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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Fish and Wildlife Commission
Division:	
Contact Person:	Torrey S. Grimes, General Counsel Tennessee Wildlife Resources Agency
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Randi Tarpy, Chief of Human Resources Tennessee Wildlife Resources Agency
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Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Region II Office, Tennessee Wildlife Resources Agency		
Address 2:	5105 Edmondson Pike		
City:	Nashville, Tennessee		
Zip:	37211		
Hearing Date:	06/23/2023		
Hearing Time:	9:00 AM	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

In addition to the in-person public comment noted above, the Agency will accept public comment via electronic means from the date of filing of this Notice of Rulemaking Hearing until 6/22/2023 at 4:30 PM.

Any electronic public comment must be emailed to twra.rulescomments@tn.gov with the heading "Proposed Rule Comment – RAPTOR RULE".

Revision Type (check all that apply):

☐ Amendment
☒ New
☐ Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
1660-01-37	RULES AND REGULATIONS GOVERNING THE POSSESSION AND USE OF RAPTORS
Rule Number	Rule Title
1660-01-37-.01	Purpose
1660-01-37-.02	Definitions
1660-01-37-.03	Falconry Permits
1660-01-37-.04	Education Permits
1660-01-37-.05	Abatement Permits
1660-01-37-.06	Propagation Permits
1660-01-37-.07	General Requirements and Miscellaneous Restrictions

Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

**RULES OF
THE TENNESSEE WILDLIFE RESOURCES AGENCY
BOATING AND LAW ENFORCEMENT**

**CHAPTER 1660-01-37
RULES AND REGULATIONS GOVERNING THE
POSSESSION AND USE OF RAPTORS**

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1660-01-37-.01 PURPOSE.

- (1) The Tennessee Wildlife Resources Agency (TWRA) recognizes the importance of consistency and balance that is necessary in concurrent Federal and State regulatory areas. Accordingly, the TWRA hereby adopts, and incorporates by reference, the falconry standards and falconry permitting regulations which appear in the Code of Federal Regulations, 50 C.F.R. § 21.82, and its permits subject to the Tennessee-specific regulations detailed herein.
- (2) The TWRA, in furtherance of its regulatory responsibilities relating to live wildlife life and exotic wildlife, hereby additionally adopts these rules relating to all raptors that are not applicable Migratory Bird Treaty Act.
- (3) These rules shall apply to the possession and use of raptors in all circumstances in Tennessee.

Authority: 50 C.F.R. § 21.82, T.C.A. §§ 70-1-206, 70-4-404, and 70-4-414.

1660-01-37-.02 DEFINITIONS.

- (1) "Raptor" means a live migratory bird of the Order Accipitriformes (excluding the American Bald Eagle), the Order Falconiformes, or the Order Strigiformes. This definition includes all birds that meet this definition including those birds that are not subject to the Migratory Bird Treaty Act (MBTA).
- (2) "Take" means to trap or capture or attempt to trap or capture a raptor for the purpose of falconry.
- (3) "Falconry" means caring for and training raptors for the pursuit of wild game and the hunting wild game with raptors. Falconry includes the taking of raptors from the wild to use in the sport; and caring for, training, and transporting raptors held for falconry.
- (4) "Service" means the U.S. Fish and Wildlife Service, U.S. Department of Interior.
- (5) "State" means the Tennessee Wildlife Resources Agency (TWRA).
- (6) "Bred in captivity" or "captive-bred" refers to raptors, including eggs, hatched in captivity from parents that mated or otherwise transferred gametes in captivity.
- (7) "Captivity" means a live raptor held in a controlled environment that is intensively manipulated by man for the purpose of producing raptors of selected species, and that has boundaries designated to prevent raptors, eggs or gametes of the selected species from entering or leaving the controlled environment. General characteristics of captivity may include, but are not limited to, artificial housing, waste removal,

health care, and protection from predators, and artificially supplied foods.

- (8) "Possession" and short-term handling of a falconry raptor. We do not consider short-term handling, such as letting any other person hold or practice flying a raptor you possess under your permit, to be possession for the purposes of this section if you are present and the person is under your supervision.
- (9) "Native wildlife" means those species presently occurring in the wild in Tennessee and those extirpated species that could reasonably be expected to survive in the wild if reintroduced.
- (10) "Permanent exhibitors" means those exhibits that are housed the entire year in facilities located within this state.
- (11) "Temporary exhibitors" means those transient animal acts not permanently located within the boundaries of this state.
- (12) "Hacking" is the temporary release of a raptor held for falconry to the wild so that it must survive on its own.
- (13) "Hybrid" means any bird that results from a cross of genetic material between two separate taxa when one or both are listed as a migratory bird in 50 CFR 10.13, and any progeny of those birds.
- (14) "Imprint", for the purposes of falconry, means a bird that is hand-raised, from 2 weeks of age or earlier until it has fledged, and has identified itself with humans rather than its own species. An imprinted bird is considered to be so for its entire lifetime.

