

**Alaska Falconers Association  
P.O. Box 55390  
North Pole, AK 99705-0390**

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BOARDS

Cliff Judkins, Chair  
Alaska Board of Game  
% Boards Support Section  
Alaska Department of Fish and Game  
P.O. Box 115526  
1255 West 8<sup>th</sup> Street  
Juneau, AK 99811-5526

Dear Chairman Judkins:

At its January 2012 meeting, the Alaska Board of Game (Board) briefly considered Proposal No. 40, advocating non-resident take of Alaska raptors for falconry. Citing a lack of information and in the absence of meaningful public input, the Board deferred action on the proposal until its March 2012 meeting. The Alaska Department of Fish and Game (Department) suggested the Board would benefit from a "white paper" summarizing issues and questions regarding such a take, and perhaps including a potential scheme or schemes for implementing it. Attached is the Alaska Falconers Association's (AFA) effort to provide the Board with this information.

The AFA counts virtually all Alaska licensed falconers as members. We have served as the voice of Alaska falconry for more than 30 years. By our reckoning, a clear majority of Alaska falconers oppose non-resident take of falconry raptors. However, the U.S. Constitution apparently requires Alaska to offer some level of access to wild-taken raptors to non-resident U.S. citizens. For the record, we did not come looking for this "opportunity."

In effect, non-resident take of Alaska raptors already exists, because "passage" raptors (birds in immature plumage on their first southward migrations) are available for take across the Lower 48. Thousands of raptors hatched and reared in Alaska migrate south, where they may be legally taken by falconers. Ironically, many Alaska-reared peregrines migrate through Texas and may be readily trapped along barrier beaches and coastal zones, but because of a "reciprocity clause" in that state's falconry regulations, i.e., only residents of states allowing non-residents to take raptors in their home states may take raptors in Texas, Alaska falconers may not trap passage peregrines there, even though that opportunity is afforded residents of other states.

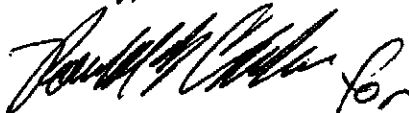
Finally, we note the group that submitted the proposal mentioned above alleges they prepared it in consultation with several Alaska falconers. To date, we have been



unable to identify those individuals. We are aware of no Alaska members of that group. We want the Board to know in no uncertain terms and regardless of that group's assertions, they do not speak for or represent the interests of Alaskans. One of their founding members was once caught selling gyrfalcons taken illegally and smuggled from Alaska, which has been frequently mentioned at Board hearings over the years. The group's web site declares their dedication to securing private property rights to wild-taken raptors, a stance we interpret as in direct opposition to the North American model of wildlife management and to the potential detriment of raptors and falconry. We would like the record to clearly reflect the AFA's wish to not be associated with that group in any way.

Thank you for considering our views. We stand ready to assist the Board in its deliberations in any way possible, and look forward to working with you again.

Sincerely,



William R. Tilton, President  
Alaska Falconers Association



## **NON-RESIDENT TAKE OF ALASKA RAPTORS FOR FALCONRY**

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North Pole, AK 99705-0390

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February 2012

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### **1. Biological Considerations**

The annual take of raptors by resident falconers has averaged fewer than nine birds over the past ten years; resident take has never exceeded twenty birds in any one year since falconry was authorized in Alaska. To date, no party with an interest in the welfare of raptor populations has asserted resident falconry take is unsustainable, or even detectable, at the population level.

Demand by non-residents could easily eclipse take levels by residents. A proposal recently submitted to the Board requested a total non-resident take approximately three times the average annual resident take. Biologically, allowing a non-resident take similar to or even larger than the resident take is unlikely to even register in an overall statewide assessment of raptor mortality, if such could be undertaken. This is pure conjecture, of course, but given known annual mortality from other sources, falconry is not and is not likely to become a significant or even detectable factor in annual raptor mortality.

Substantially increasing the annual take of raptors may invite scrutiny of both resident and non-resident raptor take. Individuals or groups may demand collection of population data to justify take by falconers. Some might push for a moratorium on take



until positive justification could be established. This is not unprecedented; federal guidelines for take of golden eagles is capped at six birds nationwide unless and until sufficient data exist to affirmatively demonstrate increased take would not adversely affect eagle populations. Disproving a negative assumption such as that would be time- and energy-intensive, expensive, and unlikely to be undertaken. It is highly unlikely sufficient data will ever exist to establish that level of assurance. If such a condition were imposed, falconry take could very well cease.

