to the next requires approval from the sponsor and from DFW. In addition, any person under the age of 18 is required to get a parent or legal guardian signature taking on full responsibility. See page 46 of the DED for discussion of age limits for falconry classes.

AR: Opposed to animal rights groups who are opposed to falconry and taking wild raptors into captivity.

<u>DFW Response</u>: DFW has evaluated the concerns and viewpoints of both the falconry stakeholders and other stakeholders. It is clear that falconry is a unique type of hunting sport in the state, and not all viewpoints of the various stakeholders are easily reconciled.

A4: (Respondent #165). The language in (e)(6)(a)4 for Apprentice falconer possession is confusing.

<u>DFW Response</u>: At first glance, the language may appear confusing given all the limitations for an entry level falconer. However, a close read of each sentence indicates the first sentence is specifically addressing the 2 species that may be taken or possessed by an Apprentice (1 red-tailed hawk or 1 American kestrel), either wild or captive bred. Second sentence indicates only passage-stage red-tails or kestrels may be taken from the wild or possessed. Third sentence notes apprentices are not required to capture the wild raptor themselves, as a raptor can be transferred to the apprentice by another licensee. Finally, the last sentence makes the distinction once again that eyas (nestling) red-tails or kestrels may not be taken from the wild or possessed (passage stage raptors are required), nor may an apprentice possess a raptor that is imprinted on humans.

Given that over two-hundred comments were received on the proposed regulations, and no other commenters had an issue with the apprentice language, DFW believes the language is reasonably clear and closely parallels the federal regulations, except the latter allow for more species to be taken and possessed.

> "4. POSSESSION OF RAPTORS. An Apprentice falconer may possess for falconry purposes no more than one wild or captive-bred red-tailed hawk (*Buteo jamaicensis*) or American kestrel (*Falco sparverius*) at any one time, regardless of the number of state, tribal, or territorial falconry licenses in possession and only as long as the raptor in possession is trained in the pursuit of game and used in hunting. An Apprentice falconer may only capture from the wild or possess a passage red-tailed hawk or an American kestrel. Apprentice falconers are not required to capture a wild raptor themselves; the raptor can be transferred to him/her by another licensee. An Apprentice falconer may not capture from the wild or possess an eyas raptor or a raptor that is imprinted on humans. "

AC: (Respondent # 165). Compliance with (g)(4), "licensee shall be present during capture of a raptor from the wild", may be difficult. Some falconers do not wish to share nest site locations with other falconers.

DFW Response: We agree it may be true that some falconers do not wish to share nest site locations with other falconers. However, this is an optional way for a falconer to obtain a raptor, it is not required that falconers have another person capture a raptor for them. This language also closely mirrors the federal regulatory language, and it is apparent in this regulation that there is an advantage to having a skilled climber access a tree nest, or rappel down a cliff in order to secure a nestling for another falconer who may not have climbing skills or equipment, or who may no longer have the physical capability of safely making such climbs. Both the licensee and the climber could gain from the relationship because either one could find the nest first, or if sufficient young birds are present, both falconers would potentially benefit by having legal access to the nestlings within the bounds of the federal and state regulations.

APNG/G: (Respondent #157). Proposed regulations do not provide for the accidental predation of non-game species, or game species taken out of their regular season. CDFW should recognize these events are an inherent risk.

DFW Response: Except for under the Reporting Requirements section, the proposed regulations do not have a section specifically addressing what the falconer should do if a raptor accidently takes unauthorized nongame species, or game species outside the regular season, but the regulations do address inadvertent take of threatened and endangered species, and require the reporting of those listed species, game species, and unauthorized species to DFW. Our requirement for reporting of these species demonstrates that we recognize these events are an inherent risk of the sport of hunting via falconry. Assessing the level of take of these various non-target categories of species is important for DFW in its trustee role for wildlife. Falconers should follow all laws and regulations pertaining to hunting and use their raptor training and hunting skills, and acquire knowledge of non-target species and their habitat to avoid accidental take to the greatest extent feasible. Inadvertent or accidental take is also discussed in responses to codes H, IP, LL, and NTP, above.*

We recognize the regulations could be written more clearly to specifically instruct the falconers in regard to procedures to follow in the event of inadvertent take of species other than threatened and endangered species. We have aligned our regulations to the federal regulations to the greatest extent feasible. DFW will consider modifying the regulations in regard to inadvertent take in a future regulatory proposal.

The intent of this filing is to transition the Federal falconry program to the state by January 1, 2014. With this intent and the time restraints necessary to meet this deadline, some recommended amendments received during the Notice Period go beyond the initial scope of this transition. Some specific amendments will have to be reconsidered in a separate and future rulemaking. The Commission has expressed its desire to look at these recommendations in 2014.

* (3) Upon applying for license renewal or within 10 calendar days after expiration of the license, whichever comes first, a licensee shall submit to the department, an annual report using the Falconry Hunting Take Report, as specified in Section 703, summarizing the number and type of prey species taken while hunting, counties hunted, and birds used in hunting during the most recent license year.

B: Opposed to banding all wild caught raptors; this is a problem for small raptors in particular. Banding should limited to Gyrfalcon, Peregrine falcon, Northern goshawk, and Harris' hawk, or at least limited to bird species larger than Cooper's hawk. Banding of all wild caught raptors was previously removed from California regulations in 1993; and

B: (Respondents 177 and 194). Banding of raptors should be reserved for captive bred and imported birds. The need to band already approved species native to California and taken in California is redundant and a burden.

DFW Response: Comments noted in regard to limiting the banding of all raptors. The proposed regulations in Appendix B (DED) would have required all wild raptors to be banded. However, during the public comment period it became apparent that banding of all raptors with black plastic falconry bands is inappropriate for all species, causing harm to some small raptors. Therefore, we removed this from the proposed regulations (Title 14, Section 670(i)) and made this requirement in line with federal regulations (i.e., banding requirement was changed to only include wild-caught goshawk, peregrine, gyrfalcon and Harris's hawk). The federal standards also require that all captive-bred, hybrid, and exotic species have unique identifiers/bands.

While the banding of falconry raptors, replacement of lost or damaged bands, and tracking banded birds can be time consuming, it is necessary for enforcement purposes and better tracking of individual birds. This is why the USFWS has required bands on the more sensitive species as noted above (wild-caught goshawk, peregrine falcon, gyrfalcon, and Harris's hawk). Such marking devices can ultimately help conserve raptor populations, and provide useful information, such as recovering a lost falconry bird, and documenting its survival or breeding and hybridizing in the wild. Bird banding is a common marking technique in scientific research on birds, and band sizes and various color bands exist for species as small as hummingbirds up to golden eagles and California condors in size. Bird banding for scientific research is highly regulated by the Bird Banding Lab operated by U.S. Geological Survey, and the technique is not considered to substantially affect the behavior and longevity of wild birds. DFW acknowledges that might not be the case for falconry birds that are subject to confinement and lack of normal/natural stimuli.

Federal regulations already require imported birds to be banded or micro-chipped, as noted here: (iii) Unless you have the necessary permit(s) to permanently export a raptor from the United States, you must bring any raptor you take out of the country for falconry back to the United States when you return. Each raptor must be covered by a CITES certificate of ownership issued under part 23 of this chapter. You must have full documentation of the lawful origin of each raptor (a copy of a propagation report with band number or a 3-186A report), and each must be identifiable with a seamless band or a permanent, nonreusable, numbered Fish and Wildlife Service leg band issued by the Service or an implanted microchip for identification.

In the future, we will be assessing the proper type of marking device to be compatible with our needs for enforcement purposes, the needs of falconers, and for the health and conservation of raptors.

The intent of this filing is to transition the Federal falconry program to the state by January 1, 2014. With this intent and the time restraints necessary to meet this

deadline, some recommended amendments received during the Notice Period go beyond the initial scope of this transition. Some specific amendments will have to be reconsidered in a separate and future rulemaking. The Commission has expressed its desire to look at these recommendations in 2014.

BA: Banding should be required for all wild caught raptors, including small raptors, to increase the ability to distinguish wild caught raptors from captive bred raptors, and to limit the ability to launder birds into the captive breeding system.

DFW Response: In the future, we will be assessing marking devices to meet our needs and the needs of the falconers. Specialized marking and radio-marking will be evaluated and considered for future regulatory change if needed. It would be helpful to be able to track escaped raptors, and to distinguish between captive bred raptors and wild caught raptors to avoid any false reporting by falconers. For additional information see "Illegal Take" section below.

BA/Prior: (Respondent #194). Delete this section [crossed out]: (A) A licensee shall obtain a band from the department's License and Revenue Branch or regional office ~~prior to capturing a raptor from the wild~~. It is unrealistic to know what you are going to trap.

DFW Response: Because we have limited the number of raptors to be banded to more closely align with federal regulations, leaving only the goshawk as a native raptor to be banded when taken from the wild, we believe it is realistic that a falconer knows what species they intend to take or wish to take prior to going afield, especially in the case of a species like the goshawk. The falconer would have to be in the right habitat at the right time of year, have goshawk nest-finding skills in heavily forested terrain, have good climbing skills (for eyas goshawk), and falconry skills that would match what is necessary for training a high-strung raptor like the goshawk to take legal quarry.

Regulatory language is as follows:

(i) **BANDING AND TAGGING.**
(1) A goshawk, peregrine, gyrfalcon or Harris's hawk captured from the wild or acquired from another licensee or a permitted California wildlife rehabilitator shall be banded with a permanent, nonreusable, numbered USFWS leg band if the raptor is not already banded. Captive bred raptors that are listed under the MBTA shall be banded with seamless bands.
(A) A licensee shall obtain a band from the department's License and Revenue Branch or regional office prior to capturing a raptor from the wild.

C: Opposed to filling out a state "Resident Falconer Raptor Capture, Recapture, and Release" form and federal form for capturing a raptor, feel this is redundant.

<u>DFW Response</u>: Regarding redundant reporting between federal and state forms, the DFW will be requiring its own information to ensure California has the appropriate and needed information related to falconry. DFW plans to develop a fully functional electronic reporting system for all state forms in close coordination with USFWS, and in this way much of the redundancy should be eliminated in the future.
DFW has acknowledged some problems with the lack of reported take location by further refining reporting requirements in the newly revised "Resident Falconer Raptor Capture, Recapture and Release Report" form. As for other species with take report cards (e.g. abalone, sturgeon, scientific collecting, etc.), compilation and scientific use of this take data relies heavily upon honesty by the permit-holder. There is currently no method or resources in place to confirm all take locations are legitimate (e.g., no on-the-ground follow-up to determine if there is an active nest in the reported location, and with a time-lag in reporting, a nest may have already been vacated or failed by the time anyone from DFW could confirm nest activity). Data collected from 2006-2010 indicates raptor capture occurs throughout the state rather than concentrated in a particular region/area (FED, p. 40.).

DFW has not been intensively monitoring or analyzing the level of reported take every year due to the minimal level of falconry take in California and higher priorities, but DFW does review the annual take report forms. Falconry take has been reported on existing forms since the early 1990s; and some data compilations exist from before the 2005-2010 time frame. This data will be incorporated into future falconry management activities to determine long-term trends for falconry take for each species.

CI: The impact of falconry on raptors is minor compared to the cumulative impacts associated with other human-caused mortality factors (e.g., electrocution, collision with vehicles, collision with wind turbines, shooting, clear-cutting, and habitat loss).

<u>DFW Response</u>: We acknowledge the need for more scientific data to provide stronger assurance for self-sustaining raptor populations, especially in regard to increased human population growth in the state, and further loss of habitat for raptors. As a result of compiling and analyzing information for this environmental document, we recognize the need for closer population monitoring of the species authorized for falconry take, especially those with smaller population size and under pressure from habitat modification and loss (i.e., prairie falcon and northern goshawk). The species accounts in the FED (Appendix F) describe the various threats facing the subject raptors in California.

DD: The tag drawing dates for Prairie falcon and Northern goshawk should be changed (Section 670(g)(7)(K)). The tag application date was changed from May 1st to January 31st, but the drawing date/date to turn in tag application was not changed as well.

DD: (Respondent #160). Application and drawing dates are wrong. You changed the application date but not the drawing date. This needs to be fixed.

DFW Response: Comment noted; the application and application fee due date for Special Raptor Capture Drawing Applications has been modified from May 1 to January 31 to better fit the appropriate season for raptor capture. According to Section 670(g)(7)(K)(5) the drawing shall take place within 10 business days following the application deadline (January 31st). This indicates the drawing shall occur on or near February 10. If the drawing is delayed due to circumstances beyond the department's control, the department shall conduct the drawing at the earliest date possible. The June 1 deadline refers to the date when the Raptor Capture Permit fee must be received by the Licensing and Revenue Branch in order for an applicant to claim the special permit.

DNA: Propose using DNA tests to determine individual identification of falconry raptors, as opposed to banding.

DFW Response: Comment noted; this would likely not be a feasible or cost-effective method to identify falconry raptors, and would likely result in even higher license fees to compensate for testing requirements.

E: Prefer applicants can re-take the falconry exam the next day if fail, not 3 weeks from fail date.

DFW Response: The waiting period for failed license applicants has been reduced from three months to "the next business day." The change accommodates applicants that must travel a great distance for the examination and is consistent with other DFW administered exams.

ED: Falconry is beneficial to raptor conservation and education.

DFW Response: We recognize that conservation of raptors is one benefit of falconry (page 21 of the FED). While we are not aware of any study to determine the value of falconry in relation to conservation education, we have observed the educational value that falconers provide to the public through demonstrations at organized wildlife festivals. The practice of falconry may lead to a greater knowledge of raptor ecology, population status, disease, and threats. In addition, falconers may choose to participate in education efforts with proper permits.

EF: Opposed to exam fee.

DFW Response: The new falconry exam will be 100 multiple choice questions. As stated on page 58 of the Final Environmental Document for falconry, it is estimated that

to address these needs at the time of an exam, the DFW staff administering the exam will spend approximately 90 minutes, which will cost the DFW approximately $45.

F: Opposed to all falconry related fee increases.
F: (Respondent #194). The proposed fee structure is excessive…no other sporting group pays fees in addition to hunting…Licenses and tags which we buy-on the level that is proposed here.

DFW Response: We recognize the importance of the falconry sport. DFW needs to ensure the falconry program runs efficiently while ensuring that the wildlife resources we are responsible for are considered appropriately. For this reason we have included language in the proposed regulations that is more restrictive (protective) than the federal regulations.

The fees that falconers pay are intended to cover the cost of the program, thereby ensuring the cost to run the program is negligible. This includes law enforcement and administrative time spent on the program. It should also be noted that the state currently has a falconry program and this should be considered baseline for any assessment.

