believe that the jackrabbit is capable of surviving such fire effects by running away (Service 2008, p. 64). We find prescribed burns may also expose white-sided jackrabbits to higher rates of predation, but also allow for easier detection of terrestrial predators (Service 2008, p. 65). The effects of a prescribed burn would likely be short-term, because the fire-adapted grassland community usually responds quickly, with plant species showing regrowth within several days post-fire. Nevertheless, a reduction of shrubs would benefit the white-sided jackrabbit by improving grassland habitat. Although the MBHCP will likely result in short-term adverse effects to the jackrabbit, the long-term effects will improve the grassland community used by white-sided jackrabbits by reducing the shrub component, providing additional suitable habitat, and improving the area around occupied habitat for potential expansion; thus, implementation of the MBHCP, including the fire management program, should promote the conservation of the white-sided jackrabbit. For these reasons, we found no data or substantial information to indicate that wildfires or prescribed burns threaten white-sided jackrabbits or their habitat.

Evaluation of Information Provided in the Petition and Available in Service Files

We reviewed the petition, supporting information, and the information readily available to the Service and find the petition does not present any additional substantial information that any natural or manmade factors other than those discussed above for Factors A, B, and D may affect the white-sided jackrabbit's continued existence.

Finding

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our process for making this 90–day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition presents ''substantial scientific and commercial information,'' which is interpreted in our regulations as ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). We have reviewed the petition and the available literature cited in the petition, and evaluated the information to determine whether the sources cited support the claims made in the petition. We also reviewed reliable information that was readily available in our files to clarify and verify information in the petition. As described in our Five-Factor Evaluation, above, the petition presents substantial information indicating that listing the white-sided jackrabbit throughout its entire range may be warranted based on Factor A (present or threatened destruction, modification, or curtailment of the species' habitat or range), Factor B (overutilization for commercial, recreational, scientific or educational purposes), and Factor D (inadequacy of existing regulatory mechanisms). Based on our Five-Factor Evaluation (above), the petition does not present substantial information indicating that Factor C (disease or predation) or Factor E (other natural or manmade factors affecting the species' continued existence) is currently, or in the future will be, a threat to the white-sided jackrabbit.

Based on this review and evaluation, we find that the petition has presented substantial scientific or commercial information that listing the jackrabbit throughout all of its range may be warranted due to current and future threats under Factors A, B, and D. We also find that the petition presented substantial information that the northern populations of the species may be a valid DPS and may warrant listing. Therefore, we are initiating a status review to determine whether listing the jackrabbit under the Act is warranted. As part of our status review, we will examine whether the full species, subspecies, or the petitioned northern DPS of the jackrabbit warrants listing under the Act. We will issue a 12–month finding as to whether any of the petitioned actions is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding the jackrabbit.

The ''substantial information'' standard for a 90–day finding is in contrast to the Act's ''best scientific and commercial data'' standard that applies to a 12–month finding as to whether a petitioned action is warranted. A 90–day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is warranted is not made until we have completed a thorough status review of the species, which is conducted following a positive 90–day finding. Because the Act's standards for 90–day and 12–month findings are different, as described above, a positive 90–day finding does not mean that the 12–month finding also will be positive.

The petitioner requested that critical habitat be designated for this species. If we determine in our 12–month finding that listing the jackrabbit is warranted, we will address the designation of critical habitat at the time of the proposed rulemaking.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the New Mexico Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the New Mexico Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 14, 2009.

James J. Slack,

Acting Deputy Director, Fish and Wildlife Service.

[FR Doc. E9–17449 Filed 7–21–09; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 21 and 22

[FWS–R9–MB–2009–0002; 91200–1231–9BPP]

RIN 1018–AW44

Migratory Bird Permits; Changes in the Regulations Governing Falconry

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, published a final rule in the **Federal Register** on October 8, 2008, to revise our regulations governing falconry in the United States.

With this action, we propose to make several changes to those regulations to correct inconsistencies and oversights and make the regulations clearer. Because a few of our changes are technically substantive, we are opening a comment period for this action.

DATES: We must receive any comments by August 21, 2009.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R9–MB–2009–0002; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203–1610.