With the exception of certain subpopulations of the formerly endangered American peregrine falcon and, to a lesser extent, coastal goshawks, birds of prey in Alaska have never been the subjects of long-term, ongoing field research or population estimation. Now that peregrines have been completely delisted, field research on raptors is limited to sporadic and scattered studies. It is exceedingly unlikely any persons, groups, institutions, or agencies will ever collect and analyze data sufficient to accurately assess and track statewide raptor populations in Alaska.

## CONCLUSIONS

1. Wildlife professionals will never be able to base management decisions on comprehensive, up-to-date field data.
2. Resident take of Alaska raptors for falconry exerts no detectable impact on wild raptor populations.
3. A limited, conservative non-resident take of Alaska raptors is biologically defensible.
4. A disproportionately large proposed non-resident take may inspire calls for field data that are difficult or even impossible to produce.

## 2. Legal Considerations

Alaska Assistant Attorney General Kevin Saxby has advised the U.S. Constitution requires that residents of all states have access to hunting and fishing privileges extended to Alaska residents, including take of falconry raptors. This constitutional requirement applies to nonresident United States citizens only and does not apply to nonresident aliens. States may reasonably restrict such non-resident activity, but may not entirely exclude non-residents from activities allowed for residents.

## CONCLUSIONS

1. Alaska must work to provide non-resident U.S. citizens with some level of access to raptors.
2. No such requirement applies to non-resident aliens.
3. Non-resident raptor take may be restricted as the state sees fit.



### 3. Administrative Considerations

#### a. Logistics

Awarding non-resident raptor take permits to interested applicants would require ~~a fair and transparent system of collecting and tracking an as yet indeterminate number of~~ applications. Whether using an existing system or inventing a new one, the department will assume new work and incur additional expense to administer a non-resident take.

No reliable prediction of domestic non-resident interest exists, but other states' experience suggests applicants would likely number no more than one hundred. Non-resident alien applications could number many more. Interest in large falcons, especially from Middle East falconers, is strong, long-standing, and likely to continue. A considerable number of practitioners in the Middle East possess the financial and logistical ability to take advantage of a non-resident take in Alaska. It is not presently possible to reliably gauge the level of non-U.S. interest in Alaska raptors, but it is potentially substantial.

A new lottery system could be created, or the existing Alaska Department of Fish and Game (department) drawing hunt system could serve as a platform for awarding non-resident raptor permits. The department should be able to provide estimates of their costs of public notice, application collection, winner selection, permittee notification, take management, and other administrative expenses in conducting a drawing for non-resident raptor take permits.

Other jurisdictions report attempts to subvert their selection systems, notably by multiple proxies entering applications on behalf of a single applicant. Several states relegate successful applicants to the end of the line in subsequent years, whether they take birds under their permits or not, to help distribute a limited number of permits more equitably among applicants.

Biological concerns sufficient to warrant emergency closures or other actions are unlikely to arise, but administrative problems may trigger a need for regulatory amendment. The Board's and the commissioner's existing authorities likely provide the legal latitude to make needed adjustments, but until it becomes well-established, a non-resident take system may demand to be revisited and examined more frequently than falconry regulations are reviewed, i.e., every four years.

### CONCLUSIONS

1. Any new non-resident take system should be as close to cost neutral to the department as possible.
2. The department should prevent individual applicants from dominating the selection process.
3. Alaska should anticipate considerable non-resident alien interest in raptors.



4. The U.S. Constitution does not require Alaska to provide opportunities for raptor take by nonresident aliens.
5. Alaska should retain the flexibility to curtail or alter any non-resident take scheme to respond to unanticipated problems or difficulties outside of the usual quadrennial schedule of falconry regulation review.

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#### **b. Permit Fees**

Non-residents should expect to cover administrative costs to award permits. Additionally, non-resident permits for many big game hunts in Alaska are limited in number and typically cost hundreds of dollars. Permits for non-resident take of raptors for falconry in Alaska would likely be few in number; they could easily be among the rarest of non-resident drawing permit opportunities. Issuing such permits for anything less than a substantial fee would be inconsistent with existing drawing permit protocol and could invite challenges to other permit fees (i.e., if the rarest of permits were inexpensive or even free, how could the state justify charging hefty fees for more commonly available permits?).

In light of the fees charged for other uncommon permits issued by the Alaska Department of Fish and Game, imposing a substantial fee for the falconry equivalent of a rare big game trophy would be entirely consistent with existing state policy. For example, a non-resident wishing to hunt musk oxen in Alaska pays a \$10.00 application fee to register for a permit hunt drawing, \$85.00 for a non-resident annual hunting license, and a \$1,100 fee for the requisite locking metal tag. The state issues four musk oxen tags to non-residents in a typical year. Fees for other species are substantial: e.g., a nonresident brown/grizzly bear tag costs \$500.00; Dall sheep \$425.00; and a moose tag \$400.00.