There are no fees or fee structures proposed with this rulemaking. The authority to set the fees belongs to the DFW and not FGC pursuant to Fish and Game Code. A separate rulemaking and process will be held by DFW to establish the fees for the falconry program. Keeping a live wild animal at someone's home for the purpose of hunting is unique to falconry and requires associated fees not required of other hunters. Also, see response to Code W.

Feathers: (Respondent #187). (2)(11) Feathers from one's raptor is private property. They cannot be taken without due process of law or without compensation.

DFW Response: Federal falconry regulations found in 50 C.F.R., § 21.29, subdivision (f)(12), adopted pursuant to the Migratory Bird Treaty Act, prescribe the manner in which licensees are required to use or dispose of feathers from birds used in falconry. These regulations require that feathers be obtained from the licensees' raptors, other licensed falconers, wildlife rehabilitators, or propagators. These regulations also require persons whose licenses have expired or revoked to donate feathers to certain authorized institutions or other persons licensed to possess them. Otherwise, the feathers must be burned, buried, or otherwise destroyed.

Section 670, subdivision (h)(1) makes state requirements pertaining to use and disposal of feathers consistent with federal regulations, which do not treat feathers from one's raptor as "private property."

FEHA: Opposed to elimination of Ferruginous hawk from the species authorized for wild take in California. Propose limit take to the non-breeding season.

<u>DFW Response</u>: A summary of the ferruginous hawk population status and level of wild capture can be found in the DED, Chapter 4 (pages 27-28) and pages 49-55. Ferruginous hawks were excluded because of their limited use in the practice of falconry, their small nesting population size in California, and their questionable/declining population trend north of California.

Historically the ferruginous hawk (Buteo regalis) was considered "formerly common as a transient and winter visitant" throughout its range, but "notably scarce or altogether wanting in all regions from which previous reports have been made" (Grinnell 1915). Grinnell and Miller (1944) regarded ferruginous hawk as "formerly abundant" during winter; but only common locally throughout its distribution. There is little information on historical nesting distribution and numbers for ferruginous hawk in California.

The only consistent current monitoring data of ferruginous hawk wintering populations in California is available from the Christmas Bird Count, which was used by Hunting (1998) to estimate "the average California population could be between 400 and 500 individuals," based on an average of 2.5 individuals seen for all CBC circles from 1990 to 1997. There is no other population estimate for California's wintering ferruginous hawk population, aside from more current CBC data. Band recovery and telemetry data indicate California provides winter habitat for threatened ferruginous hawk populations in Washington and possibly threatened populations in Canada (Garrison 1990, Gosset 1993, Richardson 1996, Watson 2003, COSEWIC 2008, WDFW 2012). Furthermore, the breeding population size of ferruginous hawk in California is very small, and seasonal movements of resident breeders are unknown.

Assessing population-level impacts from falconry during the winter would be difficult, potentially requiring a species-specific ferruginous hawk migration monitoring program (e.g., Golden Gate Raptor Observatory at a statewide level) to determine the true number of winter-only ferruginous hawks. Even then, estimates of breeding populations via intensive surveys and monitoring would still be required to account for potential year-round resident ferruginous hawks. An analysis of the impacts of falconry take on the breeding and wintering populations would require estimates of immigration and emigration.

The DFW recognizes that ferruginous hawks from outside of California winter here and would be subject to falconry take, but there is concern for these individuals due to uncertainty regarding their traditional breeding locations and legal status elsewhere. We are cautious in our management of those individuals in order to avoid impacts to populations that breed in other states, and in our state. Breeding ferruginous hawks may be permanent residents in California, making it difficult to determine the difference between a resident breeder and a winter migrant in the absence of any species-specific studies in the state.

The ferruginous hawk occurs at the southernmost portion of its breeding range in northern California. Populations at geographic margins of their ranges may be particularly important for long-term persistence and evolution of species because disjunct or peripheral populations may have diverged genetically from central populations due to either genetic drift or adaptation to local environments (Fraser 1999). Populations at geographic margins of their ranges can exhibit differences from larger, core populations in their habitat relationships, associations with competing species, and feeding and breeding behaviors (Restrepo and Gomez 1998, Lomolino et al. 2006). The potential for adaptation to local environments makes conservation measures for ferruginous hawk in California particularly important.

Given the uncertainties surrounding the breeding population size and distribution of ferruginous hawk in California, and the fact that DFW has concern for winter migrants, a prohibition on the harvest of this species for falconry is justified. Previous regulations allowed for unlimited take of ferruginous hawk from the wild, which if left unchecked, could quickly reach levels that would have a negative impact on ferruginous hawks inhabiting California, especially in the context of cumulative threats facing the species (e.g., urbanization, renewable energy development, etc.). For a more detailed analysis of ferruginous hawk ecology in California, refer to the species account in Appendix F of the Falconry DED.

Literature Cited:

COSEWIC. 2008. COSEWIC assessment and update status report on the Ferruginous Hawk Buteo regalis in Canada. Committee on the Status of Endangered Wildlife in Canada. Ottawa. vii + 24 pp.(www.sararegistry.gc.ca/status/status_e.cfm).

Fraser, D. F. 1999. Species at the edge: The case for listing of "peripheral" species. Proceedings of the Conference on Biology and Management of Species and Habitats at Risk, Kamloops, B.C.
15–19 February, 1999.

Garrison, B.A. 1990. Trends in winter abundance and distribution of ferruginous hawks in California. Transactions of Western Section of the Wildlife Society 26:51-56.

Gossett, D. N. 1993. Studies of Ferruginous Hawk biology: I. Recoveries of banded Ferruginous Hawks from presumed eastern and western subpopulations. II. Morphological and genetic differences of presumed subpopulations of Ferruginous Hawks. III. Sex determination of nestling Ferruginous Hawks. Thesis. Boise State University, Boise, ID.

Grinnell, J. 1915. A distributional list of birds of California. Pacific Coast Avifauna No. 11. Page 66.

Grinnell, J. and A.H. Miller. 1944. The distribution of the birds of California. Pacific Coast Avifauna 27:104.

Hunting, K.W. 1998. Ferruginous hawk. In B. Allen, editor. California partners in flight grassland bird conservation plan. California Partners In Flight and Point Reyes Bird Observatory. Available at: www.prbo.org/calpif/htmldocs/grassland.html.

Lomolino, M. V., B. R. Riddle, and J. H. Brown. 2006. Biogeography. 3rd edition. Sinauer
Associates, Inc., Sunderland, MA.

Restrepo, C., and N. Gomez. 1998. Responses of understory birds to anthropogenic edges in a neotropical montane forest. Ecological Applications 8: 170–183.

Richardson, S.A. 1996. Washington State recovery plan for the ferruginous hawk. Washington Dept. of Fish and Wildlife, Wildlife Management Program, Olympia, WA. 63 pages.

Washington Department of Fish and Wildlife. 2012. Ferruginous hawk. Threatened and Endangered Wildlife in Washington: 2011 Annual Report. Endangered Species Section, Wildlife Program. Washington Department of Fish and Wildlife, Olympia. (available at : http://wdfw.wa.gov/publications/01385/)

Watson, J.W. 2003. Migration of winter ranges of ferruginous hawks from Washington. Final Report. Washington Department of Fish and Wildlife, Olympia, Washington, USA.

FM: Change wording of Section 670(j)(1)(C) from "*in the immediate presence of a licensed falconer*" to "*such as by you or a family member at any location or, for example, by a designated individual in a weathering yard at a falconry meet*".

DFW Response: Comment noted; DFW may consider changes in this language during potential regulation changes in the future.

FR: Support adoption of all federal regulations; the proposed project/regulations too strict.

DFW Response: We recognize the importance of the falconry sport to falconers. DFW needs to ensure the falconry program runs efficiently while ensuring that the wildlife resources we are responsible for are considered appropriately. For this reason, we have included language in our regulations beyond that of the federal regulations. As noted on page 45 of the FED: Other state laws and regulations give certain protections to raptors beyond the federal regulations, and hence, there are some items in the federal regulations that the state cannot strictly adopt straightaway. For instance, the state has a fully protected statute (see Fish and Game Code Section 3511) that gives

added protection to golden eagles and peregrine falcons. The federal regulations allow capture of both of these species, however, Fully Protected species cannot be obtained from the wild for use in falconry (page 48, FED).

H: Opposed to reporting falconry take of prey species on "Falconry Hunting Take Report" form; feel it is an excessive requirement, and creates extra work for DFW.

<u>DFW Response</u>: Under the regulations approved by the Fish and Game Commission on March 6, 2013, additional prey reporting requirements will result in DFW obtaining better information on incidental take by falconry raptors. This requirement is partly a result of comments received during scoping for the DED where it was noted we need to study effects on nongame species including threatened and endangered species unintentionally taken by falconry raptors (page 89 of the FED). The regulations state: "A licensee shall ensure that falconry activities do not cause the take of state or federally threatened or endangered wildlife, for example, by avoiding flying a raptor in the vicinity of the listed species".

As noted in the FED (pages 107-108), in regard to incidental take of nongame species, we recognize there is the potential for falconry raptors to take non-target species. However, the DED does address these concerns. See "Effects of Falconry on Targeted Prey Species, Non-target Species, and Listed Species", page 41 of the DED. Unintentional take is a risk under the existing regulations too. However, under the proposed regulation, additional prey reporting requirements will result in DFW obtaining better information on incidental take in order to ensure take levels are not excessive, especially in regard to any threatened, endangered, fully protected species, or Species of Special Concern, and in regard to particular geographic areas where take could be more concentrated during the falconry hunting seasons due to limited access for hunting purposes. Reporting of incidental take is also addressed in the proposed regulations: "Any threatened or endangered bird, or mammal, reptile or amphibian taken by a raptor without intent shall be removed from the raptor as soon as practical, and left at the site where taken if dead, or taken to the nearest wildlife rehabilitation center if injured. The take shall be reported by the licensee to the nearest U.S. Fish and Wildlife Service (USFWS) Ecological Services Field Office and the nearest department regional office (www.dfg.ca.gov/regions/) within 10 calendar days of the kill". This requirement should reduce the potential for mortality.

As noted on page 117 of the FED: The DFW does not have much data on prey numbers taken by falconry species, other than the data presented in the DED (see page 10-13; Table 2 and Table 3). This is the major reason we added the requirement for falconers to report prey species taken annually, in addition to the incidental take of T&E species or game species taken outside the hunting season. We also recommend that falconers report take of targeted and non-targeted game species annually so that the Department can track this hunting practice as it does with other more common hunting practices in the state (Page 57, FED). Once we have this basic data from year to year, we can

better assess impacts of falconry over several years. Currently, there are no specific indications that the proposed project will significantly impact any species.

In order to help minimize incidental take, we can also direct falconers to web pages and other sources of information to educate them, and to help insure they know how to identify special status species, and know the habitat and range of such species. We understand that identification of non-target species and knowing their distribution in the state may be a difficult task for falconers, but it is our responsibility to ensure that legal game is being taken, and to determine any potential impacts on the state's wildlife as a result of falconry in California.

I: Please do not ban falconry and make it illegal.

DFW Response: Approximately one third of the total comments (~50) expressed concern that the Fish and Game Commission and the DFW were considering banning falconry, and many of these particular commenters expressed their support of falconry. The regulations were not changed to ban falconry, but to more closely align with federal regulations, where feasible.

IP: Falconry has no significant impact on prey species populations.

DFW Response: See "Effects of Falconry on Targeted Prey Species, Non-target Species, and Listed Species", page 41 of the FED, where impacts to these species are addressed. There is not expected to be a change in baseline as a result of the proposed regulations because the level of removal from the wild has been occurring for several decades, is very likely decreasing as the number of falconers in the state decreases over time, and the overall level of removal in relation to the species population estimates is extremely low.

The FED presents and analyzes the known data sources on the populations of the species covered by the proposed regulations. As it relates to take of nongame, listed species, or non-target species, the information available, based on voluntary reporting to the Department for 2005 and 2011, indicates that this is insignificant. Because the overall number of practicing falconers in California is low, the Department has concluded that the take of wildlife is non-significant to any of the prey species populations.

IR: Falconry has no significant impact on raptor populations.

DFW Response: Full species accounts can be found in Appendix F of the DED. A summary of species information, including population trend and estimates, can be found in the body of the DED on page 22-39. A table summarizing whether a species was included for wild capture, or not is included in the DED on page 38-49. These sections assess wild capture considering species status, population numbers, and use in falconry. Low numbers and the impact of falconry take is relative. For no species

authorized in the new regulations, is the anticipated level of removal from the wild greater than 0.5 percent, an insignificant percentage.

There is not expected to be a change in baseline as a result of the proposed regulations because the level of removal from the wild has been occurring for several decades and the overall level of removal in relation to the species population estimates is extremely low.

DFW acknowledges that additional monitoring would be beneficial. Reassessing the population in the future, and therefore reassessing capture level, will be needed for goshawk as well as other falconry raptor species. However, the lack of monitoring data does not substantially impact the conclusions in the environmental document. All of the available scientific data is consistent with the proposed regulations.

Because DFW anticipates that capture levels will continue to remain minimal compared to populations as a whole and geographically dispersed, take at individual nests, does not significantly impact raptor populations on a statewide level (FED, "Effects of falconry on wild raptor populations" page 40).

However, when combined with cumulative impacts (recreational disturbance, disease outbreaks, etc.) repeated take at localized levels may have potential impacts that DFW acknowledges, will monitor, and adapt regulations to in the future if data warrant a change (FED, page 40). The proposed project will result in raptor captures far below the estimated maximum capture levels in California (FED, pages 50-51), and would not significantly impact raptor species. If concern that overharvest may be possible for a particular species, then appropriate restrictions may be considered for the regulatory year. Additionally, the Commission has the capability to implement emergency regulations to protect a species if necessary, however, the DFW authorized take is so conservative, that we do not anticipate that ever being necessary.

Also, see "Wild nestling capture" section of the FED, page 56, for a description on the take of eyas birds. Additionally, because there is a limit on the number of nestlings that may be taken from the wild each year (two/general and master falconer, limit of 14 prairie falcon for take each year), the cumulative take of nestlings is expected to be low, unless the number of practicing falconers increases significantly.

A maximum capture percentage (see page 50 of the FED) has been applied to the juvenile California population estimate for each species allowed for take, based on a model developed by Millsap and Allen (2006). When comparing the average number of birds reported being captured over a 5-year period (majority passage) versus the number considered sustainable by the falconry take model, only 2 species were expected to exceed allowable take levels. One of those species (Ferruginous hawk) has been proposed to be prohibited from take and another (prairie falcon) has been proposed to have a take limit of 14/year. Therefore, because anticipated capture levels

are so low, any impacts on raptor populations caused by taking younger birds should not be significant.

One commenter noted that a few species are declining, principally because of habitat changes, adding that the Harris' hawk is the only declining species that is of importance to falconry. We note that this species was historically documented as breeding in California (Grinnell and Miller 1944), but we are unaware of any current breeding sites.