We will not accept e-mail or faxed comments. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (*see* the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1825.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that the final action resulting from this proposal will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection at *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service (*see* **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of our previous actions concerning this subject by mail (*see* **FOR FURTHER INFORMATION CONTACT**) or by visiting the Federal eRulemaking Portal at *http://www.regulations.gov.*

I. Background

On October 8, 2008, we published a final rule in the **Federal Register** (73 FR 59448) to revise our regulations governing falconry in the United States. We eliminated the requirement for a Federal permit to practice falconry, and made other changes to make it easier to understand the requirements for the practice of falconry, including take of raptors from the wild, and the procedures for obtaining a falconry permit. The rule also added a provision allowing us to approve falconry regulations that Indian Tribes, States, or U.S. territories adopt. This final rule became effective November 7, 2008, and changed the Code of Federal Regulations (CFR) at 50 CFR parts 21 and 22.

We have received questions about some parts of the final rule, which we propose to clarify or correct. Because a few of our proposed changes are technically substantive, we are opening a comment period for this action.

II. Corrections

We propose to better define the term ''imprint'' in 50 CFR 21.3 by changing the definition to mean a bird that is hand-raised in isolation from the sight of other raptors from 2 weeks of age until it is fully feathered.

Since publishing the rule, we have received inquiries about the prohibition in 50 CFR 21.29(c)(3)(i)(E) on possession of captive-bred raptors by Apprentice falconers. We continue to disallow possession of eagles and of raptor species on the most recent national list of bird species of conservation concern (currently *Birds of Conservation Concern 2008,* U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Arlington, Virginia). However, captive-bred individuals of some of the prohibited species may be appropriate for Apprentice falconers. We failed to clearly prohibit possession of wild raptors of threatened or endangered species. We propose to revise paragraph (c)(3)(i)(E) to clarify this issue for the public and to clarify that an Apprentice falconer may have a hybrid raptor of most species.

In § 21.29(c)(3)(ii)(C), we stated that to advance to the level of General Falconer, an Apprentice Falconer must ''have practiced falconry with wild raptor(s) at the Apprentice Falconer level or equivalent for at least 2 years, including maintaining, training, flying, and hunting the raptor(s) for at least 4 months in each year.'' However, because apprentices need not use wild raptors to advance to the General Falconer level, we propose to remove the word ''wild'' from this requirement. Likewise, we would correct § 21.29(g)(5)(ii), to make the requirements listed match those in § 21.29(c)(3)(ii)(C). Finally, for the same reason, we would remove the word ''wild'' from § 21.29(d)(1)(ii)(A).

In § (c)(7)(i), we by replace the words ''in lieu of a'' with the words ''in addition to the'' in the second sentence. The four species named in that paragraph must be banded with a nonreusable band that we will provide to the State, Tribe, or territory.

In § 21.29(d)(1)(ii)(A)(*4*), we stated in our regulations for housing falconry raptors that ''[e]ach raptor must have a pan of clean water available.'' In cold weather conditions and with some perch types, this requirement is impractical, and potentially harmful. We propose to change the requirement to clarify that, if practical, a water pan should be made available for a falconry bird.

In an oversight, the regulations at § 21.29(e)(3)(ii) state that General or Master falconers ''may take raptors less than 1 year of age from the wild during any period or periods specified by the State, Tribe, or territory.'' This constraint was not put in place for Apprentice falconers, so we wish to add the relevant language to the regulations, at § 21.29(e)(3)(i).

Since the final rule was published, we have been asked about the use of falconry birds in demonstrating or advertising falconry-related items such as hoods and telemetry equipment. We propose to add a sentence to § 21.29(f)(9)(i) clarifying that filming, photography, or illustration of falconry birds to demonstrate or advertise falconry equipment is acceptable.

Finally, we make several small word changes or additions to make these regulations compliant with other regulations. We also correct paragraph designations for several subparagraphs by indicating that the designations should have published in italics to conform with style requirements of the Office of the Federal Register, which requires that paragraph designations in the CFR follow this order: (a), (1), (i), (A), (*1*), and (*i*). Because several of the other proposed changes are substantive,

we request public comment on this proposed rule.