Previously, in some Alaska draw hunts, applicants were found to have submitted multiple applications under names other than their own. The Board now requires all applicants to purchase a hunting license prior to applying for the permit. The Board needed go no further, as this restriction solved most of the problems. This remedy might not work if certain nonresidents were willing to risk a substantial sum of money to draw a permit to take a raptor in Alaska.

To further limit participation to legitimate and serious applicants, the department makes permits for some Alaska hunts available only in person in sometimes remote locations. Instead of drawing for permits online, they are awarded to applicants on a first-come, first-served, in-person basis.

Any new fee structure imposed on non-residents for take of raptors for falconry would require action by the Alaska State Legislature.

#### **CONCLUSIONS**

1. Alaska charges substantial fees for drawing permits that are few in number.
2. The Board may require applicants to purchase a non-resident hunting license



- to enter a permit drawing.
3. Permits may legally be issued from local Department offices, and aspiring hunters may need to appear in person to claim them.
  4. A fee for non-resident raptor take permits would require new legislation.

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### **c. Permit Allocation**

Other jurisdictions report setting quotas, often by species, to limit non-resident take. Some states forbid take of certain species by non-residents. Only rarely do these states possess even limited data on wild raptor populations or trends.

Alaska formerly imposed quotas on take of peregrine falcons for falconry, but eliminated them some years ago. The regulations the Board adopted last month recognize the self-limiting nature of falconry take of raptors and maintained the status quo, i.e., imposing no numerical quotas on resident wild take of falconry raptors.

Generally, non-residents are allowed some fraction – typically, no more than 20% -- of resident take. Lacking resident take quotas, Alaska must rely on annual take numbers from years past to establish typical resident take levels. While there are no biological concerns for non-resident take equaling or even exceeding (within reason) resident raptor take, we are aware of no other Alaska hunting seasons where non-residents are allowed to take more animals than residents.

### **CONCLUSIONS**

1. Any new scheme of take is justifiably set conservatively at first, with increases considered only after some years of experience with the new take regime.
2. Typically, non-resident take comprises some fraction of, and never exceeds, typical resident take.

## **4. Other Considerations**

### **a. Protection of Raptor Eyries**

Falconers take raptors in two ways: 1) removal of nestlings, or eyas, birds from nests or eyries before they are capable of flight, and 2) trapping of fully-flighted birds capable of hunting on their own and on their first migrations (i.e., passage birds). Each has advantages and drawbacks. Eyasses tend to be tamer and easier to train, but may turn out to be one of the eight or nine of ten that were not destined for survival in the wild, i.e., not effective hunters. Passage birds are strong fliers and experienced, already proven hunters, but tend to be wilder and thus more easily lost.

Many species of raptors build new nests or occupy new sites every year, but large falcons tend to reoccupy select sites repeatedly. Cliffside scrapes with features favorable



to large falcons are unusual and tend to be used and re-used over many years. One site in Greenland was determined through radiocarbon dating to have been occupied as far back as 26,000 years ago. Consequently, eyrie sites used by large falcons are far more sensitive and precious than good hunting spots or hot fishing holes.

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~~Falconers have long held known eyrie locations closely. If eyries become known~~ by too many people, unwanted attention and competition may result – and not just from other falconers. Wildlife photographers, birdwatchers, wilderness travelers, and others have all been known to visit large falcon eyries in Alaska with detrimental results. Additionally, in the past, individuals and government agencies have removed eyas raptors from eyries in Alaska outside the confines of existing falconry regulations.

Other states restrict non-resident take to passage birds and some place certain species off limits to non-residents.

## CONCLUSIONS

1. Alaska is justified in limiting knowledge of and access to eyries and nest sites, especially those of large falcon species.
2. One way to protect large falcon eyries is to restrict take to passage birds.

### **b. Protection of Resident Privileges**

Presently, resident falconers pay no fees beyond the cost of a hunting license, and are not limited by quotas on take by species. There are no administrative, financial, political, or biological reasons to alter this arrangement.

## CONCLUSIONS

1. Alaska need impose no fees or additional requirements on resident take of falconry raptors.
2. Alaska need impose no numerical quotas on resident take.

### **c. Impact on Existing Regulations**

The regulations adopted by the board last month include detailed restrictions on when and how a resident falconer may temporarily and/or permanently export a raptor from the state. Maintaining those restrictions while allowing permanent export of raptors by non-residents might create an incongruous or even legally indefensible discrepancy between residents and non-residents.

## CONCLUSION

1. The Board should work with its legal advisors to maintain consistency between restrictions on residents and non-residents.





