December 9, 2014

Dear Falconer,

On November 7, 2008, the United States Fish and Wildlife Service (USFWS) relinquished permitting authority for falconry to states, tribes and U.S. territories. The Florida Fish and Wildlife Conservation Commission (FWC) passed a proposed falconry rule on February 14, 2013. These changes were certified by the USFWS, and Rule 68A-9.005, Florida Administrative Code (F.A.C.), became effective January 1, 2014. This rule may be viewed on-line at https://www.flrules.org/.

It has come to the attention of FWC, Division of Habitat and Species Conservation (HSC), and Division of Law Enforcement (LE) staff that there is a conflict in the interpretation of state versus federal regulations regarding the number of raptors a falconer may take from the wild each year, based on the use of the term “replacement” in Rule 68A-9.005 (3) (a) (b) and (c), F.A.C., which states in part:

(3) Examination and classifications:
(a) Apprentice:
4. Permittee may take and possess one wild-caught red-tailed hawk (Buteo jamaicensis), red-shouldered hawk (Buteo lineatus), broad-winged hawk (Buteo platypterus), or Merlin (Falco columbarius).
5. Permittee may not obtain more than one raptor for replacement during any 12-month period.

(b) General:
2. Permittee may possess no more than 3 raptors.
3. Permittee may not obtain more than two wild raptors for replacement birds during any 12-month period.

(c) Master:
3. Permittee may possess no more than 5 wild raptors (no more than 3 of which may be golden eagles (Aquila chrysaetos)) and any number of captive-bred raptors but they must be used in the pursuit of game and hunting.
4. Permittee may possess any captive-bred individuals or hybrids of the species he/she is allowed to possess.
5. Permittee may not obtain more than two wild raptors for replacement birds during any 12-month period.

FWC staff previously interpreted this regulation to mean that should a falconer take the limit of raptors that may be possessed based on their classification level and as authorized by the regulations, they may also take no more than the specified number of additional raptors from the wild as replacement birds in any 12 month period. This interpretation is incorrect based on recent clarification from the USFWS.

Federal regulations provide that states, tribes and U.S. territories that wish to allow falconry must establish regulations that meet federal standards as provided in 50 CFR 21.29(b)(1) – Falconry Standards and Falconry Permitting, which states:

(i) General.

(i) A State (including the District of Columbia), tribe, or territory under the jurisdiction of the United States that wishes to allow falconry must establish laws and regulations (hereafter referred to as laws) that meet the standards established in this section. To allow the practice of falconry on tribal lands by tribal members or residents, a tribe may
either certify that it has adopted Service-approved State laws if those laws are fully enforceable on tribal lands, or issue its own laws and request our approval.

(ii) State, tribal, or territorial laws may be more restrictive than these Federal standards but may not be less restrictive. For instance, a State, tribe, or territory may choose not to allow possession of some species of raptors otherwise allowed in this section. State, tribal, and territorial laws must be consistent with the terms contained in any convention between the United States and any foreign country for the protection of raptors and the Migratory Bird Treaty Act.

(3) Federal approval and terms. If we concur that the regulations and the examination meet the requirements of this section, we will publish a rule in the Federal Register adding the State, tribe, or territory to the list of those approved for allowing the practice of falconry. We will terminate Federal falconry permitting in any State certified under these regulations on January 1st of the calendar year following publication of the rule.

Furthermore, federal regulations provide that a falconer may take no more than two raptors from the wild each year as provided in 50 C.F.R. 21.29(e)(1), which states:

(iv) Take of any species must be in compliance with these regulations.

(2) How and when you may take raptors from the wild to use in falconry. You may take no more than two raptors from the wild each year to use in falconry.

Therefore, effective immediately a falconer may take no more than two raptors from the wild in a 12 month period based on their classification level as authorized by Rule 68A-9.005, F.A.C., and in compliance with 50 C.F.R. 21.29, regardless if it is an initial take or take of a replacement bird. The FWC is working to clarify the language in Rule 68A-9.005, F.A.C., to ensure consistency with federal regulations.

We appreciate your cooperation regarding this matter. If you have any questions, please call Captain Kara Hooker at (850) 488-6253, or write to her at Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, Captive Wildlife Office, 620 South Meridian Street, Tallahassee, Florida 32399-1600.

Sincerely,

[Signature]

For:
Colonel Calvin Adams, Jr.
Director, Division of Law Enforcement

c/a lh