L: Suggest clarification of "listed" to "threatened and endangered" with respect to take of prey species.

DFW Response: The proposed regulations have taken out the reference to "listed" species in Section (d), and have restated as "threatened or endangered".

LL: Would like Let-it-lay regulation as written in the federal regulations.
LL: (Respondent #160). Concerning take of threatened and endangered species, we had discussed the omission of the federal "Let-it-Lay" law, and DFW had indicated with the ad hoc CHC Regulations Working Group that this provision of the federal regulations would cross over into the new state regulations. As now written, it is ambiguous, pertaining to reporting and not the actual Let-it-Lay provision.

DFW Response: Comment noted. DFW has an obligation under the California Endangered Species Act to "conserve, protect, restore and enhance any endangered species or any threatened species..." (CESA; Fish & G. Code, § 2052.) DFW indicated earlier that it would consider adopting the federal let-it lay language, which allows a falconry raptor to feed on any threatened or endangered species it catches; this provision is found in 50 C.F.R., § 21.29(19). However, after considering this issue further, DFW believes that requiring reporting and release/rehabilitation requirements are consistent with its obligations under CESA to conserve, protect, restore and enhance listed species. Therefore, our proposed regulations do not contain the let-it–lay provision.
Specifically, the revised regulation provides stronger protections for listed species than the let-it-lay provision by doing the following. First, it includes language requiring licensees to remove any threatened or endangered bird, mammal, reptile or amphibian taken by a raptor and take it to the nearest wildlife rehabilitation center, if injured. This provision will reduce take of listed species and ensure the continued protection of threatened and endangered species. Second, additional prey reporting requirements will result in DFW obtaining better information on incidental take in order to ensure take levels are not excessive, especially in regard to any threatened, endangered, fully protected species, or Species of Special Concern, and in regard to particular geographic areas where take could be more concentrated during the falconry hunting seasons due to limited access for hunting purpose (see response to comment code "H", above).

LT: (Respondent #194). Three year license should be granted.

DFW Response: Falconry hunting regulations are set by the regulatory year, which is the 12-month period starting July 1 and ending the following June 30, and is the same as the falconry license term, or license year. We would have to analyze the pros and cons of having the regulatory year cover a three-year term.

The intent of this filing is to transition the Federal falconry program to the state by January 1, 2014. With this intent and the time restraints necessary to meet this deadline, some recommended amendments received during the Notice Period go beyond the initial scope of this transition. Some specific amendments will have to be reconsidered in a separate and future rulemaking. The Commission has expressed its desire to look at these recommendations in 2014.

MBTA: Section 670(i)(1) under Banding and Tagging you crossed out "*that are listed under the MBTA*" that should not have been crossed out. There are several non-MBTA falcons that are bred here in the US that are flown for falconry such as the Barbary falcon and the Saker falcon. The breeders are federally permitted and the feds do not want non-MBTA falcons banded with seamless bands.

DFW Response: Comment noted; DFW has made an adjustment to this section in the regulations adopted on March 6, 2013.

MC: Provide DFW law enforcement the ability to monitor wild capture of falconry raptors (i.e., require that falconers notify the Department of when, and where, they plan to capture a falcon from the wild); giving Wildlife Officers and/or DFW biologists an option to go into the field with falconers during capture attempts.

DFW Response: Given the nature of the sport of falconry, reporting cannot be continually monitored or verified by DFW staff. It would be very difficult for DFW staff to be present at the time of all capture or release activities, since falconers often do not know exactly when or where they will be capturing a target raptor species until the opportunity arises.

In past and present regulations, DFW will rely on falconers to follow falconry laws when enforcement staff is not present. Generally, most falconers follow falconry laws, because of an interest in the welfare of the birds and in retaining their privilege to continue falconry. Moreover, serious falconers have proven to be valuable allies to enforcement staff by reporting violations.

While DFW has insufficient resources to have an employee present whenever a wild raptor is taken, DFW will consider and evaluate an official, signed-off validation as part of reporting take in the future, similar to the process for completing deer or bear tags. This could be tested as a pilot program for the more regulated species (northern

goshawk and prairie falcon), and could involve biologists of government agencies where take is likely to occur (e.g., USFS, BLM, NPS), to help alleviate costs to DFW.

MF: Suggest a follow-up meeting with the falconers to go through the regulation language, and the falconers are willing assist in writing the regulations.

DFW Response: The Commission has recommended a follow-up meeting with the falconers to discuss potential regulation changes in the future and we will comply with that recommendation, and include other interested parties.

NG: Opposed to lottery of one Northern goshawk; prefer Lake Tahoe Basin to stay closed to take of goshawk.

DFW Response: Comment noted; we may consider changes in level of take for northern goshawk during potential regulation changes in the future. In authorizing take of one goshawk in the Tahoe Basin, the DFW will be gaining location information and response to removal from other birds, thus increasing our knowledge base on the species.

NGL: As written in the proposed regulations, only one goshawk may be allowed for take statewide, and only from the Tahoe Basin. Suggest adding language to allow for unlimited take outside of the Tahoe Basin.
NGL: (Respondent #160). On all other species accounts there is language that states "No restrictions on cumulative numbers and location", we need to put that statement in for the remainder of the state because as written now we can only take 1 Goshawk in California and that is out of the Tahoe Basin.

DFW Response: Comment noted; language for unlimited falconry take of northern goshawk outside the Lake Tahoe Basin can be found on page 7 of the FED: Year-long capture of Northern goshawks statewide. No more than 1 goshawk per year from the Tahoe Basin. Subsection (g)(5) addresses the statewide capturing of various raptor species from the wild, including goshawk. Subsection (g)(7)(A) through (K) addresses restrictions species by species, including goshawk taken within the Lake Tahoe Basin. It is not the intent to have the goshawk restriction noted in (g)(7)(A) apply statewide, but be specific only to the geographic boundary listed. If continued feedback demonstrates a problem with interpretation of the text as written, the clarity of the text will be proposed for amendment when the Commission addresses recommendations that will have to be reconsidered. The Commission has expressed its desire to look at these recommendations in 2014.

NOGO: Prefer Lake Tahoe Basin be opened to the unlimited take of goshawk.

DFW Response: Comment noted; we may consider changes in level of take for northern goshawk during potential regulation changes in the future. The major landowner in the Tahoe Basin, the U.S. Forest Service, has expressed concern over take of the species in the basin. Additionally, as noted on page 40 of the FED: "Currently, goshawk

population numbers in the Tahoe Basin are small and productivity is average. The Tahoe Basin goshawk population is not a closed population, meaning immigration and emigration between other goshawk population centers are possible. However, this small population could be sensitive to disturbance and over-capture, especially during the breeding season". For these reasons, we have determined it to be reasonable to only allow limited take (n=1) in the Tahoe Basin at this time.

NR: Opposed to non-residents being required to purchase a California falconry license; should be able to use out-of-state falconry license. Why do non-resident falconers have to submit a capture report if they did not capture a bird?

DFW Response: We must ensure that any persons practicing falconry in the state have a full knowledge of state requirements, and thus obtain a state falconry license. Nonresidents need to return raptor capture forms in order to confirm that take did or did not occur. If nonresidents do not intend to capture raptors in California (e.g., travel to the state to hunt), then only a falconry license from the falconer's resident state would be required.

NTP: The take of non-target prey species during falconry hunting should be better addressed. In particular, small raptors do not naturally take legal game species and are likely "practice" or "novelty" birds.

DFW Response: If small raptors (i.e., sharp-shinned hawk, American kestrel, etc.) used in falconry were to incidentally take species otherwise prohibited under Fish and Game Code or regulations, such take should be reported. See response to "H" above. DFW will monitor incidental or "without intent" take by each raptor species to help determine if appropriate for use in falconry.

OU: (Respondent #194). The "other uses of falconry raptors" section is taken out of context from the federal regulations, and was language intended for raptor propagation permits; suggest replacing with the federal language.

DFW response: Comment noted. Section (h)(14) of the State regulations, pertaining to the use of falconry raptors for education, exhibiting, propagation, and abatement, has been changed to reflect the federal regulations. The time requirement for use as a falconry raptor now only pertains to raptors transferred to a federal raptor propagation permit, as noted below in section (h)(14).

State Regulations:
(h)(14) OTHER USES OF FALCONRY RAPTORS. A licensee may use falconry raptors for education, exhibiting, propagation, or abatement. A licensee may transfer a wild-caught raptor to a raptor propagation permit, but the raptor shall have been used in falconry for at least two years, or at least one year for a sharp-shinned hawk, merlin, Cooper's hawk or American kestrel. A wild caught raptor may be transferred to another permit type other than falconry only if it has been injured and can no longer be used in

falconry. In this case, the licensee shall provide a copy of a certification from a veterinarian to the department's License and Revenue Branch stating that the raptor is not useable in falconry.

P: Recommend amending Section 670(e)(6)(B) and (C), possession requirements for general and master falconers, to allow for possession of threatened and endangered species "legally obtained elsewhere"; and align with the federal regulations regarding raptor possession.
P: (Respondent #160). Proposed language needs to be changed to cover listed raptors currently in possession. We can possess federally or state listed threatened or endangered species when legally obtained elsewhere such as from breeding facilities around the US.

DFW Response: The texts of the regulations have been modified to accommodate the concerns of the commenter, as well as clarify the consistency of the regulations with existing law. Legally acquired threatened and endangered raptors submitted on federal form 3-186A MIGRATORY BIRD ACQUISITION AND DISPOSITION REPORT, as evidence of legal acquisition, shall be provided to DFW. Raptor species authorized for take from the wild for falconry in California are limited to those in Section 670(g)(5). A General falconer may possess for falconry purposes any wild raptor species listed in subsection (g)(5), and any captive-bred or hybrid of any species of Order Falconiformes, Accipitriformes, or Strigiformes, or legally acquired federally or state listed threatened or endangered species, and eagles. A Master falconer may possess for falconry purposes any wild raptor species listed in subsection (g)(5), and any captive-bred or hybrid of any species of Order Falconiformes, the Order Accipitriformes, or the Order Strigiformes, or legally acquired federally or state listed threatened or endangered species. A Master falconer may possess any number of raptors except he/she shall possess no more than five wild-caught raptors for use in falconry at any one time, regardless of the number of state, tribal, or territorial falconry licenses in possession. Only eyas or passage raptors may be wild-caught; except American kestrel (Falco sparverius) or great horned owl (Bubo virginianus) may be captured at any age.

POSSESSION OF EAGLES. A Master falconer may possess up to three eagles at any one time, except no bald eagle may be possessed. Eagles may not be captured from the wild in California, but may be obtained from captive breeders, imported from another state, or transferred from a rehabilitation facility if the eagle is non-not releasable. The department shall authorize in writing which species of eagles a Master falconer may possess.

(4) "Eagles" includes golden eagle (Aquila chrysaetos), bald eagle (Haliaeetus leucocephalus), white-tailed eagle (Haliaeetus albicilla), and Steller's sea-eagle (Haliaeetus pelagicus).

The intent of this filing is to transition the Federal falconry program to the state by January 1, 2014. With this intent and the time restraints necessary to meet this

deadline, some recommended amendments received during the Notice Period go beyond the initial scope of this transition. Some specific amendments will have to be reconsidered in a separate and future rulemaking. The Commission has expressed its desire to look at these recommendations in 2014.

PEFA: Believe that falconers are the reason why peregrine falcon recovered from endangered status in California, and falconry contributes to raptor conservation/enhancement of wild raptor populations.

DFW Response: Appendix C contains the historical background of falconry where it is mentioned that falconers assisted in conservation efforts through a captive breeding program for the peregrine falcon (see page 6 of Appendix C). We recognize the role that falconry techniques played in the conservation of the peregrine falcon in California, while also recognizing that other conservation efforts were important (e.g. ban on DDT).

It should be noted that DFW does not rely on the practice of falconry for conservation efforts for raptors, and any captive breeding program proposed to aid in conservation/recovery would only be approved by us in the context of ongoing recovery efforts for critically imperiled species, and should only be used as a last resort (e.g. California condor captive breeding and release program).

Our examples of falconry contributions to conservation (FED, page 21) were specific and did not indicate that falconers are directly contributing to wild raptor population stability or growth. Falconry take is based on allowing a small number of young-of-the-year to be removed from the wild, without causing a decline in a given species. Additionally, there is little evidence in California (aside from the specialized case of the peregrine falcon) that wild-caught birds released after some time in captivity will successfully reproduce. This is why falconry take has been considered a mortality event in the models used by Millsap and Allen (2006) and USFWS (2007). We recognize that falconry is a hunting method that is allowed with proper license for pursuing authorized game species, and as a sport, is not meant to be used as a tool to enhance wild raptor populations.

PRFA: Opposed to lottery for prairie falcon, and consider it an abundant species in California. Reporting is a burden to falconers and DFW, and take is low anyway.

DFW Response: Regarding the capture limit and lottery system for prairie falcon, we believe this is the appropriate action to take based on the best scientific data available. For detailed rationale, see our response to comments regarding prairie falcon and the analysis contained in the document in the record (FED) entitled "Comparison of Breeding Bird Survey and Focused Prairie Falcon Population Estimates," also inserted below at the end of this response to public comments section.

Though take may have been low in some previous years, there was the potential for take to increase beyond a scientifically acceptable limit in the absence of a limit. Reporting of take is vital for DFW to carefully manage the species in the context of all known threats and cumulative impacts.

Based on early ornithological work by Grinnell and Miller (1944) in California, prairie falcon was not considered "abundant". For purposes of their work, it was considered common (lower density). The term "common" was defined on page 10 of their book as: "… a common species is one of which some representative could at least be noted daily in appropriate habitat". In contrast, they defined an abundant species as: "It may be said that abundant species are those which can be observed in quantity in their habitat in any day in the proper season without any special search." Prairie falcon did not fit that description then, nor does it now. In fact, Grinnell and Miller (1944) caveated their use of "common" for the species by limiting that description to only a part of the prairie falcon range in California, i.e., the "metropolis of range" (see species account for details). More recently, Polite and Pratt (2005) and Small (1994) considered prairie falcon "uncommon" in California.

Regarding the planning needed if a lottery system is used for prairie falcon, a similar regulatory system is used for game species in California to prevent overharvest. DFW does not anticipate the prairie falcon lottery system will be a burden, and it is part of our trustee role to oversee harvest of many different taxa in California.

PRFA and PEFA: Historically there were more Prairie falcons (PRFA) than peregrine falcons (PEFA) in California. PEFA dramatically increased after the DDT era, and we should assume PRFA did too.