III. Required Determinations

Clarity of This Regulation

Executive Order (E.O.) 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

1. Are the requirements in the rule clearly stated?
2. Does the rule contain technical language or jargon that interferes with its clarity?
3. Does the format of the rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity?
4. Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol § and a numbered heading; for example: ''§ 21.29 Falconry standards and falconry permitting.'')
5. Does the description of the rule in the Supplementary Information section of the preamble help you to understand the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail comments to *Exsec@ios.doi.gov.*

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this proposed rule is not significant under Executive Order 12866. OMB bases its determination upon the following four criteria:

a. Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

b. Whether the rule will create inconsistencies with other Federal agencies' actions.

c. Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (that is, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action will not have a significant economic impact on a substantial number of small entities because the changes we are proposing are intended primarily to clarify and correct small problems with the published regulations.

Consequently, we certify that because this proposed rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). It will not have a significant economic impact on a substantial number of small entities.

a. This rule does not have an annual effect on the economy of $100 million or more. There are no costs to permittees or any other part of the economy associated with these regulations changes.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The practice of falconry does not significantly affect costs or prices in any sector of the economy.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Falconry is an endeavor of private individuals. Neither regulation nor practice of falconry significantly affects business activities.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule will not ''significantly or uniquely'' affect small governments. A small government agency plan is not required. Falconry is an endeavor of private individuals. Neither regulation nor practice of falconry affects small government activities in any significant way.

b. This rule will not produce a Federal mandate of $100 million or greater in any year; i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. Though States may have to revise their falconry regulations to comply with the proposed revisions, nearly every State already has falconry regulations in place. Therefore, revisions of the State regulations should not be significant.

Takings

In accordance with E.O. 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule does not contain a provision for taking of private property.

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It will not interfere with the States' ability to manage themselves or their funds. No significant economic impacts are expected to result from the regulation of falconry. However, this rule provides the opportunity for States to cooperate in management of falconry permits and to ease the permitting process for permit applicants.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

We examined this rule under the Paperwork Reduction Act of 1995. OMB has approved the information collection requirements of the Migratory Bird Permits Program and assigned OMB control number 1018–0022, which expires November 30, 2010. This regulation change does not add to the approved information collection. Information from the collection is used to document take of raptors from the wild for use in falconry and to document transfers of raptors held for

falconry between permittees. A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We evaluated the environmental impacts of the significant changes to these regulations, and determined that the clarifications and corrections in this rule do not have any environmental impacts. Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA), and other statutes, orders, and policies that protect fish and wildlife resources, we determined that these regulatory changes do not have a significant effect on the human environment.

Under the guidance in Appendix 1 of the Department of the Interior Manual at 516 DM 2, we conclude that the regulatory changes are categorically excluded because they ''have no or minor potential environmental impact'' (516 DM 2, Appendix 1A(1)). No more comprehensive NEPA analysis of the regulations change is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian Tribes and have determined that this rule will not interfere with Tribes' ability to manage themselves or their funds or to regulate falconry on Tribal lands.

Energy Supply, Distribution, or Use

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only affects the practice of falconry in the United States, it is not a significant regulatory action under E.O. 12866, and will not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Environmental Consequences of the Proposed Action

The changes we propose are primarily in the combining, reorganizing, and rewriting of the regulations. The environmental impacts of this action are limited.

Socioeconomic. We do not expect the proposed action to have discernible socioeconomic impacts.

Raptor populations. This rule will not change the effects of falconry on raptor populations.

Endangered and Threatened Species. This proposed rule has language additions or changes that clarify protections for endangered and threatened species. The rule does not itself make any changes to those protections.

Compliance With Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that ''The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter'' (16 U.S.C. 1536(a)(1)). It further states that the Secretary must ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat'' (16 U.S.C. 1536(a)(2)). These regulatory corrections and clarifications would not affect threatened or endangered species or their habitats in the United States.

List of Subjects

50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 22

Exports, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons stated in the preamble, we propose to amend part 21 of subpart C, subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 21—MIGRATORY BIRD PERMITS

1. The authority citation for part 21 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Public Law 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

§ 21.3 [Amended]

2. Amend § 21.3 in the definition of the term ''Imprint'' by removing the words ''has fledged'' and adding in their place the words ''is fully feathered.''