Authority: T.C.A. §§ 70-1-206, 70-4-402, and 70-4-414.

1660-01-37-.03 FALCONRY PERMITS.

- (1) Falconry Examination Requirement
 - (a) Before any Apprentice Falconry Permit is issued, the applicant shall be required to answer correctly at least 80 percent of the questions on a supervised examination approved by the Service relating to the basic biology, care, and handling of raptors, literature, laws, regulations, and other appropriate subject matter.
 - (b) The applicant shall purchase the Falconry Exam Fee each time the test is administered. If there is a lapse in the falconry permit, the permittee shall re-take the exam and must score at least 80 percent to obtain the permit.
- (2) Falconry Permit requirements
 - (a) A valid state falconry permit from Tennessee or another state meeting federal falconry standards is required before any person may take, possess, or transport a raptor for falconry purposes. Falconers from other states must obtain a Tennessee permit within sixty (60) days of Tennessee residency in order to continue the practice of falconry in Tennessee.
 - (b) Peregrine falcons may only be taken under the authority of a permit obtained through a random computer drawing. Only permitted General Class or Master Class resident and non-resident falconers may participate in the drawing. Interested falconers must complete a no-fee Peregrine Falcon Take Permit Application found on TWRA's website, www.tnwildlife.org or <http://www.tn.gov/twra/>. Such application must be completed and postmarked or emailed no later than midnight on August 15th each year. If August 15th falls on Sunday the deadline will be midnight on August 16th. All applications should be sent to TWRA, Falconry Coordinator, P.O. Box 40747, Nashville, TN 37204.
 - (c) All applications will be entered in a random draw to select the permit(s) available for peregrine falcon take in Tennessee. Permit drawings will be held during the last week of August each year, with actual dates posted on the Agency's website. Permittees will be notified by phone and mail.

- (d) Peregrine falcons may be trapped from September 20th through October 20th each year. All birds taken must be first-year (juvenile) and as passage birds. Any banded bird captured must be immediately released at the site of capture and the band number and location of trapping site reported to the TWRA Falconry Coordinator. Permit holders who trap a peregrine falcon wearing a transmitter should contact the TWRA Falconry Coordinator immediately at 615-781-6581 for authorization and assistance.
- (3) An applicant who wishes to practice falconry must submit an application, with appropriate permit fee, for a State Falconry Permit to the Executive Director of the Agency.
- (4) Every permit issued shall be subject to the following:
 - (a) A permittee may not take, transport, or possess a bald eagle for falconry purposes.
 - (b) A permittee who lawfully possess a valid raptor propagation permit, raptor education permit, raptor abatement permit or state issued falconry permit, may sell, purchase, barter, or offer to sell, purchase, barter any captive bred raptor marked with seamless bands for falconry or falconry-related activities. A permittee may not purchase, sell, trade or barter wild raptors. Wild raptors may only be transferred.
 - (c) A permittee may not take, possess, or transport a raptor in violation of restrictions, conditions, and requirements of the Federal or State Falconry Permit Regulations.
 - (d) For falconry, all special purpose permits, and propagation, any change in ownership including, but not limited to, take from the wild, transfer, death, and or escape, shall be reported to the Service electronically at <https://epermits.fws.gov/falcp/> or submit a paper 3-186A form to TWRA within five (5) calendar days. A copy of such will be provided to the State within the same amount of time.
 - (e) Any person possessing or using a raptor for any purposes must have possession of all permits, or legible copies thereof, in their immediate possession when trapping, transporting, working with, or flying raptors.
- (5) Permits will expire on June 30 of the third year from date of issuance.
- (6) There shall be three classes of falconry permits issued, including:
 - (a) Apprentice Class - Conditions of this class include:
 - i. An apprentice permittee shall be at least fourteen (14) years old. If the permittee is under the age of 18, a parent or guardian must sign the application shall be responsible for the permittee's activities.
 - ii. A sponsor who is a holder of a General or Master Falconry Permit is required for the first two years in which an apprentice permit is held, regardless of the age of the permittee. A sponsor may not have more than three (3) apprentices at one time;
 - iii. An apprentice permittee shall not possess more than one raptor and may not obtain more than one raptor as a replacement bird during any twelve-month period from Jan 1 to Dec 31; and
 - iv. An apprentice permittee may only possess a wild American Kestrel (*Falco sparverius*) or a Red-tailed Hawk (*Buteo jamaicensis*) captured by the apprentice, or a captive-bred raptor from a legal source.
 - (b) General Class - Conditions of this class include:
 - i. A general permittee shall be at least eighteen (18) years old;
 - ii. A general permittee shall have at least two years' experience in the practice of falconry at the apprentice level or its equivalent;

