



United States Department of the Interior

FISH AND WILDLIFE SERVICE

300 Westgate Center Drive
Hadley, MA 01035-9589



In Reply Refer To:

FWS/R5/MB

Certified Mail: 7008 0500 000 1128 4365

January 29, 2020

Adirondack Wildlife Inc.
Wendy B. Hall
977 Springfield Road
Wilmington, NY 12997

Notice of Denial of Request for Reconsideration of Proposed Permit Denials

Dear Ms. Hall:

The U.S. Fish and Wildlife Service (Service) received your timely request for reconsideration of our proposed permit denials on December 16, 2019, submitted on behalf of Adirondack Wildlife Inc., for the federal migratory bird permits listed below. For the reasons discussed below, we are denying your request for reconsideration:

Special Purpose Possession Live and Dead (SPDAVE) formerly (MB49922A) Rehabilitation (REHAB) formerly (MB171265)

We considered your initial application and the supplemental information you provided in your request for reconsideration when making our decision.

Under current Federal law, your Request for Reconsideration failed to contain the required information pursuant to 50 CFR § 13.29. These regulations, which were described in, and enclosed with, our Notice of Permit Denial letter (dated November 5, 2019) (**Enclosure 1**) to you, specified the form for such a request:

(b) Method of requesting reconsideration. Any person requesting reconsideration of an action under this part must comply with the following criteria:

- (1) Any request for reconsideration must be in writing, signed by the person requesting reconsideration or by the legal representative of that person, and must be submitted to the issuing officer.
- (2) The request for reconsideration must be received by the issuing officer within 45 calendar days of the date of notification of the decision for which reconsideration is being requested.
- (3) The request for reconsideration shall state the decision for which reconsideration is being requested and shall state the reason(s) for the reconsideration, including presenting any new information or facts pertinent to the issue(s) raised by the request for reconsideration.
- (4) The request for reconsideration shall contain a certification in substantially the same form as that provided by 50 CFR § 13.12(a)(5). If a request for reconsideration does not contain such

certification, but is otherwise timely and appropriate, it shall be held and the person submitting the request shall be given written notice of the need to submit the certification within 15 calendar days. Failure to submit certification shall result in the request being rejected as insufficient in form and content.

Here we find that your submission did not satisfy subsections b(3) and b(4); we therefore, must deny your request for reconsideration on a procedural basis as it is insufficient. The information you provided does not address the deficiencies that led to our original denial and fails to present any new information or facts pertinent to the issues. Your request for reconsideration also failed to provide the required certification under 50 CFR § 13.

However, assuming we treated your submission as a completed request for reconsideration, we would be compelled to deny it because of your extensive history of violating the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) and their implementing regulations under 50 CFR's § 13, 21 and 22 (see Permit Denial letter dated November 5, 2019). Additionally, the Site Visit Findings/Violations section below documents your continued failure to comply with federal and state laws, regulations and Service requirements.

Site Visit Findings/Violations

On January 21, 2020, representatives of the Service and New York Department of Environmental Conservation conducted a site visit of the facility which revealed that you are in possession of the following migratory birds without the required federal and state permits, which is a violation of federal and state laws and regulations:

	Quantity	Species	Expired Permit	Location	Violation Key ¹
1	1	Turkey Vulture	SPDAVE	Back Caging	1,2,3
2	1	Great-horned Owl	SPDAVE	Back Caging	1,2,3
3	1	Northern Goshawk	SPDAVE	Back Caging	1,2,3
4	1	American Kestrel	SPDAVE	Back Caging	1,2,3
5	2	Black Vultures	SPDAVE	Back Caging	1,2,3
6	1	Red-tailed Hawk	SPDAVE	Back Caging	1,2,3
7	1	Snowy Owl	SPDAVE	Back Caging	1,2,3
8	1	Swainson's Hawk	SPDAVE	Back Caging	1,2,3
9	1	Rough-legged Hawk	SPDAVE	Back Caging	1,2,3
10	1	Raven	SPDAVE	Rehab Building	1,2,3
11	1	Barred Owl	SPDAVE	Rehab Building	1,2,3
12	1	Broad-winged Hawk	SPDAVE	Rehab Building	1,2,3
13	1	Northern Saw-whet Owl	SPDAVE	Rehab Building	1,2,3
14	1	Peregrine Falcon	SPDAVE	Rehab Building	1,2,3
15	1	Eastern Screech Owl	SPDAVE	Rehab Building	1,2,3
16	3	Barred Owls	REHAB	Across Street	1,2,4

¹Violation Key: 1 =MBTA, 2 =50 CFR § 13, 3 =50 CFR § 21.27, 4 = 50 CFR § 21.31

In addition, you were in possession of an additional barred owl, which is a new violation under MBTA and 50 CFR's § 13 and 21.31 because this bird was not present on our October 22, 2019 site visit. You were instructed to not take in any additional migratory birds at that time and in a subsequent email dated October 23, 2019 (**Enclosure 2**) since you do not have the required federal or state permits to possess it.

Furthermore, in our November 5, 2019 Notice of Permit Denials letter (see Immediate Actions) **(Enclosure 1)** to you, you were directed to dispose of all of birds listed in the table above as SPDAVE and REHAB within 60 days of the date of that letter because you do not have the required federal and/or state permits to possess them, which is a continued violation of MBTA and 50 CFR's § 13.1, 21.31 and 21.27.

On October 30, 2019, you failed to submit timely and accurate reports regarding the Service's October 23, 2019 email **(Enclosure 2)** requirement #3 by failing to report within 48 hours the condition and failing to report the disposition by October 28, 2019 of the unlawfully possessed bald eagle we discovered in your possession during our October 22, 2019 site visit. Additionally, you failed to meet email requirement #4 by failing to report all items in the email to the Service by October 29, 2019.