§ 21.29 [Amended]

3. Amend § 21.29 as follows:

a. Redesignate paragraphs (c)(3)(i)(C)(1), (2), and (3) as paragraphs (c)(3)(i)(C)(*1*), (*2*), and (*3*);

b. Revise paragraph (c)(3)(i)(E) to read as set forth below;

c. Amend paragraph (c)(3)(ii)(C) by removing the word ''wild'' from the first sentence;

d. Amend paragraphs (c)(3)(iii)(C) and (c)(3)(iv)(B) by adding the words ''for use in falconry'' at the end of both paragraphs;

e. Redesignate paragraphs (c)(3)(iv)(A)(1) and (2) as paragraphs (c)(3)(iv)(A)(*1*) and (*2*);

f. Amend paragraph (c)(7)(i) by adding the words ''or from another falconer'' after the word ''rehabilitator'' in the first sentence;

g. Amend paragraph (c)(7)(i) in the second sentence by removing the words ''in lieu of a'' and adding the words ''in addition to the'' in their place;

h. Amend paragraph (d)(1)(ii)(A) by removing the word ''wild'';

i. Redesignate paragraphs (d)(1)(ii)(A)(1), (2), (3), and (4) as paragraphs (d)(1)(ii)(A)(*1*), (*2*), (*3*), and (*4*) and revise paragraph (d)(1)(ii)(A)(*4*) to read as set forth below;

j. Redesignate paragraphs (d)(1)(ii)(B)(1) and (2) as paragraphs (d)(1)(ii)(B)(*1*) and (*2*) and paragraphs (d)(1)(ii)(D)(1), (2), and (3) as paragraphs (d)(1)(ii)(D)(*1*), (*2*), and (*3*);

k. Amend paragraph (e)(1)(v) by adding the words ''or wildlife'' after the word ''livestock'' in both places where it occurs;

l. Revise paragraph (e)(3)(i) to read as set forth below;

m. Amend paragraphs (e)(3)(iii), (e)(3)(iii)(A), and (e)(3)(iii)(B) by adding the words ''or wildlife'' after the word ''livestock'' wherever it occurs;

n. Redesignate paragraphs (e)(3)(vi)(C)(1) and (2) as paragraphs (e)(3)(vi)(C)(*1*) and (*2*);

o. Revise paragraph (f)(9)(ii) to read as set forth below; and

p. Amend paragraph (g)(5)(ii) by removing the words ''taken from the wild'' and ''an average of 6 months per year, with.''

§ 21.29 Falconry standards and falconry permitting.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(E) You may possess a raptor of any Falconiform or Strigiform species except a Federally listed threatened or endangered species, a bald eagle (*Haliaeetus leucocephalus*), a white-tailed eagle (*Haliaeetus albicilla*), a

Steller's sea-eagle (*Haliaeetus pelagicus*), or a Golden eagle (*Aquila chrysaetos*), including wild, captive-bred, or hybrid individuals of these species.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(A) * * *

(*4*) In most cases, each raptor should have a pan of clean water available. However, this requirement is waived if weather conditions, the perch type used, or some other factor makes it inadvisable to have water available to the raptor.

* * * * *

(e) * * *

(3) * * *

(i) If you are an Apprentice Falconer, you may take raptors less than 1 year of age from the wild during any period or periods specified by the State, Tribe, or territory. You may take any species from the wild except any listed as a national Species of Conservation Concern in the most recent list of ''Birds of Conservation Concern'' from the Division of Migratory Bird Management, a bald eagle (*Haliaeetus leucocephalus*), a white-tailed eagle (*Haliaeetus albicilla*), a Steller's sea-eagle (*Haliaeetus pelagicus*), a Golden eagle (*Aquila chrysaetos*), or a Federally listed threatened or endangered species.

* * * * *

(f) * * *

(9) * * *

(ii) You may not use falconry raptors for entertainment; for advertisements; as a representation of any business, company, corporation, or other organization; or for promotion or endorsement of any products, merchandise, goods, services, meetings, or fairs, except for products related directly to falconry, such as hoods, telemetry equipment, giant hoods, perches, and materials for raptor facilities.

* * * * *

PART 22—EAGLE PERMITS

4. The authority citation for part 22 continues to read as follows:

Authority: 16 U.S.C. 668–668d; 16 U.S.C. 703–712; 16 U.S.C. 1531–1544.

§ 22.24 [Amended]

5. Amend § 22.24(b) by adding the words ''or wildlife'' after the word ''livestock'' in both places where it occurs.

Dated: June 16, 2009.

Jane Lyder,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E9–16922 Filed 7–21–09; 8:45 am]

BILLING CODE 4310–55–P