<u>DFW Response</u>: Because of the difference in ecological niche for these two species, one needs to be careful in making assumptions and comparisons of abundance between peregrine and prairie falcons as it relates to DDE impacts and recovery. At the time of publication of Grinnell and Miller (1944), peregrine falcons were considered one step lower in density compared to prairie falcons, and noted as "fairly common for a hawk". Fairly common was defined as: "a fairly common species in order to be detected regularly might require search for a specially favorable locality with resulting discovery of but scattered pairs or isolated small colonies". The authors considered both species to be permanent residents, defined as: "Sometimes where vagrancy seems particularly lacking or of short range, this circumstance is emphasized by the qualification "permanent resident".

As stated in the status review to delist the peregrine falcon (Comrack and Logsdon 2008), "The actual size of the historic breeding population in California is unknown. Best estimates range from between 100 to 300 active eyries prior to the 1940s (Herman et al. 1970, Harlow et al. 1979, Shuford 1993)." The same uncertainty in regard to true historic population size can be applied to prairie falcon.

What is certain is that by the 1970's, the peregrine falcon had declined by about 90% from estimated pre-Grinnell and Miller (1944) statewide levels (Kiff 1988, Jurek 1989). In contrast, for prairie falcon, Boyce et al. (1986) found 520 breeding territories after extensive surveys in the 1970s. Prairie falcon is known to be more sensitive to DDE than peregrine falcon (see threats section of species account), but because "…the prairie falcon eats more mammals and fewer birds than the peregrine falcon and merlin do, it was less exposed to organochlorine pesticides and did not experience severe population declines" (Steenhof 1998). Peregrine falcon would not have increased without restriction of DDE and human intervention via captive propagation and nest augmentation. In fact, hacking captive-reared peregrine falcons into prairie falcon nest sites was a method used to recover the once endangered peregrine falcon (Walton 1977).

PF/D: Observed wild Prairie falcons defending territory against falconry raptors, therefore they must be abundant.

<u>DFW Response</u>: See the excerpt below from the prairie falcon DED species account, Appendix F. It is known that wild prairie falcons exhibit territorial defense against raptors that are too close to their active nest site. The behavior noted by the commenter is likely nest defense, and is not an indication of abundance; "Throughout the breeding season prairie falcons must protect their nesting territory from intruding conspecifics and interspecific predators with sympatric home ranges (Kaiser 1986). Aggressive behavior (vocalization, chasing, striking) is directed towards intruders within 400 m (1,312 ft) away from and 100 m (328 ft) above the eyrie, while the remainder of the home range and foraging habitats are undefended (Haak 1982). Common ravens are responded to most frequently (49%), because both species breed in close proximity of each other and have similar nesting preferences (Haak 1982, Kaiser 1986, Holthuijzen and Oosterhuis 2004). The red-tailed hawk, golden eagle, and northern harrier also trigger a high amount of aggressive behavior from prairie falcons (Kaiser 1986, Holthuijzen and Oosterhuis 2004). The only significant territoriality difference between the sexes is that males tend to chase the small, aerobatic American kestrel, while the female chases away larger enemies such as bobcats (Holthuijzen and Oosterhuis 2004). This interspecific aggression is rare during winter, when home ranges become more flexible (Beauvais et al. 1992). In areas such as the Lava Beds National Monument and theSnake River NCA, a large prey base and abundance of nesting sites allows many of these different raptors to coexist with minimal competition (Dixon and Bond 1937, Ogden and Hornocker 1977)."

PM: Suggest that DFW conduct population monitoring and collection of data specific to falconry.

<u>DFW Response</u>: Regarding statewide raptor monitoring, existing monitoring by outside groups is discussed in the FED (see Appendix F), such as the use of BBS and CBC

data. This constitutes the available scientific information on population monitoring. The GGRO raptor migration count is also included as a measure. DFW recognizes that other harvested species have some level of population monitoring (e.g., waterfowl, extrapolated from aerial count surveys, not CBC/BBS data).

We acknowledge the need for more scientific data to provide stronger assurance for self-sustaining raptor populations, especially in regard to increased human population growth in the state, and further loss of habitat for raptors. As a result of compiling and analyzing information for the DED and FED for falconry take in California, we recognize the need for closer population monitoring of the species authorized for falconry take, especially those with smaller population size and under pressure from habitat modification and loss (i.e., prairie falcon and northern goshawk).

DFW agrees that California-specific studies on nestling survival/manipulation for species allowed for take would be advantageous to better understand the impacts of falconry take. Each raptor species differs in clutch size, incubation timing, predation factors, food habits, threats, and other factors that affect productivity and survivorship, and we currently do not have the resources to conduct such studies. Given limited resources, it might be preferable to focus research on better understanding breeding distribution, productivity, and population size and trend for at least goshawk and prairie falcon. There have been some studies on nestling survival post-nestling take in other states for prairie falcon (see Conway et al. 1995, cited in the prairie falcon species account).

DFW has not been intensively monitoring or analyzing the level of reported take every year due to the minimal level of falconry take in California and higher priorities, but DFW does review the annual take report forms. Falconry take has been reported on existing forms since the early 1990s; and some data compilations exist from before the 2005-2010 time frame. This data will be incorporated into future falconry management activities to determine long-term trends for falconry take for each species (and location of take) and falconry licenses issued. Some raptor species allowed for wild take in falconry are currently considered Species of Special Concern (northern goshawk) or "taxa to watch" (prairie falcon, Cooper's hawk, sharp-shinned hawk), and more effort will be expended on monitoring these species in the future (e.g., input of new and updating existing records based on valid take locations into the California Natural Diversity Database (CNDDB)).

DFW concurs that additional monitoring would be beneficial. However, the lack of monitoring data does not substantially impact the conclusions in the environmental document. All of the available scientific data is consistent with the proposed regulations.

PU/PV: (Respondent #194). Written permission to hunt on public or private land, where required, is a requirement of all hunters and does not need to be added to the falconry regulations.

DFW Response: The language has been retained due to the sensitive nature of raptor nest sites, protective language in the Fish and Game Code for raptors and their nests (Section 3503.5), and the requirements that many public and some private landowners have to conserve and protect nest sites under management plans, conservation easements, public environmental documents, or other such documents. Because this is already required of all hunters, DFW does not see this as excessively burdensome. The language is included below for the record:

(11) PUBLIC AND PRIVATE LANDS. A licensee is not authorized to capture raptors or practice falconry on public lands where it is prohibited, on private property without written permission from the landowner or tenant, or on tribal government lands without written permission. The licensee shall carry the written permission while practicing falconry.

RA: Apprentices (and other falconer classes) should be allowed to release raptors at the conclusion of the hunting season (i.e., after one year) in the location other than described Section 670(h)(6).

DFW Response: DFW believes that the requirements in the proposed regulations to release raptors at the site of capture if at all possible, or at least in appropriate habitat that doesn't contain other raptors will help address the concerns raised about the survival of released raptors. The proposed regulation restricts the area where a raptor may be released to "near the site that raptor was originally captured," thus minimizing the risk of mixing of subspecies and rendering such risk insignificant.

RH: Birds taken from the wild are fed well, given medical attention, and are released back into the wild after "rehabilitation" and being taught to hunt by a human.

DFW Response: The FED stated that it is not known if falconry birds released from captivity actually survive, reproduce, and contribute to the next generation unless there is active monitoring of released birds via telemetry. Additionally, there have been no studies, and there is no scientific evidence from continuous falconry take and occasional release practices in California that demonstrates wild raptors benefit from captivity and would have otherwise died in their juvenile year, or that releasing them contributes to conservation of the species.

It is unknown if the released raptor will survive, and reproduce, or become a non-breeding floater. Their long term reproductive value is unknown and unstudied. Because of imprinting after being captive and trained to respond to humans, their survival potential and ability to breed is likely compromised. DFW recognizes that falconry is a hunting method that is allowed with a proper license for pursuing authorized game species, and is not meant to be used as a tool to enhance wild raptor populations.

RHP: Suggest that rehabilitating birds fly under a separate permit from falconry (Respondent #202).

DFW Response: Comment noted; the State regulations are aligned with the federal regulations, allowing General and Master falconers to assist rehabilitation facilities with conditioning injured raptors for release back into the wild. Both the federal and State regulations only require a letter of authorization from the rehabilitation center, allowing for an experienced falconer to possess an injured raptor, without that raptor counting against the falconers' licensed possession limit. The rehabilitator's letter shall identify the raptor and explain that the falconer is assisting in its rehabilitation. The licensee shall have the letter or legible copies in his/her possession while flying the raptor for rehabilitation. In contrast, transfer of a non-releasable wild raptor from a permitted California wildlife rehabilitation facility is at the discretion of the rehabilitator and will count as one of the raptors a licensee is allowed to capture from the wild during the regulatory year. A licensee acquiring a raptor from a permitted California wildlife rehabilitation facility shall report the transfer by entering the required information on Form 3-186A in the USFWS's electronic reporting system within 10 calendar days of the transfer. In this situation, a separate permit is not required, but the federal form is required.

DFW is aware of concerns by other stakeholders regarding overlap between restricted species permits and possession of raptors under falconry regulations. In this regard, in order to better track individual raptors and avoid potential conflicts or confusion regarding appropriate permits and uses of raptors, we will consider the need to clarify activities under our existing permit structure for raptors, and will consider potential regulation changes in the future.

RNCB: (Respondent #194). Delete "native captive bred" from Subsection 670(h)(6)(C): "A licensee may not intentionally and permanently, release a non-native raptor, hybrid, or native captive-bred raptor to the wild in California".

DFW Response: "Native captive bred" was retained in the regulatory language in order to allow us to quantify the demand for such releases and to know the various reasons for such releases. Additionally, raptors that have been in captivity, especially in urban or suburban environments, may carry diseases that could affect native raptors or other bird species. By requiring DFW authorization for such releases, we can better conserve our native wildlife, and may wish to conduct studies on the survival and subsequent breeding status of any such raptors that are authorized for release. The language reads as follows:

(C) A licensee may not intentionally and permanently, release a non-native raptor, hybrid, or native captive-bred raptor to the wild in California, unless authorized by the department.

RO: Request that the regulations be re-opened after certification by the USFWS and publication by OAL on January 1, 2014.

DFW Response: Comment noted; we may consider changes in the falconry regulations in the near future (i.e., for the next regulatory year).

RP: The possession limits should be reduced; 5 falconry raptors would be difficult to manage. An experienced falconer can do two birds justice, three at most.

DFW Response: Comment noted; we may consider changes in the raptor possession limits during potential regulation changes in the future.

RR: Opposed to requirement of reporting raptor take electronically, prefer paper.

DFW Response: DFW plans to develop a fully functional electronic reporting system for all state forms in close coordination with USFWS, and in this way much of the redundancy should be eliminated in the future. DFW may also continue the option to report using paper.

RS: Prefer revocation/suspension of a falconry license occurs after 3 falconry violations in 5 years, instead of one violation. Also, narrow the applicable sections to falconry related violations, instead of any Fish and Game Code violation.
RS: (Respondent #160). Concerning immediate revocation after one falconry related violation, which does not match hunting regulations, you had indicated there would be wording changes, but that did not happen. Did an oversight occur?
DFW Response: Clarification is provided regarding the applicable sections of the Fish and Game Code which, if violated, may result in DFW denying the issuance of a license or renewing a lapsed license. Rather than a violation of any section of the Fish and Game Code, the revised language makes it clear that failure to comply with Section 1054 (false statements to obtain a license), California Penal Code Section 597 (animal cruelty), or any regulations adopted pursuant to Fish and Game Code sections related to raptors may result in denial of a license application. The number of allowable violations before a falconry license is revoked has remained at one violation. In addition, the denial, suspension, and revocation sections in the proposed regulations are substantially fortified, giving the DFW more authority to act on issues of noncompliance. If the licensee has been convicted in a court of competent jurisdiction of violating falconry provisions, the suspension or revocation shall take effect immediately. If the licensee has not been convicted, the suspension or revocation shall take effect when the time to request an appeal pursuant to subsection (e)(11) has expired. A timely request for an appeal will stay the department's suspension or revocation if the licensee was not convicted as described above. DFW indicated earlier that it would consider aligning falconry regulations regarding violation and revocation with the hunting

regulations. However, after considering this issue further, DFW believes that keeping the number of allowable violations before a falconry license is revoked at one violation will be beneficial to the conservation of raptor species used for falconry. This was not an oversight. Any applicant or licensee who is denied a license, an amendment to an existing license or has a license suspended or revoked by the department pursuant to these regulations may appeal that denial, amendment, suspension, or revocation by filing a written request for an appeal with the commission.

S: Support falconry in California.

DFW Response: Generally, a majority of the public comments support falconry. Many commenters only expressed their support, with no specific recommended changes to the proposed falconry regulations.

SE: Trapping raptors at any time of the year needs to be re-examined. Some species may breed when less than one year old, while still in their juvenal plumage. It is easily conceivable that someone might legally trap a juvenile hawk that in fact has a nest with eggs or young, unbeknownst to the trapper.

In contrast, another commenter supported year-round take of raptors.

DFW Response: Comments noted; in future regulation changes, we may consider reverting back to the falconry take seasons (i.e., eyas and passage) to help avoid impacts to certain nesting raptors and their young, while accommodating take by falconers. We may also prepare outreach materials to falconers to educate them of this potential for harm to active nests of some raptor species.

T: The federal language for traveling falconers is preferred.
T: (Respondent #194). Please insert USFWS language to clarify the standards that temporary facilities must meet.

DFW Response: Regarding clarity for temporary facilities for traveling falconers, the state regulations have been harmonized with the federal regulations on this point.

The federal language is included by reference to Title 50, CFR, Section 21.29, as follows:

(C) A nonresident licensed falconer or non-U.S. citizen currently licensed falconer shall provide and thereafter maintain facilities and equipment for raptors in his/her possession while practicing falconry in California. Temporary facilities shall meet the standards in these regulations, including but not limited to provisions described in subsection (j), and pursuant to Title 50, CFR, Section 21.29. A nonresident or non-U.S. citizen may house raptors in his/her possession at another licensed falconer's facilities while temporarily practicing falconry.

The intent of this filing is to transition the Federal falconry program to the state by January 1, 2014. With this intent and the time restraints necessary to meet this deadline, some recommended amendments received during the Notice Period go beyond the initial scope of this transition. Some specific amendments will have to be reconsidered in a separate and future rulemaking. The Commission has expressed its desire to look at these recommendations in 2014.

TC: (Respondent #194). What time period is the minimum for temporary care? Does this include my family feeding my birds while I am at work? Does this include my family feeding my birds while I am at work?

DFW Response: Subsection (h) refers to "temporary" care or transfer of falcons to another licensee or non-licensee, and does not apply to the typical care and support provided by family and or appointed house sitters while licensee is at work, or away for a brief period. However, transfer to another location, or extended care by a licensee or unlicensed individual must be reported to DFW within 10 days.