- iii. A general permittee may not possess more than three raptors and may not obtain more than two raptors from the wild as replacement birds during any twelve-month period; and;
 - iv. A general permittee may not take, transport, or possess any species listed as Threatened or Endangered by the Service, except as provided by the State and Federal Falconry Regulations.
- (c) Master Class - Conditions of this class include:
- i. An applicant must have at least five years' experience in the practice of falconry at the General class level or its equivalent;
 - ii. A master permittee may not possess more than five wild raptors, and may not obtain more than two raptors taken from the wild for replacement birds during any twelve-month period;
 - iii. A master permittee may possess any number of captive-bred raptors. However, the master permittee must train captive-bred raptors in the pursuit of wild game and use the captive-bred raptors in hunting.
 - iv. A master permittee may not take, transport or possess any species listed as Endangered by the Service except as provided by the State and Federal Falconry Regulations.
 - v. Except as provided by the State and Federal Falconry Regulations, a master permittee may not take, transport, or possess, more than one raptor listed as Threatened by the Service and/or State, and then only in accordance with Federal Regulations, 50 CFR 17, 21, and 22, and/or current State Proclamations.
- (7) Sponsors may not have more than three (3) apprentices at one time.
- (8) Active-duty military personnel shall possess a falconry permit from the state the facility and raptors reside. Those individuals may or may not be permanent TN residents.
- (9) Before any falconry permit is issued, the applicant's raptor housing facilities and falconry equipment shall be inspected and certified by a representative of the Tennessee Wildlife Resources Agency as meeting the following standards:
- (a) Facilities
- i. The primary consideration for raptor housing facilities whether indoors (mews) or outdoors (weathering area) is protection from the environment, predators, or undue disturbance. Applicants shall have the following facilities, except that depending upon climate conditions and sensitivity of the species, only one of the following facilities may be required.
 - ii. Indoor facilities (mews) shall be large enough to allow easy access for caring for raptors housed in the facility. If more than one raptor is to be housed in the facility, the raptors shall be tethered or separated by partitions and the area for each bird shall be large enough to allow each bird to fully extend its wings. There shall be at least one window, protected on the inside by vertical bars, spaced narrower than the width of the bird's body and a secure door that can be easily closed. The floor of the mews shall permit easy cleaning and shall be well drained. Adequate perches shall be provided.
 - iii. Outdoor facilities (weathering area) shall be fenced and covered with netting or wire or roofed to protect the birds from disturbances and attack by predators, except that perches more than 62 inches high need not be covered or roofed. The enclosures shall be wide enough to ensure that the birds' wings shall not strike the fence when flying from the perch. Protection from excessive sun, wind, and inclement weather shall be provided for each bird. Adequate perches shall be provided.
- (b) An applicant must possess the following equipment before obtaining a permit:

- i. Jesses - At least one pair of Aylmeri jesses of pliable leather or suitable synthetic material. Traditional type one-piece jesses may be used on raptors when not being flown;
 - ii. Leashes and swivels - At least one flexible, weather resistant leash and one strong swivel of acceptable falconry design;
 - iii. Bath container - At least one container, 2 to 6 inches deep and wider than the length of the raptor, for drinking and bathing for each raptor;
 - iv. Outdoor perches – If required, at least one weathering area perch of an acceptable design shall be provided for each raptor; and
 - v. Weighing device - A reliable scale or balance suitable for weighing the raptor(s) and graduated in increments of not more than 2 ounces (15 grams) shall be provided.
- (c) All facilities and equipment shall always be kept at or above the preceding minimum standards.
 - (d) A raptor may be transported or held in temporary facilities, which shall be provided with an adequate perch and protection from extreme temperatures and excessive disturbance, for a period not to exceed thirty (30) days.
 - (e) A falconry permit holder shall obtain written permission from the State before any species not indigenous to this state is intentionally released to the wild. The marker of any intentionally released bird shall be removed and surrendered to the Tennessee Wildlife Resources Agency upon release. A standard Federal bird band shall be attached to such birds by the state or authorized Federal bird bander whenever possible.
- (10) Any raptor possessed under authority of a falconry permit may be temporarily held by a person other than the permittee for maintenance and care for a period not to exceed (120) days for another falconer or 45 days for a non-permitted person. The raptor must be accompanied at all times by a properly completed form provided by the State/Service designating the person caring for the raptor as the possessor of record and by a signed, dated statement from the permittee authorizing the temporary possession.
 - (11) Feathers that are molted or those feathers from birds held in captivity that die, may be retained and exchanged by permittees only for imping.