#### **d. Guiding**

Many aspects of taking a raptor in Alaska are difficult for residents to understand and navigate successfully; non-residents could not reasonably be expected to negotiate ~~the intricacies of the Alaska situation without running afoul of state, local, and Native~~ restrictions. Professional guides assist many non-resident big game hunters and are even required for some hunts. Some suggest professional raptor guides would be useful or even necessary for non-residents taking raptors in Alaska. Others advocate requiring Alaska licensed falconers to accompany non-residents taking birds in Alaska.

Existing statute makes no provision for falconry guides; expertise to populate a falconry program does not exist within the present Big Game Commercial Services Board structure.

Attaching a monetary value, even obliquely, to the removal of an animal from the wild, invites wide-ranging challenges and problems and creates incentives for greater wild take than might otherwise exist.

#### **CONCLUSIONS**

1. Allowing the exchange of anything of value for raptor guiding services would open a large universe of challenges and problems.
2. The Board may preclude raptor guiding services by prohibiting financial or material remuneration for assisting a nonresident falconer take a raptor.

#### **e. Reciprocity**

Some states limit non-resident access to raptors in their states to residents of states that also allow non-resident take, i.e., "reciprocity." Such provisions are intended primarily to encourage all states to allow non-resident take.

Sponsors of a recent proposal requested the Board include a reciprocity clause in non-resident take regulations, i.e., they advocate restricting take in Alaska to residents of states that also allow non-resident take of falconry raptors in their states. This assertion invites examination on at least four fronts: 1) constitutionality; 2) practicality; 3) administrative logistics; and 4) benefit to Alaska falconers.

1) The same provision of the U.S. Constitution requiring states to provide non-residents access to activities allowed to their residents also renders such reciprocity clauses illegal.

2) Presently, only Connecticut and West Virginia lack non-resident take provisions (Hawaii allows neither falconry nor non-resident take). Rules preventing residents of those states from taking raptors in Alaska would affect only a very few



individuals and would accomplish little as far as exerting pressure on those states to implement non-resident take.

3) Keeping track of other states' reciprocity standing would require the Department to expend significant effort to monitor each state's regulatory status to insure ~~up-to-date, legal, even-handed treatment of all applicants.~~

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4) The assertion Alaska falconers would enjoy expanded access to raptors in other states is illogical. With the exception of passage tundra peregrine falcons, the Lower 48 states offer few opportunities attractive to Alaskans.

## CONCLUSION

1. A reciprocity clause in Alaska's regulations is neither legal nor desirable.

## **5. Recommended Features Of An Alaska Non-Resident Raptor Take**

- Restricted to U.S. citizens.
- Non-resident take limited to five birds total annually.
- Five non-resident take permits awarded per year by lottery, through the department's existing permit drawing system.
- A non-resident applicant winning a permit may take one bird of any species allowed to a resident falconer of a similar class of falconry permit.
- Charge an entry fee of \$5.00 per application to enter a raptor take permit drawing.
- The department should take steps to prevent individual applicants, or an applicant's proxies, from dominating the selection process.
- A successful applicant must purchase a non-resident hunting license, pay any non-resident raptor take fee determined by the department (we suggest at least \$100.00 per permit), and present proof of being legally permitted to practice falconry in his/her home state.
- A non-resident may take only a passage raptor.
- Non-resident take allowed 1 September to 31 December annually.
- A successful applicant must notify the appropriate regional falconry representative prior to undertaking trapping activities, and must report in person to the department area biologist for the area where the permittee intends to conduct trapping activities, and present his or her non-resident hunting license, falconry permit or license from his or her home state, written permission from landowners, if pertinent, and provide any other information the department may require.
- A permittee must report in person to the regional falconry representative before leaving the state, whether successful in trapping a bird or not. If successful, a permittee must present his or her hunting license, capture permit, and any bird taken, and provide whatever additional information the department may require.



- Any bird taken by a non-resident, regardless of species, must be banded with a locking, non-reusable, black nylon numbered marker band issued in person by the Department upon check-in prior to attempting to capture a raptor.
  - For at least five years after take, a non-resident successfully trapping a bird must file an annual report designed to track the movement, transfer, and disposition of the bird.
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- No one may offer or accept anything of value in exchange for raptor guiding services or other activities intended to assist a non-resident in taking a raptor for falconry.
  - A successful applicant may not apply for another non-resident take permit for at least five years, whether or not he or she was successful in trapping a raptor.
  - No new quotas or fees shall be imposed on resident falconers.
  - Board review of the entire non-resident raptor take scheme is required by 31 December 2014; scheme sunsets 31 December 2016.