Regulatory language included here for the record:
(2) TEMPORARY TRANSFER OR CARE OF RAPTOR. Any licensee who temporarily transfers possession of his/her raptor to another licensee, or allows an unlicensed person to temporarily care for a raptor, shall provide written notification of such transfer to the department's License and Revenue Branch within 10 days after the bird is transferred. The notification shall include contact information including name, address, phone number, and email address of the temporary caregiver.
(A) Temporary possession of a raptor by a licensee shall not exceed 120 consecutive calendar days. Temporary possession may exceed 120 days only if a request is made to the department's License and Revenue Branch and written authorization is given. Temporary care of a raptor by an unlicensed person shall not exceed a 45 consecutive calendar day period. A raptor cared for by an unlicensed person shall remain housed at the licensee's facility. The unlicensed person is not authorized to fly the raptor. The licensed person may fly the raptor if he /she possesses the appropriate level license.

TE: Opposed to prohibition of flying falconry raptors near threatened and endangered species.

DFW Response: See response to "H" code, above. We believe these regulations are cautionary in order to avoid impacts to threatened and endangered species, and contribute to conservation of these species. Furthermore, the USFWS regulations are similar, except only federally listed species are covered; whereas the state regulations will also cover both federal and state threatened and endangered species.

TEPrey: (Respondent 163). (7)(d) Propose change to: Take of state or federal listed species. A licensee shall take reasonable actions to ensure that falconry activities do not cause the take of state or federally listed wildlife, for example, by avoiding flying a raptor in the vicinity of a listed species where there is real

potential that the species could be preyed upon by the raptor species used by the falconer.

<u>DFW Response</u>: We appreciate the attempt to make the regulations read slightly broader in order to address "real-world" situations. However, "reasonable actions" is somewhat vague and subject to interpretation, and should be defined with examples, whereas "ensure" as a stand-alone implies a higher standard of protection for the threatened and endangered species, and a higher level of expertise by the falconer to know the behavior of and habitat where threatened and endangered species are likely to be found, and what listed species would be most likely to be consumed by a particular falconry raptor species in a particular habitat type during set times of the day or year. While this may seem like a high burden compared to non-falconry hunting activities where the hunter pursues legal quarry and has the ability to judge what to shoot and when, a falconry raptor may respond to stimuli from non-target species that it may recognize as potential prey; it is also responding to its own hunger threshold. These latter aspects are not something the falconer can easily control, resulting in the need for careful attention to the habitat being utilized for exercising or hunting with a falconry bird in order to avoid incidental take of threatened or endangered species. Lastly, "real potential" should be defined with examples to be most useful. There is a compromise in writing regulations between succinctness, completeness, and clarity, and we acknowledge there may be room for improvement in the language in the future.

TI – Temporary Import: (Respondent #194): Falconers and falconry raptors are subject to regulations promulgated under federal oversight, making them subject to the same minimum guidelines. The new requirement of import permits for these highly regulated birds by duly licensed falconers should be withdrawn because it is excessive and redundant. Why is this interstate clause added? Has there been a problem that needs addressing? Is this required of hunting dogs also? Does this include a non-resident falconer coming into California on a hunting trip, or for permanent transfer?

DFW Response: Because raptors also serve a commercial purpose and have commercial and black-market value, and because there are important disease issues that we need to be aware of when raptors are imported, the regulatory language below has been retained. In developing these regulations, we had to consider input from many stakeholders, including those who would like us to exercise more oversight on the falconry program, including importation and potential commercial uses, and any illegal importations. But not the least of which is to address the potential spread of disease among native birds.

Unlike hunting dogs (where the licensing and proof of vaccinations are regulated, but not by DFW), raptors maintained under permit are still considered wildlife, and as with any wildlife that is permitted to enter the State, proof of permitting and health care are required. This also provides proof of the origin of raptors that are also found as native

to California, as well as DFW awareness of the non-native species being brought into the State.

These regulations are intended for a non-resident falconer coming into California with a temporary import of raptor(s).

State Regulatory language:

(5) IMPORTATION OF RAPTORS BY NONRESIDENTS OR NON-U.S. CITIZEN. A nonresident or non-U.S. citizen may temporarily import lawfully possessed raptors into California for up to 120 days. The department's License and Revenue Branch shall be notified within 10 calendar days prior to importing the raptor. A nonresident or non-U.S. citizen shall submit to the department's License and Revenue Branch official written authority to export raptors from the originating state or country, along with a health certificate for the raptor, prior to importing a raptor. A non-U.S. citizen may import his/her falconry raptor that he/she possesses legally, provided that importation of that species into the United States is not prohibited, and he/she has met all permitting requirements of his/her country of residence. Import of raptors, including exotic raptors, may be subject to other state and federal laws.

TR: Attaching two transmitters to small exotic raptors (e.g., Taita falcons) would be unfeasible because the extra weight could put an unacceptable burden on small hawks.

DFW Response: To help with the recapture of lost raptors, the proposed regulations also require hybrid, captive-bred or exotic species to be flown with transmitters. The language regarding hacking has been changed to (Section 670(h)(7) "…except native captive bred raptors shall have a minimum of one functioning transmitter."

We may consider changes to the transmitter language during potential regulation changes in the future, to prevent the problem presented by two transmitters on a small raptor.

V: Falconry birds are important to control "pests," providing an organic method of pest control (business) in agriculture.

DFW Response: Comment noted; abatement activities are authorized under a falconry license and a Special Purpose Abatement Permit.

VP: (Respondent #194). Include language that allows falconers to receive payment for providing abatement services.

DFW Response: Subsection 670(h)(14)(c) clarifies certain requirements for other uses of raptors and provides that a Master Falconer may receive payment for abatement

services, as authorized in the federal regulations and noted below in the State regulations.

State Regulations:
(h)(14)(c) A Master falconer may conduct abatement activities with raptors possessed under a falconry license and receive payment if the licensee possesses a valid federal Special Purpose Abatement Permit. A General falconer may conduct abatement activities only as a sub-permittee of the holder of a valid federal Special Purpose Abatement Permit.

Abatement services that go beyond the current proposals to transition the Federal falconry program to the state by January 1, 2014 will have to be reconsidered in a separate rulemaking. The Commission has expressed its desire to look at these recommendations in 2014.

VR: Many raptors in possession is useful to someone in the bird abatement business, but such an enterprise is not falconry and should be regulated separately (this comment also relates to comment "RP" above).

DFW Response: Comment noted; we may consider changes in this language during potential regulation changes in the future, in order to separate the sport of falconry (and its associated regulations) from the commercial business of abatement.

W: Opposed to mew inspections by DFW Wildlife Officers (and the fee), and should allow Master falconers to self-inspect facilities. Opposed to unannounced inspections by Wildlife Officers and feel this is a violation of 4th Amendment rights.

DFW Response: DFW is responsible for the practice of falconry in California and must follow statute to ensuring the practice is done correctly. The department cannot transfer this responsibility on to others at this time. Therefore, it must provide for doing the inspections. Additionally, the proposed project will result in law enforcement being more involved in the falconry program, mainly by putting the inspections of facilities, equipment and records back in the hands of the State.

Allowing wardens to conduct inspections, in consultation with Master falconers, will keep the falconers involved while allowing DFW Wildlife Officers to conduct enforcement activities to ensure compliance with the falconry regulations.

Moreover, the new inspection language only makes modest changes to existing inspection language. While the new language expressly authorizes "unannounced" inspections, unannounced inspections are implicitly allowed in the current regulation. Inspections are still constrained by the requirement that they be conducted at a "reasonable time of the day." Unannounced inspections are a crucial tool to ensure compliance.

Nor does the new inspection language add any additional authority concerning where inspections may occur. In both the existing and new language, DFW "may enter the premises" of licensees to conduct inspections. Falconers voluntarily engage in a highly regulated activity and as such, are subject to additional oversight. The California Supreme Court recently held that DFW has authority to conduct inspections of vehicles whose owners had engaged in fishing or hunting, "even when there is not reasonable suspicion that an angler or hunter has violated a statute or regulation…when a game warden reasonably believes that an occupant of a vehicle has recently been fishing or hunting" (People v. Maikhio, 51 Cal. 4th 1074, 1098, 2012.) Likewise, DFW believes it has authority to conduct inspections of facilities where falconry raptors are kept—without a warrant—and that this authority is consistent with the Fourth Amendment of the United States Constitution. In any event, DFW does not anticipate that Wildlife Officers will conduct inspections of falconry facilities significantly differently from how they have been conducting inspections. DFW is not aware of any complaints from falconers that DFW Wildlife Officers conducting inspections had abused their authority.

WA: Support annual inspection of falconers in possession of raptors (Section 670); similar to the strict requirements for the same raptors under the new restricted species regulations (Section 671).
WA: (Respondent #161). I think the falconry regulations should stipulate that they will be inspected at least once per year. As it stands now, there is no minimal inspection rate.

DFW Response: Comment noted; Section 670(j)(1) indicates that inspections occur when a new falconer applies to have their new facilities inspected, and in 670(j)(1)(E) when a current licensee moves their facilities. In this regard the respondent is correct, at this time there are no requirements for periodic inspections, or a minimal inspection rate.

However, our proposed regulatory language contains protective measures to help assure falconry raptors remain housed in a healthy environment, and our language references the federal housing standards and specifications, as noted below:

(j) **FACILITIES, EQUIPMENT, AND INSPECTIONS.**
(1) HOUSING STANDARDS AND SPECIFICATIONS. Raptor housing facilities shall meet the standards in Title 50, CFR, Section 21.29(d) at all times. Raptor housing facilities shall be inspected and certified by the department prior to issuance of a falconry license. *Thereafter, a licensee shall maintain approved permanent facilities for housing raptors.* [*emphasis added*]

(A) Raptor housing facilities shall protect raptors housed in them from predators, the environment, domestic animals, and escape, *and shall provide a healthy, clean, and safe environment. [emphasis added]*

DFW may conduct announced or unannounced visits to inspect facilities, equipment, or raptors possessed by the licensee, and may enter the premises of any licensed falconer during a reasonable time of the day and on any day of the week. The department may also inspect, audit, or copy any permit, license, book, or record required to be kept by the licensee under these regulations at any time. Because DFW wildlife officers will be conducting the inspections under the new regulations, our officers will be able to document conditions and quantify violations, providing us with background information that will be useful to help determine if minimal inspection frequency should be established.

Additionally, the falconry program is a sponsorship program and unlike most other wildlife permit programs, there is a higher level of community oversight. Sponsors know that it is in their own interest and in the falconry program's interest to call for DFW inspections when they suspect it is necessary.

In the event we determine more inspections should occur, we could consider changes in our regulatory language in the future.

WE: Welfare and housing of captive raptors needs to be further addressed; suggest looking at restricted species regulations (Section 671).
DFW Response: Generally, the proposed regulation does not specifically address changes to caging, enrichment, or the other health or welfare concerns. Falconers are already required to comply with humane treatment of animals through various state and federal regulations. Therefore, the proposed regulation would not significantly impact these areas of concern. DFW is considering proposing new falconry regulations in the near future and would welcome suggestions pertaining to caging, enrichment, and other health and welfare issues that are not addressed in the proposed regulation. Nonetheless, welfare concerns are addressed on page 41 of the FED, "Effects of Falconry on the Welfare of the Individual Captive Raptors."

WF: The biggest threat to raptors is wind farm mortality; suggest outlawing renewable energy. Power companies need to be held to the same standard (as falconers that incidentally injure raptors during trapping) when raptors are electrocuted and hit by wind turbines.

DFW Response: Comment noted; the threat of wind turbine mortality is acknowledged in the various species accounts found in Appendix F of the DED (e.g., red-tailed hawk, great horned owl, prairie falcon, American kestrel, ferruginous hawk). While DFW agrees wind turbines cause injury and mortality to raptors and other species, renewable energy sources are important in the face of global warming. Power companies are not held to the same standard because output from their structures exists for public use; injury or mortality of raptors is not a result of direct pursuit for capture and hunting purposes.

Detailed response to public comments on Illegal Take/Trade of Falconry Raptors

(See also response to “BA”, above)

DFW is aware that illegal take practices have occurred in California, and we will be working to improve our enforcement capacity with the proposed regulatory requirements. While recognizing that some level of illegal take may occur, there is no evidence of it affecting species populations. DFW acknowledges the need for more information on captive breeding and illegal trade in such birds that may involve hybridization with wild-caught birds.

DFW relies on licenses to complete various reports pertaining to the management of many species that have high value like raptors (e.g., salmon, abalone, and deer). Some raptors, such as Fully Protected species mentioned below, may be illegally sold at a high price on the black market. Moreover, in contrast to the voluntary survey mailed in 2011, the reporting provisions in the proposed regulation would be required (i.e., take of threatened and endangered species). Failure to comply with these provisions would violate the regulation and could result in criminal penalties and/or suspension or revocation of the license. Therefore, DFW anticipates that the licensees would comply with the regulations.

Peregrine falcon and Golden eagle:

Both the peregrine falcon and golden eagle (in addition to white-tailed kite and bald eagle) are prohibited from wild take in California due to their Fully Protected status. Falconry take of peregrine falcons from the wild has been prohibited since 1968. After the initial listing of the peregrine falcon under the California Endangered Species Act, the DFW noted “illegal taking by falconers” as a contributing factor to the decline of the species in California (CDFG 1972).

Other DFW publications have mentioned the need to protect active peregrine falcon eyries from illegal take and the hiring of observers to provide surveillance around these nest sites (Herman 1970, Jurek 1989). More recently, falconry take was not discussed as a threat to wild peregrine falcons due to the take prohibition as a Fully Protected species; however, the effects of illegal falconry take, trade, or hybridization of peregrines was not discussed (Comrack and Logsdon 2008). It is known that DFW law enforcement officers have encountered at least one attempt to take wild peregrines, and one attempt to take golden eagles, despite their fully protected status (Nongame Wildlife Program Files, 2013).

Northern goshawk:

While conducting a statewide survey to determine the status of northern goshawk, Bloom et al. (1986) determined four breeding territories had young illegally removed by falconers, three of which had all young removed. There is evidence that illegal take of goshawk continued in the years following these statewide surveys (Nongame Wildlife Program Files, 1993), and the current level of illegal take for this species, and others, is

unknown because DFW law enforcement is not heavily engaged in falconry activities, and DFW biologists are not able to monitor nest sites due to limited resources.

Summary

Determining illegal falconry take levels of various raptor species requires different methods of detection. Take of a tree nesting raptor (e.g., goshawk) can be more easily confirmed by evidence of tree climbing spike marks, but a cliff nesting raptor (e.g., prairie falcon, peregrine falcon) or a ground/shrub nesting raptor (e.g., ferruginous hawk) may have young illegally "scooped" without any evidence to confirm or deny other causes of nest failure (e.g., predation, starvation, etc.). Of the three example species mentioned, one is prohibited from take(peregrine falcon), one has a proposed capture limit on take (prairie falcon), and the third is proposed to be prohibited from take (ferruginous hawk) in California.