Authority: 50 C.F.R. § 21.82, T.C.A. §§ 70-1-206, 70-2-201, 70-2-202, 70-4-405, 70-4-409, and 70-4-414.

1660-01-37-.04 EDUCATION PERMITS.

- (1) Any permit holders who are compensated for educational programs using captive bred native wildlife shall obtain an exhibitor's permit in accordance with Tenn. Comp. Rule & Regs 1660-01-18 and 1660-01-28.
- (2) Educational programs using wild-caught raptors must be at no charge and an exhibitor permit shall be issued at no charge. No permits needed for non-native raptor programs.

Authority: T.C.A. §§ 70-1-206, 70-2-201, 70-2-202, 70-4-404, and 70-4-414.

1660-01-37-.05 ABATEMENT PERMITS.

- (1) All persons with a valid federal bird abatement permit shall be required to obtain a nuisance animal damage control permit from TWRA prior to conducting abatement activities in accordance with Tenn. Comp. Rule & Regs 1660-01-21.
- (2) For the purposes of this rule, abatement activity occurs when the person uses a raptor to destroy, or otherwise control, nuisance wildlife and charges a fee for such services.

Authority: 50 C.F.R. § 21.82, T.C.A. §§ 70-1-206, 70-2-201, 70-2-202, 70-4-404, and 70-4-414.

1660-01-37.06 PROPAGATION PERMITS.

- (1) The State of Tennessee hereby adopts, and incorporates by reference, the raptor propagation permits which appears in Code of Federal Regulations, 50 C.F.R. § 21.85. All persons propagating raptors in Tennessee shall be governed by and follow these rules.
- (2) A permitted party shall submit a completed FWS Form 3-202-8 to their Regional Migratory Bird Permit office and the TWRA Falconry Coordinator by January 31 each year for January 1 through December 31 of the preceding year.

Authority: 50 C.F.R. § 21.85, T.C.A. §§ 70-1-206, 70-2-201, 70-2-202, 70-4-410, and 70-4-414

1660-01-37-.07 GENERAL REQUIREMENTS AND MISCELLANEOUS RESTRICTIONS.

- (a) Markings and Bands
 - (1) All raptors held within this state, except those held for scientific, rehabilitation, or zoological purposes, shall be banded or tagged either in accordance with 50 C.F.R. § 21.82 or 50 C.F.R. § 21.82. Non MBTA raptors shall be banded or tagged with a marking or band provided by the State.
 - (2) Alteration, counterfeiting, or defacing of a marker/band is prohibited, except that permittees may remove the rear tab on markers and may smooth any imperfect surface, provided that the marker and the number are not affected.
 - (3) Loss or removal of any band must be reported to both the Service and the State within five (5) business days of the loss. The band must be replaced within thirty (30) days by a like band issued by the Service and available through the State.
 - (4) Once a raptor is trapped, the falconer shall request a band from the Falconry Coordinator within 5 days of capture.
- (b) Wild raptors may be taken only in accordance with the proclamations promulgated by the Tennessee Fish and Wildlife Commission.
- (c) If a person who holds a falconry permit, or other supplemental permits, accepts compensation for engaging in an activity that assists another person in any act of hunting, fishing and/or trapping in accordance with Tenn. Comp. Rule & Regs. 1660-01-28, the permittee shall purchase a guide license prior to the activity.
- (d) Interstate transport - Non-resident, interstate import and export conditions follow:
 - (1) Non-residents shall obtain a trapping authorization from the Executive Director and file a report with the TWRA Falconry Coordinator. The report shall consist of species trapped, location and date and time of trapping. Prior to trapping, the falconer shall report to the appropriate TWRA Regional Dispatch Office the locations, dates and times.
 - (2) Residents of this state who are falconry permittees may transport their raptors into other states that are recognized by the Service as falconry states for personal falconry use, provided all applicable hunting and falconry laws and regulations are observed.
- (e) Raptor facilities, including equipment and records, shall be open to inspection by any duly constituted officer of the Wildlife Resources Agency at all reasonable times. Said records must be maintained for a period of five (5) years.
- (f) A violation of any of these rules and regulations or of any law governing the wildlife of this state or country may be sufficient cause to refuse to issue a permit or to revoke an existing permit. If an applicant for or

holder of a falconry permit has been charged with a violation of these rules and regulations or state of federal wildlife laws, a permit may be suspended pending adjudication.

Authority: 50 C.F.R. § 21.70, 50 C.F.R. § 21.82, *T.C.A. §§ 70-1-206, 70-2-201, 70-2-202, 70-4-411, 70-4-412, and 70-4-414.*

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 4/28/2023

Signature: _____



Name of Officer: Torrey S. Grimes

Title of Officer: General Counsel, Tennessee Wildlife Resources Agency

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Tre Hargett
Secretary of State

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