DFW law enforcement has not been heavily involved in monitoring activities or issuing citations for illegal aspects of captive-bred raptors or hybrids, or take of fully protected species such as the peregrine falcon or golden eagle. However, communication does occur with U.S. Fish and Wildlife Service law enforcement in this regard, and joint law enforcement efforts are sometimes conducted.

DFW acknowledges that if additional resources were available, more time could be spent on enforcement of falconry and captive breeding regulations.

Literature Cited:

Bloom, P.H., G.R. Stewart, and B.J. Walton. 1986. The status of the Northern Goshawk in California, 1981-1983. California Department of Fish and Game, Wildlife Management Branch, Administrative Report 85-1. 25 pp + appendices.

California Department of Fish and Game (CDFG). 1972. At the Crossroads, A Report on California's Endangered and Rare Fish and Wildlife. Sacramento, CA.

Comrack, L.A. and R.J. Logsdon. 2008. Status review of the American peregrine falcon (*Falco peregrinus anatum*) in California. California Department of Fish and Game, Wildlife Branch, Nongame Wildlife Program Report 2008-06. 36 pp + appendices.

Herman, S.G. 1970. The peregrine falcon: a vanishing Californian. Special Wildlife Investigations, California Department of Fish and Game, Sacramento, California.

Jurek, R. M 1989. Five-year status report: American peregrine falcon. Nongame Bird and Mammal Section Report, California Dept. of Fish and Game, Sacramento, CA.

Other sources of Information: Nongame Wildlife Program Files. 1993-2013. California Department of Fish and Game, Wildlife Branch, Sacramento, CA.

Detailed Response to public comments on Prairie falcon ("PRFA"):

Comparison of Breeding Bird Survey and Focused Prairie Falcon Population Estimates

The justification to establish a cumulative falconry take of 14 prairie falcons (*Falco mexicanus*) per year throughout California can be found on page 49 of the final falconry Environmental Document (ED), under the subheading "**Level of Wild Raptor Species Capture"**.

The Breeding Bird Survey (BBS) data presented in the FED (page 30) and the prairie falcon species account (page 19) was collected in BBS count circles throughout California, using data gathered from 1990 through 1999. This data was used in the Partner's In Flight (PIF) analysis to estimate a population of 2900 breeding individuals (or 1450 breeding pairs) in California (found at: http://rmbo.org/pif_db/laped/query.aspx). The PIF analysis also estimates prairie falcon population levels for each Bird Conservation Region (BCR) in California.

The raw BBS data is listed in the table below (found at: https://www.pwrc.usgs.gov/BBS/PublicDataInterface/index.cfm?fuseaction=PublicDataInterface.viewStateSummaryReport), and includes the numbers of observations of presumed breeding prairie falcon for each year of BBS surveys in California (1966-2011). Data used in the PIF analysis are in **bold**, and were collected from 33 BBS routes (out of 200 total routes) in the 1990s.

Year	#	Year	#	Year	#	Year	#	Year	#	Year	#	Year	#	Year	#
1966	-	1972	4	1978	5	1984	9	**1990**	2	**1996**	12	2002	14	2008	5
1967	-	1973	2	1979	3	1985	4	**1991**	4	**1997**	8	2003	4	2009	8
1968	0	1974	2	1980	8	1986	6	**1992**	4	**1998**	8	2004	11	2010	9
1969	0	1975	8	1981	7	1987	6	**1993**	15	**1999**	14	2005	6	2011	7
1970	3	1976	8	1982	5	1988	6	**1994**	10	2000	3	2006	10		
1971	3	1977	3	1983	2	1989	4	**1995**	20	2001	8	2007	10		

The PIF population estimate of 2900 breeding adult prairie falcons in California greatly contrasts with the population estimate derived from long-term, species-specific surveys conducted by Boyce et al. (1986) in the 1970s. The BBS data used by PIF represent extremely small samples sizes. BBS methodology is not designed to survey for nest site occupancy, reproductive success, or population size at unique cliff and rock formation breeding habitat of an uncommon raptor such as the prairie falcon.

Using species-specific methods to detect prairie falcon breeding territories, Boyce et al. (1986) reported observations of 1,250 nesting attempts at 520 territories in California from 1970-1979. The entire state was covered in great depth, ultimately leading Boyce

et al. (1986) to estimate “300 to 500 breeding attempts may occur annually within the state.” Productivity rates from the study were then applied to the latter population estimate to determine “between 650 to 1,150 fledgling falcons maybe produced annually in California.”

Analysis of California Natural Diversity Database Records of Prairie Falcons

As of January 28, 2013, the California Natural Diversity Database (CNDDB 2013) indicates there are 456 known breeding territories (or “element occurrences”) for the prairie falcon, throughout 35 counties. Each territory is “presumed extant.” From 2000 to 2008, however, only 37 (8.1%) of these known breeding territories have been updated with recent observations of occupancy, or observed re-occupancy of historically documented sites. These more recent CNDDB records (2000-2008) were reported by prairie falcon expert biologists in California, including data from a long-term breeding season study by Emmons (2012) at Pinnacles National Park, and various other locales (e.g., east San Francisco Bay Area).

From 1983 to 2008, 75 (of 456 total) prairie falcon breeding territories have been reported as occupied, which is only 16.4% of the total records (CNDDB 2013). The remaining breeding territories were all documented prior to 1982 (381 of 456), which corresponds with the end of the Department’s “Prairie Falcon Harvest Program” and the extensive data collection beginning in 1970 (Garrett and Mitchell 1973, Schlorff 1981, Boyce et al. 1986, CNDDB 2013).
No records have been added to the database since 2008, leaving the Department to rely on historical nest site information from 1970-1981. This time frame of observations accounts for 83.6% of all known prairie falcon breeding territories in California (CNDDB 2013).

While the Department possesses 456 CNDDB records that are considered “extant,” there is a need to verify occupancy and reproduction at these historical nest sites. An unknown proportion of breeding territories documented in CNDDB may or may not be consistently occupied (or successful) each year. Additionally, an unknown amount of the territories designated as “presumed extant” may now be permanently vacant due to loss of essential foraging habitat surrounding the sites.

A prime example: a breeding territory was declared vacant in the Monterey Breeding Bird Atlas due to permanent removal of foraging habitat in the northern tip of the Sierra de Salinas coastal mountain range (Roberson and Tenney 1993). A housing development likely caused the breeding territory vacancy, and resulted in permanent habitat loss. Only 3 of 18 CNDDB element occurrences for Monterey County have been updated since publication of the aforementioned atlas, (two records are from Pinnacles NP). Under the “threats” attribute section (in CNDDB) for the Monterey nests, there is no documentation of potential urban expansion, nor documentation of territory extirpation (CNDDB 2013).

Another example from Unitt (2004): "…At least one former nest site on the fringe of San Diego has apparently been abandoned however: Fortuna Mountain (P11), active at least in 1980 (Calif. Dept. Fish and Game data)." This nest site is still considered "presumed extant" in CNDDB (CNDDB 2013).

There are also nesting territories from pre-Grinnell and Miller (1944) times, shedding light on historical distribution of prairie falcon in California prior to extensive coastal development by humans. These sites include, but are not limited to: (1) Santa Ana Canyon, Orange County (Hamilton and Willick 1996); and (2) the southern or seaward slope of the Santa Ynez Range, near Santa Barbara (Dawson 1916).

All territories previously determined active, but now long-vacant and/or unsuitable due to loss of surrounding foraging habitat (see Threats section of prairie falcon account, page 23), should be considered "extirpated" and made note of in CNDDB. There may also be information to be gathered on active territories not yet documented in CNDDB from the 2009-2012 breeding seasons, warranting an update of the database.

Furthermore, 520 nesting territories were reported by Boyce et al. (1986), but only 456 are documented by CNDDB, creating a discrepancy of 64 breeding territories that were not reported to the Department. These missing records should be found and incorporated into CNDDB.

Conclusion

In summary, all available scientific information is used to determine the population distribution, abundance, and productivity of prairie falcons in California. CNDDB (2013) records represent the most up-to-date dataset for this purpose, adding to the extensive breeding territory dataset from the 1970s (Garrett and Mitchell 1973, Schlorff 1981, Boyce et al. 1986).

The main limitation in determining population trend for prairie falcon in California is the lack of an annual or periodic statewide monitoring program with a scientifically-based survey protocol. Long-term datasets for prairie falcon are generally localized, and therefore biased by regional biotic and abiotic factors (Steenhof et al. 1999, Emmons et al. 2011). Given the diversity of California's ecoregions where prairie falcon can nest, a stratified sampling approach is desirable.

While an enormous effort by Boyce et al. (1986) was focused on locating nesting prairie falcons in all regions of the state, including re-examination of pre-1970 historical territories, this took a decade to complete. Every known nesting territory was not visited every year, lending room for error, hence the range of 300 to 500 breeding attempts estimated by Boyce et al. (1986).

The prairie falcon tends to be faithful to a breeding territory (Bent 1938), but is not always present at each historic breeding territory every year (Boyce et al. 1986).

Because of this behavior, saturation of all known breeding territories with successful fledging is unlikely. Occupancy and breeding success at a given historic nesting site is complex because prairie falcons must compete with other cliff nesting species for nest sites (e.g., ravens, golden eagles, and great horned owls). With the increase in abundance of peregrine falcon (*Falco peregrinus anatum*) in recent years (Comrack and Logsdon 2008), displacement of prairie falcons may become more common in the future. The historical interaction between these two falcon species is largely unknown; however, there is information to suggest nest site competition occurs (Walton 1978). Long-term territory fidelity and productivity is further hampered by threats to the species, including habitat destruction, mortality due to wind turbines, eradication of prey base, human disturbance, etc. (refer to prairie falcon species account, page 23).

Furthermore, prairie falcons are limited by available nest sites (i.e., cliffs and large rocky outcrops), which are geographically limited across the landscape and mostly unchanged through time (Runde and Anderson 1964, Boyce 1987, Boyce et al. 1986, Peeters and Peeters 2005).

Therefore, it should not be assumed that all 456 breeding territories documented in CNDDB, or all 300-500 breeding attempts reported by Boyce et al. (1986), have 100% successful reproduction with optimal fledging rates per nest each year. In light of the breeding population estimate from Boyce et al. (1986), and little information gathered since then, one must use great caution and understand the full ramifications of applying PIF's extrapolated population estimate to California. Doing so would result in at least a three-fold increase in prairie falcon breeding bird abundance (utilizing the mid-range of 400 pairs from Boyce compared to 1450 pairs from PIF), and is likely an overestimate based on a small sample size.

To reliably assess effects of falconry take, and assure long term population viability of prairie falcon throughout their breeding range, current estimates of breeding pairs, productivity, and survivorship by age class are needed, based on valid sample sizes from more than one breeding population in California. There is potential for differences in productivity and survivorship between the distinct biogeographic areas where prairie falcon are known to nest in California. While future nest site use and productivity at traditional eyries is probably not adversely affected if take for falconry is small, occasional, and geographically spread apart to the greatest extent feasible (Conway et al. 1995); continued take from local populations that are small or experiencing declines from various threats can exacerbate local population declines and local extirpation (Milllsap and Allen 2006, Bousman 2007). Obtaining current, California-specific demographic data is important to confidently authorize a scientifically defensible level of take that will not become additive to all known and future cumulative threats to prairie falcons in California.

Literature Cited

Bent, A.C. 1938. Life histories of North American birds of prey, order Falconiformes. Part 2. United States National Museum Bulletin 170. Pages 18-42.

Boyce, D. A., Jr., R.L. Garrett, and B.J. Walton. 1986. Distribution and density of Prairie Falcons nesting in California during the 1970s. Journal of Raptor Research. 20:71-74.

Bousman, W.G. 2007. Prairie falcon. Page 190 in W.G. Bousman, editor. Breeding Bird Atlas of Santa Clara County, California. Santa Clara Valley Audubon Society, Cupertino, California. 547 pp.

Boyce, D.A., Jr. 1987. Nest site characteristics of prairie falcons in the Mojave Desert, California. Journal of Raptor Research 21(1):35-38.

Buranek, S.C. 2006. Prairie falcon home range and habitat use at Pinnacles National Monument, 2002 to 2004. Thesis. California State University, Sacramento, CA.

Comrack, L.A. and R.J. Logsdon. 2008. Status review of the American peregrine falcon (*Falco peregrinus anatum*) in California. Wildlife Branch, Nongame Wildlife Program Report 2008-6. 36pp + appendices.

Conway, C. J., S. H. Anderson, D. E. Runde and D. Abbate. 1995. Effects of experimental nestling harvest on Prairie Falcons. Journal of Wildlife Management 59:311-316.

[CNDDB] California Department of Fish and Wildlife, Natural Diversity Database. 2013. Element Occurrence Reports for prairie falcon. Unpublished cumulative data current to July 07, 2008. Accessed January 28, 2013.

Dawson, W.L. 1916. A personal supplement to the distributional list of the birds of California. Condor 18:26.

Emmons, G. J. Patterson, M. Koenen, D. Press. 2011. Prairie falcon monitoring protocol for Pinnacles National Monument: standard operating procedures – version 2.2. Natural Resource Report NPS/SFAN/NRR-2010/217. National Park Service, Fort Collins, Colorado.

Emmons, G. 2012. 2011 Breeding season report for the Pinnacles National Monument—Prairie falcons and other raptors. Natural Resource Technical Report NPS/FAN/NRTR—2012/614. National Park Service, Fort Collins, Colorado.

Garrett, R.L. and D.J. Mitchell. 1973. A study of Prairie Falcon populations in California. Wildlife Management Branch Administrative Report No. 73-2. California Department of Fish and Game.

Grinnell, J. and A.H. Miller. 1944. Prairie falcon. The distribution of the birds of California. Pacific Coast Avifauna 27. Pages 108-109.

Hamilton, R.A. and D.R. Willick. 1996. The birds of Orange County, California: status and distribution. Sea and Sage Press, Sea and Sage Audubon Society, Irvine, CA. Page 68.

Harlow, D., B.J. Walton, and D.A. Boyce. 1979. Reproductive status of American peregrine falcon in California. Paper presented at the 1979 Annual Meeting of the raptor research foundation, Davis, California, November 8-12, 1979.

Herman, S.G., M.N. Kirven, and R.W. Risenbrough. 1970. The peregrine falcon in decline in California: 1. A preliminary review. Audubon Field Notes 24(4):609-613.

Jurek, R.M. 1989. 5-year status report, American peregrine falcon. Nongame Bird and Mammal Section Report. Wildlife Mngmt. Division, Calif. Dept. Fish and Game, Sacramento, CA.

Kiff, L.F. 1988. Commentary: changes in the status of the peregrine in North America: An overview, in Peregrine falcon populations, their management and recovery (T.J. Cade, J.H. Enderson, C.G. Thelander, and C.M. White, editors), Peregrine Fund, Boise, ID, pp. 123-139

Millsap, B.A. and G.T. Allen. 2006. Effects of falconry harvest on wild raptor populations in the United States: theoretical considerations and management recommendations. Wildlife Society Bulletin 34(5):1392-1400.

Peeters, H. and P. Peeters. 2005. Prairie falcon. Pages 249-253 in P.M. Faber and B.M. Pavlik (editors). Raptors of California. California Natural History Guide Series Number 82, University of California Press, CA.

Polite, C. and J. Pratt. 1990 updated 2005. Prairie falcon. Pages 150-151 in D.C. Zeiner, W.F. Laudenslayer, K.E. Mayer, and M. White, editors. California's Wildlife, Volume 2. Calif. Dept. Fish and Game.

Rich, T. D., C. J. Beardmore, H. Berlanga, P. J. Blancher, M. S. W. Bradstreet, G. S. Butcher, D. W. Demarest, E. H. Dunn, W. C. Hunter, E. E. Iñigo-Elias, J. A. Kennedy, A. M. Martell, A. O. Panjabi, D. N. Pashley, K. V. Rosenberg, C. M. Rustay, J. S. Wendt, T. C. Will. 2004. Partners in Flight North American Landbird

Conservation Plan. Cornell Lab of Ornithology. Ithaca, NY. Partners in Flight website. http://www.partnersinflight.org/cont_plan/ (VERSION: March 2005).

Roberson, R. and C. Tenney.1993. Prairie falcon. Atlas of the breeding birds of Monterey County, California. Monterey Peninsula Audubon Society. 438 pp.

Runde, D.E. and S.H. Anderson. 1986. Characteristics and nest sites used by breeding prairie falcons. Journal of Raptor Research 20(1):21-28.

Schlorff, R.W. 1981. Prairie falcon harvest program. Nongame Wildlife Investigations, Department of Fish and Game, Sacramento, CA.

Shuford, W.D., editor. 1993. Marin County Breeding Atlas: a distributional history of the coastal California birds. Bust Tit, Bolinas, CA.

Small, A. 1994. California Birds: their status and distribution. Ibis Publishing Co., Vista, CA. Page 80.

Steenhof, K. 1998. Prairie falcon (*Falco mexicanus*). In the Birds of North America, Number 346, editor. The Birds of North America, Inc., Philadelphia, PA.

Steenhof, K. and M.N. Kochert. 1982. An evaluation of methods used to estimate raptor nesting success. Journal of Wildlife Management 46(4):885-893.

Steenhof, K., M.N. Kochert, L.B. Carpenter, R.N. Lehman. 1999. Long-term prairie falcon population changes in relation to prey abundance, weather, land uses, and habitat conditions. Condor 101:28-41.

Unitt, P. 2004. San Diego County Bird Atlas. Proceedings of the San Diego Society of Natural History. Page 171 and 179.

Walton, B.J. 1977. Development of techniques for raptor management, with emphasis on peregrine falcon. Calif. Dept. Fish and Game, Wildlife Management Branch, Administrative Report 77-4. 26 pages.

Walton, B. J. 1978. Peregrine Prairie Falcon interaction. Raptor Res. 12:46-47.

No other public comments, written or oral, were received during the public comments period.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street, Room 1320

Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game
1812 Ninth Street
Sacramento, California 95811

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

Two alternatives related to falconry alternatives (or options) to the proposed regulation change were evaluated.

Alternative 1 - No Change in California Falconry Regulations

Falconry is conducted with raptors that are protected and managed under federal authority from the Migratory Bird Treaty Act. The Service modified their regulations and for falconry to continue in California, complying state regulations must be approved and certified, by publishing in the Federal Register, by the Service by January 1, 2014. These changes to federal regulations require changes to State regulations. No action on changing State regulations would be a violation of federal law if the State continues to allow falconry after January 1, 2014. The Department's mission, along with conserving natural resources, is to maintain opportunities for recreational use of wildlife. Since falconry is a deep-rooted tradition, it is recommended this alternative not be considered so that falconry in California can remain legal.

Alternative 2 - Strict Adoption of Federal Regulations

This alternative would be to replace state regulations with the specific federal regulations. This alternative would ensure compliance with the federal requirement; however, it would not fully protect the natural resources of California in accordance with the Department's mission. For example, a more restrictive regulation is needed in cases where species have or need more protection in California than on a national level, or where populations of affected species in specific locations are declining or experiencing other significant pressures. In addition, federal regulations allow the use of two Fully Protected species, the Peregrine Falcon and Golden Eagle. If the state adopted federal regulations strictly it would be out of compliance with Fish and Game Code Section 3511.

Since 1996, when State falconry regulations were last updated, changes have occurred in populations of raptor species used in falconry, special status

designations, habitats required by these species, and numbers of falconers taking species from the wild. If the State were to only adopt federal regulations without revising existing State regulations, these changes would not be addressed. Since it is the mission of the Department and in the best interest of the falconry community to maintain healthy populations of all species involved, the Department does not recommend this alternative. In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed, or would be as effective and less burdensome to the affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

(b) No change Alternative:

A no change alternative in conforming State and federal regulations would result in a federal discontinuation to permit falcons or to allow falconry after January 1, 2014. Any proposed regulatory changes for the practice of falconry need to be thoroughly vetted with the Service prior to January 1, 2014.50 CFR 21.29 requires that before falconry may be practiced in any state, that state must have their falconry regulations certified by the Service by publishing in the Federal Register no later than January 1, 2014 so that falconry licenses may be issued under its own laws and regulations. State falconry regulations must meet the federal standards established under 50 CFR 21.29. If the January 1, 2014 deadline is missed, residents of states that have not had their state regulations certified by the Service will not be allowed to practice falconry. To comply with the January 1, 2014 deadline, approved regulations must be submitted to the Service by September 1, 2013. A determination

The Department is proposing to amend 14 CCR 670 to meet the federal requirements; specifically, to comply with establishing and maintaining its own permitting program. In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed, or would be as effective as and less burdensome to the affected private persons than the proposed regulation. The proposed regulation incorporate language from federal regulations, retains some language in existing California falconry regulations, and develops new regulatory requirements. Proposed regulations would provide the State with an additional level of oversight then it had prior to the federal mandate. Changes in this case would be to add adopted federal standards that previously didn't exist in the State regulations or revised standards that existed as a reference to federal regulations that no longer exist. Some existing State regulations would remain unchanged. However, to fully address the increased oversight of the Department and other California laws and regulations, as well as consider each raptor species population status, some new additions to regulations are proposed in this

alternative. The proposed project is to provide revised or new regulations that meet the current needs of prey species and raptors in California by using the most current scientific data available. In addition to adopting federal standards, this alternative would include adding, removing, or retaining species allowed to be captured, as well as numbers and locations of capture, more stringent reporting requirements, and other requirements that would benefit California's wildlife diversity under current political and environmental conditions.
The Proposed Project would add the following elements to the regulatory package:

- Fees and forms referenced
- Defined examination requirements
- Adjustments to falconry classes
- Adjustments to species allowed for capture from the wild
- Capture quotas for two raptor species
- Reopening the Lake Tahoe Basin for limited Northern goshawk capture
- Limitations on number of wild raptors captured from the wild annually
- Elimination of capture season (except for merlin)
- Allowing the practice of hacking
- Allowing transfer of nonreleasable raptors from rehabilitation permits to falconry permits
- Allowing falconers to assist rehabilitation facilities with conditioning raptors for release into the wild
- Clarification on reporting requirements
- Addition of a annual falconry hunting report requirement allow falconry after January 1, 2014.

(c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. A no change alternative would subject the raptor permit holders to forfeiture of their falcons for federal non-compliance by the State of California.

(d) Description of Reasonable Alternatives that would lessen adverse impact on small business:

None.

X. Impact of Regulatory Action:

Under existing State regulations, capture of raptors from the wild is allowed for nine species. Proposed regulations will eliminate one species for use in falconry, but add two more. The total species with allowed capture from the wild will be 10 under proposed regulation. In addition, the number of raptors (by species) that could be captured from the wild were assessed using estimated populations numbers in California. Two species are proposed to have capture quotas, thereby limiting number captured from the wild. One species, Northern goshawk, will have an area-specific limitation in the Lake Tahoe Basin. One species, merlin, will have a statewide limitation. These limitations in raptor capture from the wild will ensure this State's raptor resource is not overburdened by falconry practices. In addition, each licensed falconer may capture no more than two raptors from the wild annually.

The effects on the safety and well-being of captive raptors are addressed by federal standards and adopted by State regulations. Under proposed State falconry regulations, Department Law Enforcement Officers must inspect raptor facilities and are allowed to conduct unannounced inspections, Apprentice falconers must be trained and sponsored by more experienced falconers, and an examination will test a new applicant's knowledge of care and handling of raptors. These measures should ensure that there is minimal risk to falconry raptors housed by falconers.

Impacts of falconry on prey species, as well as take of listed species, are addressed by existing State regulations that require all falconers to obtain a hunting license and follow all laws and regulations pertaining to hunting. This impact will further be addressed in proposed regulations by requiring detailed reporting of prey species taken, including locations. The proposed regulations will also require falconers to avoid flying raptors in the vicinity of protected species, to avoid allowing raptors to feed on protected species, and guidance for what to do if listed species are killed or injured by a falconry raptor. Any incidental take of protected species must be reported to the State so that adjustments may be made to avoid such take in the future.

Impacts on native populations of raptors or other species from captive raptors lost or otherwise accidentally released into the wild are addressed in proposed regulations through more stringent reporting requirements and Department oversight of falconry activities. In addition, falconers will be required to fly hybrid, exotic, and captive-bred raptors with two functioning radio transmitters so relocation of lost raptor may occur. These provisions are intended to minimize accidental permanent release of captive, non-native or hybrid raptors into wild populations.

The impacts of wildlife viewing, recreational opportunities, aesthetic wilderness areas, and public safety are considered by the Department to be absent or minimal under existing federal and State regulations. There are no proposed regulation changes that address these potential impacts, since the potential impacts are expected to remain minimal.

Impact of Regulatory Action/Results of the Economic Impact Analysis

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businessmen to Compete with Businesses in Other States.

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Considering the small number of permits issued over the entire state, this proposal is economically neutral to business.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The proposed regulations are not substantially different than current federal regulations and there is no anticipated increase or decrease of the number of current falconry permit holders; therefore no impacts are expected to the creation or elimination of jobs or businesses; or to the expansion of business in California. Conversely, failure to adopt these regulations would result, at a minimum of one year, the elimination of falconry in California which could affect jobs and businesses that cater to the supplies and needs of falconers. The State must develop falconry regulations that meet the federal standards established under 50 Code of Federal Regulations (CFR), Section 21.29. Many of these proposed amendments to the regulations already exist through federal regulations, but the transition from federal to state authority will allow states to adopt the restrictions and conditions based on localized resource management needs, as well as current federal guidelines. Submission of State regulations and federal certification must occur no later than September 1, 2013 for publication in the Federal Registry, for an effective date by January 1, 2014; at which point the federal permitting program will end and states will not be allowed to practice falconry if their regulations have not been approved and certified by the U. S. Fish and Wildlife Service (Service). There are currently 576 falconry permittees throughout California and businesses that support falconry permittees most often provide equipment, care or veterinarian services. Such businesses and services would not solely specialize in raptor care, but would also include care of other domestic and/or wild animals. Such businesses would be subject to failure for a variety of causes, and a reduction or increase of falconry permittees would not be a sole cause to create or eliminate jobs; create or eliminate businesses; or expand operating businesses. However, failure to adopt these regulations by the

federal deadline of September 1, 2013 could result in a statewide closure of falconry and enactment of the federal provision to transfer all raptors out of California until such regulations may be adopted based on U.S. Fish and Wildlife review and the scheduled publications in the Federal Notice Registry.

Benefits of the Regulation:

Benefits to the Environment: Sustainable Management of Wildlife Resources. It is the policy of this state to encourage the conservation, maintenance, and utilization of the wildlife for the benefit of all the citizens of the state. The objectives of this regulatory review is to ensure the raptor populations in California are not overharvested and to ensure that falconry practices support proper animal care and recreational opportunities for both the falconer and the public. Adoption of raptor species harvest quotas provides additional preservation of self-sustaining raptor populations for their continued existence in California.

The proposed falconry regulations will not have impacts to worker safety.

(c) Cost Impacts on Representative Private Person or Business

The Fish and Game Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with this proposed action. The Department of Fish and Game will identify and consider fees for permits, permit applications and facility inspections in amounts sufficient to cover the costs of administering, implementing and enforcing regulations under Section 703, Title 14, California Code of Regulations, in a separate rulemaking, pursuant to Fish and Game Code Section 2150.2

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State.

All costs, such as those incurred for application reviews, processing, issuing permits, maintaining databases, inspections, development and maintenance of a band tracking database, and other administrative or enforcement costs will be fully offset by fees paid by the regulated parties. The Department of Fish and Game must address and propose to revise the falconry license fee structure under the authority of Section 2150.2, Fish and Game Code, in a separate rulemaking. This additional rulemaking could result in increased revenue from the falconry program. There are no costs or savings with regard to federal funding to the State.

(e) Other Nondiscretionary Costs/Savings to Local Agencies.

The effects to local agencies are unknown at this time.

(f) Programs Mandated on Local Agencies or School Districts.

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4.

None.

(h) Effect on Housing Costs.

None.

Updated Informative Digest/Policy Statement Overview

Proposed Regulations

Regulations for the practice of falconry are contained in Title 14 CCR Section 670 (14 CCR 670) along with federal regulations in Title 50 Code of Federal Regulations Section 21 (50 CFR 21). These guide the practice of falconry within the state and establish the methods and limits for capture of raptors from the wild for falconry use. Under these regulatory sections, the Department issues a license, with certain restrictions and conditions, for the capture, possession and use of wild, captive-bred, or hybrid raptors for the purpose of falconry.

In July 2009, the U.S. Fish and Wildlife Service (Service) revised CFR 50 21.28 and 21.29 to remove federal permitting for falconry. 50 CFR 21.29(b) now requires that before falconry may be practiced in any state, that state must approve the practice by issuing permits under its own laws and regulations and must submit copies of its regulations pertaining to falconry, including falconry permit requirements, to the Service. The state must develop falconry regulations that meet the federal standards established under 50 CFR 21.29. Certification of state regulations must be published in the Federal Register no later than January 1, 2014, at which point the federal permitting program will end and individual states will not be allowed to practice falconry if their regulations have not been approved and certified by the Service. State laws are allowed to be more restrictive than federal standards, but not more permissive.

The regulations, which include proof that the database linkage between the Service and the Department's database is in place, must be submitted to the Service by September 1, 2013.

The Department is proposing that the Commission repeal Section 678, Title 14, CCR, to re-organize and simplify the reading of regulations regarding captive propagation. The language from Section 678 would be covered in new Section 670 regulations.

Under existing falconry regulations (Section 670, Title 14, CCR), falconers are allowed to practice falconry in California according to the following specifications:

- General provisions are provided specifying falconry shall abide by Fish and Game Code, Department regulations, federal MBTA, and federal falconry regulations. These laws and regulations can be sent upon request.
- Protected animals inadvertently killed by falconry raptors should be removed from the raptor and left on site.
- The Department provides information on the application process. Experience acquired elsewhere is considered during the application process. Persons under 18 require a parent or guardian signature on application.
- Prior to issuance of a license, applicants must take an examination and score 80% or better. Applicants who fail the exam may take it again the next business

day. Applicants with passing scores from another state with federal approval do not have to take the exam in California.

- Classes of licenses are apprentice, general and master.
- The Department may suspend, revoke, or deny issuance or renewal of any falconry license under specified conditions. Licensees may appeal such actions.
- A sponsor must notify the Department upon termination of sponsorship. An Apprentice shall acquire a new sponsor within 60 days.
- Apprentice falconers must submit an annual report on their activities. The report must be signed and dated by the sponsor.
- Prior to issuance of a license, all housing facilities and equipment must be inspected and approved. The Department may authorize sponsors to conduct inspections. The Department may enter the premises of any licensee at any reasonable hour to inspect facilities and equipment.
- Temporary transfer of falconry raptors is allowed according to federal regulation and must be reported to the Service.
- Apprentice falconers may only capture and possess kestrels and red-tailed hawks.
- Raptors may be acquired from wildlife rehabilitation facilities.
- Infertile eggs may be possessed with written notification to the Department.
- Bands may not be removed from raptors, except by a Department employee or person authorized by Department. Bands may not be defaced, altered, or counterfeited. Lost or removed bands must be reported to the Service.
- Only persons with a valid falconry license can remove birds from the wild. Nonresidents may apply to capture a wild raptor and must report to the Department whether successful at capture or not.
- Raptors that may be captured from the wild include Northern goshawk, Cooper's hawk, sharp-shinned hawk, red-tailed hawk, red-shouldered hawk, barred owl, ferruginous hawk, merlin, American kestrel, prairie falcon and great horned owl.
- Eyas birds may only be captured by General or Master falconers. At least one eyas bird must be left in the nest.
- Any marked raptor that was lost or escaped can be captured anytime.
- Replacement period is defined as the 12 month period beginning March 1 of each year.

Consideration and adoption of these proposed regulations will result in the following:

The Department is proposing to amend 14 CCR 670 to meet the federal requirements; specifically, to comply with establishing and maintaining a permitting program. Much of California's current falconry regulation language is being modified to some extent. Many changes are being proposed to comply with federal regulation. Some new revisions to 14 CCR 670 are being proposed based on comments received during public review, expertise within the Department, as well as the latest scientific information available on the status of the species affected by the practice of falconry and the health of local populations.

The proposed regulatory changes will meet the federal requirements and assist the Department in responsibly implementing a falconry program in California.

The following is a summary of the changes proposed for Section 670, Title 14, CCR:

Definitions of terms would be included in the regulations to clarify meaning and purpose of these the terms within regulation.

Falconers would be required to ensure take of state- and federally-listed threatened and endangered species is minimized by not flying raptors near listed species, and will be required to report take of listed species to the nearest Department regional offices or Service office within 10 calendar days of the incident. If listed species are taken during the practice of falconry, the falconer would be required report to the nearest U.S. Fish and Wildlife Service (USFWS) Ecological Services Field Office and the nearest department regional office (www.dfg.ca.gov/regions/) within 10 calendar days of the take.

- To clarify the application process, new regulations would describe how to apply for a falconry license. The process of obtaining a license for falconers from another state who wish to establish permanent residency in California is also clarified.

- Regulations would allow the Department to recognize a valid falconry license from another state during the application process for a California falconry license.

- Licensees would be required to report acquisitions, releases, transfer, loss, escape, and death of a falconry raptor to the Department. Information about the county of capture/release, date of capture/release, a description of the capture/release site, description of the capture method, species information (e.g. age, sex), and Latitude/Longitude coordinates of the capture/release site would be a requirement to report to the Department. The topographic map that was required for some species in current regulation would be eliminated. Reporting would be required within 10 days of any event. Additionally, Law Enforcement Officers would also need to be notified in the case of theft.

- New licensees would be required to sign a statement stating they are familiar with both the California and U.S. Fish and the Wildlife Service falconry regulations and Title 50, CFR, part 13, and Sections 21.29 through 21.30 and that the information submitting is complete and accurate, and that any false statement is subject to cancellation and criminal penalties.
- The application and licensing process would be clarified for residents and nonresidents wishing to obtain a new license in California, renew a current license, or renew a lapsed license.
- New regulations would allow nonresident falconers or non-U.S. citizen falconers to temporarily practice falconry in California and would require them to either maintain

temporary housing facilities or utilize a license falconer's facilities.

- The ability for the Department to deny, suspend, or revoke a falconry license would be defined. Instructions for the licensee would also be added on how to appeal such action.
- New falconry forms are developed as a means to implement the state-run falconry program. Falconry forms will be referenced as FG360 (New 2/13), FG360b (New 2/13), FG360c (New 2/13), FG360d (New 2/13), FG360f (New 2/13), FG360h (New 10/12), FG360i (New 2/13), FG361 (New 2/13) and FG361a (New 2/13). However, fees will be implemented under Section 703, Title 14, CCR and under the authority of a department rulemaking.

Conditions would be defined for importation of raptors into California.

Specifications for the sponsorship program for an Apprentice falconer would be clarified, including qualifications, roles and responsibilities of the sponsor; requirements for being a sponsor; duration of sponsorship; and instructions for what to do in the case of sponsorship termination.

Apprentice falconers would advance to General Class if he/she has been at the Apprentice level for at least 2 years, including maintaining, training, flying, and hunting with the raptor for least 4 months in each regulatory year. Apprentice falconers would have their facilities inspected and certified after passing the exam, and prior to a license being issued.

General falconers would advance to Master Class if they have been at the General level for at least five years.

General falconers would be able to possess up to 3 raptors total (increased from 2), of which only 2 can be wild caught. Master falconers would be able to possess up to 5 wild caught raptors (increased from 3), and any number of captive-bred or hybrid raptors. For General and Master falconers, only nestlings or juvenile raptors less than one year old and capable of flight would be able to be captured from the wild; except American kestrel or great horned owl would be able to be captured at any age. General and Master falconers could possess any captive-bred or hybrid raptor. However neither class could possess listed, and only Master class could possess eagles. Golden eagles could only be possessed if they are obtained from a rehabilitation facility, captive-breeder, or if they are imported into California.

- Falconry records would be kept for at least 5 years.
- Conditions for release of raptors back would be included.
- In the case of capturing wild raptors, a falconer would be required to be at the site of capture unless they are deemed exempt. If marked raptors are captured, regulations would clarify the process for determining status of that raptor. If raptors are injured in the capturing process, regulations would note what a falconer is required to do. If non-target raptors are captured, the falconer would

release the raptor immediately. A falconer would only be able to capture on public lands where capture is allowed, and on private or tribal lands if they gain permission.

- New language would be added that specifies requirement and limitations of transferring a falconry raptor. When, how and under what circumstances temporary and permanent transfers may occur would be defined.
- If a raptor with a research band or marker is captured by a falconer, new language would specify action to take in notifying the Bird Banding Lab and/or the researcher.
- A falconer would be allowed to add a raptor with a research band or marker, or a raptor injured during trapping to his/her license. An injured raptor may also be given to a rehabilitation facility.
- Non-target raptors would be released immediately at the site of capture.
- Hybrid, captive-bred, or exotic raptors would have two attached functioning radio transmitters when flown free (hacking).
- Falconers would be able to obtain raptors from rehabilitation facilities. Falconers would also be able to temporarily possess raptors from rehabilitation facilities to assist in conditioning raptors for release back into the wild.
- Hacking would be allowed to condition raptors for release back into the wild and for conditioning young raptors to hunt.
- Language would be added that defines options for what to do with a falconry raptor carcass, and what to do if a falconry raptor or exotic is encountered flying free.
- Purchase, buy, sell, trade or barter of wild raptors or parts would be restricted. Gifting and donating wild raptors and parts is allowed. Purchase, buy, sell, trade or barter would be allowed for captive-bred, hybrid, and exotic raptors.
- With some limitations and under certain circumstances, other uses of falconry raptors would be allowed, including education, exhibiting, propagation, and abatement, but only if other required permits are in place.
- Captive-bred raptors listed under MBTA would be banded with seamless bands. Language notes specific restrictions and condition for banding placement, removal, reporting, or exemption on falconry raptors. The Department would distribute bands via the License and Revenue Branch or regional offices. The Department would be able to exempt the banding requirement if a raptor is documented to have health issues related to the band.
- Falconers would be able to use ISO-compliant microchips that they supply themselves on raptors in addition to bands. The Service would only supply the ISO chip for Northern goshawks and only if the raptor cannot wear bands for health reasons.
- The Service's falconry regulation stipulates standards that indoor and outdoor facilities must meet, as well as equipment that should be on hand. These standards would be referenced and defined in proposed regulations. Falconry facilities would be inspected and certified prior to issuance of a license. Unannounced inspections would be able to take place as needed with pre-authorization from falconer and/or landowner. Inspection of facilities would be

required for an Apprentice falconers, a new applicant, licensees renewing a lapsed license, and licensees that move to a new address. Inspections would be conducted by Department Law Enforcement Officers.

Amend 670 and Repeal Section 678

The major changes would include:

- New fees associated with the increased oversight of the Department would be defined. Setting of fees will require revision of Title 14, Section 703.

- The Lake Tahoe Basin would be re-opened for capturing Northern goshawk from the wild, with a capture limit of one goshawk annually via a special drawing through the Department's Automated License Drawing System (ALDS).

- A wild capture limit would be initiated for prairie falcons limiting annual capture to 14 individuals via a special drawing through ALDS.

- One raptor species would be eliminated for wild capture – the ferruginous hawk, and two species would be added – red-shouldered hawk and barred owl.

- Capturing raptors from the wild would be able to occur anytime during the year, except for merlin.

- Capture of merlins from the wild would be limited to the non-breeding season, August 15 to February 28.

- A falconer would only be able to capture up to 2 wild raptors from the wild annually.

- A nonresident falconer would only be able to capture only 1 wild raptor, but must apply with the Department to do so.

- Falconers would be required to submit an annual report summarizing the number and type of prey species taken while hunting, counties hunted, and raptors used in hunting during the most recent license year upon license renewal.

- Take of game or nongame animals shall abide by all state hunting laws and regulations.

- Raptors may be imported with proper documentation and required permits.

Benefits of the Regulation:

Benefits to the Environment: Sustainable Management of Wildlife Resources. It is the policy of this state to encourage the conservation, maintenance, and utilization of the wildlife for the benefit of all the citizens of the state. The objectives of this regulatory review is to ensure the raptor populations in California are not overharvested and to ensure that falconry practices support proper animal care and recreational opportunities for both the falconer and the public. Adoption of raptor species harvest quotas provides additional preservation of self-sustaining raptor populations for their continued existence in California.

Concurrence with State Law. The proposed regulations are neither inconsistent nor incompatible with existing State regulations. No other State agency has the authority to promulgate falconry regulations.

The Fish and Game Commission, at its Commission meeting on March 6, 2013 in Shasta City, voted to adopt the regulations as amended editorially, for the sake of clarity, and to accept some public recommendations received during the notice period. The text of the amended regulations was made available in the 15 day notice, and as presented in Pre-Adoption Statement of Reasons.

Existing regulations specify the conditions under which an individual may practice the sport of falconry in California. The proposed regulatory changes are needed to replace the existing Federal regulatory authority with California regulations. The statute and consequent regulations are intended to implement a comprehensive, self-supporting program for monitoring the sport of falconry in California, and evaluating any potential impacts on the raptors or the environment.

Changes were made to clarify the regulations and our associated forms as a result of:

1) **input received during public comment periods;**
2) **input received from the Commission's February 6, 2013 meeting with Commission staff, Department staff and Interested Parties;**
3) **input received from the U.S. Fish and Wildlife Service to bring our regulations into conformance with federal regulations; and**

The following Updated Informative Digest summarizes minor changes, corrections, and clarifications that have been made in response to public comments, as well as added authorities and references.

Subsection 670(a) General Provisions

Clarification is provided on the types of documentation required to be carried for the practice of falconry.

Subsection 670(b) Falconry Definitions

Clarification is provided that the term "Hybrid Raptor" means offspring of two or more species.

Subsection 670(d) Take of State- or Federally-Listed Species

This subsection has been revised to make it clear that state- and federally-listed species are those species designated as "threatened or endangered", and that take associated with falconry is "without intent."

Subsection 670(e) Licensing

The waiting period for failed license applicants has been reduced from three months to "the next business day." The change accommodates applicants that must travel a great distance for the examination and makes the waiting period consistent with other Department administered exams.

Subsection 670(e)(8) Denial; and, Subsection 670(e)(9) Suspension and Revocation

Clarification is provided regarding the applicable sections of the Fish and Game Code which, if violated, may result in the Department denying the issuance of a license or renewing a lapsed license. Rather than a violation of any section of the Fish and Game Code, the revised language makes it clear that failure to comply with Section 1054 (false statements to obtain a license), California Penal Code Section 597 (animal cruelty), or any regulations adopted pursuant to Fish and Game Code sections related to raptors may result in denial of a license application.

Subsection 670(g) Capturing Raptors from the Wild.

The application due date for Special Raptor Capture Drawing Applications has been modified from May 1 to January 31 to better fit the appropriate season for raptor capture.

Subsection 670(h) Possession, Transfer, and Disposition of Raptors.

Subsection 670(h)(4)(A) clarifies that a rehabilitation letter or "legible copies" to be in the possession of the falconer while flying a raptor for rehabilitation.

Subsection 670(h)(6)(C) clarifies that the intentional release of a non-native, hybrid, or native captive-bred raptor is prohibited "unless authorized by the Department."

Subsection 670(h)(7) clarifies the requirement of "one functioning transmitter" for hacking of native captive-bred raptors. This revision is needed to be consistent with federal requirements.

Subsection 670(h)(8) clarifies that a licensee may attempt to recover a raptor lost to the wild for up to 30 days before reporting the loss.

Subsection 670(h)(9)(B) clarifies the option of sending the carcass of a raptor to the Department instead of a pathologist.

Subsection 670(h)(14) clarifies certain requirements for other uses of raptors and provides that a Master Falconer may receive payment for abatement services.

Subsection 670(i) Banding and Tagging.

Clarification is provided regarding which raptors must be banded with USFWS leg bands including: "goshawk, peregrine, gyrfalcon or Harris hawk". Captive-bred raptors shall be banded with seamless bands.