Closing

The site visit documents your repeated failure to comply with the applicable federal and state laws and regulations, as well as your failure to adhere to your promises/agreements to comply with the required remedies to correct your permit deficiencies from 2014 to 2020. Based on your extensive lack of showing of responsibility and your failure to meet the permit issuance criteria outlined at 50 CFR's § 13 and 21, the Service must deny your request for reconsideration of the proposed permit denials.

As provided in 50 CFR § 13.29(e) (enclosed), you may submit an appeal of this denial to the Regional Director, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035-9589. Such an appeal must be submitted in writing within 45 calendar days of your receipt of this letter and state the reason(s) and issue(s) upon which the appeal is based and may contain any additional evidence or arguments to support the appeal.

If you have any questions regarding this denial, please contact Chris Dwyer, Acting Permit Chief, Branch of Permits, at 413-253-8541.

Sincerely,



Scott Johnston
Acting Chief, Division of Migratory Birds

Enclosures

cc: Amanda Bossie – DOI, SOL
Ryan Noel – FWS, OLE
Joseph Therrien – NYDEC



United States Department of the Interior

FISH AND WILDLIFE SERVICE

300 Westgate Center Drive
Hadley, MA 01035-9589



In Reply Refer To:
FWS/R5/MB

NOV 5 2019

Certified Mail: 70170530000042567016

Adirondack Wildlife Inc.
Wendy B. Hall
977 Springfield Road
Wilmington, NY 12997

COPY

Notice of Permit Denials

Dear Ms. Hall:

The U.S. Fish and Wildlife Service (Service) received your applications, submitted on behalf of Adirondack Wildlife Inc., for the federal migratory bird permits listed below on September 24, 2019. You failed to submit timely renewal applications in accordance with 50 CFR §13.22(a) within 30 days of permit expiration for these permits, which both expired by their terms on November 14, 2018. For the reasons discussed below, we are denying your pending applications for the following federal permits:

Special Purpose Possession Live and Dead (SPDAVE) formerly (MB49922A) Rehabilitation (REHAB) formerly (MB171265)

Your REHAB application failed to provide adequate responses to application questions 3, 4, 8; a copy of your valid state permit; a current letter from a veterinarian willing to provide services; or pictures/diagrams of your enclosures. All of these items are required for a complete application in accordance with 50 CFR §13.12, §21.31, and as stated on the form.

Furthermore, you have failed to meet the permit issuance criteria for the SPDAVE and REHAB permits as set forth at 50 CFR §13.21 as indicated in the Site Visit/Violations section of this letter. You failed to demonstrate a showing of responsibility as required by 50 CFR § 13.21(b)(3), and you are disqualified from receiving the requested permits under 50 CFR § 13.21(c)(4).

The Service previously denied renewal of these permits on August 14, 2017 (Enclosure 1) based on your failure to comply with the applicable laws and regulations of the permitted activity. During a compliance meeting on August 28, 2017, you assured the Service that these violations would be corrected; therefore, we granted your request for reconsideration on November 8, 2017 (Enclosure 2) and renewed the permits for one (1) year with the stipulation that you would correct these deficiencies and no further deficiencies or violations would occur.

In an effort to assist you with tracking migratory birds in your care and their disposition, the Service provided you an Excel tracking document on August 29, 2017. On July 13, 2018, the Service provided you with bird bands for use in conjunction with your SPDAVE and Eagle Exhibition (EAEX)(MB47245A) (Enclosure 3) permits in an effort to help you remain in compliance with your permits.

On July 5, 2019, the New York State Department of Environmental Conservation (DEC) issued you a Notice of Violation (Enclosure 4) for violations of state regulations. This notice also documents the continued violations of federal laws and regulations enumerated below in numbered paragraphs 2, 3, 4, and 5. DEC also advised the Service of a new violation for failure to band birds as required by your SPDAVE and EAEX permit conditions. Violation of your permit conditions is a violation of the Migratory Bird Treaty Act, 16 U.S.C. §703, *et seq.* (MBTA), and its implementing regulations at 50 CFR Parts 10, 13, 21, as well as the Bald and Golden Eagle Protection Act, 16 U.S.C. §668a *et seq.* (BGEPA) and its implementing regulations at 50 CFR Part 22.

Site Visit Findings/Violations

On October 23, 2014, the Service conducted an inspection of Adirondack Wildlife Inc., in conjunction with all of the permits listed above. During the site visit, Service personnel assessed compliance with MBTA, BGEPA, permit regulations and permit standard conditions. In a letter mailed to you on January 29, 2015 (Enclosure 5), we reported that we observed three deficiencies. In the same letter, we recommended you address and report back to us by April 1, 2015 on your efforts to address these deficiencies. Per 50 CFR §21.31, the Service utilizes standards developed by The National Wildlife Rehabilitators Association (NWRA) as guidance. Based on a site visit on October 22, 2019, you have still not corrected the 3rd deficiency listed below, which was stated in the January 29, 2015, letter:

“There were several individuals housed together on various permits. Per the rehabilitation regulations at 50 CFR§ 21.31 birds cannot be used for educational purposes. We recommend separating individuals that are being kept under the Rehabilitation and Special Purpose Possession Permits. In doing so, the rehabbed individuals will avoid being imprinted or habituated to humans.”

On March 17, 2017, Special Agent Jason Bak of the Service conducted a site visit of your facilities to assess your compliance with MBTA, BGEPA, permit regulations and permit standard conditions. The following permit violations observed by Special Agent Bak, were listed in our August 14, 2017 letter (Enclosure 1) to you previously denying renewal of these permits:

1. Failure to report the acquisition of eagles under your REHAB permit in violation of 50 CFR §21.31(e)(5)(i) which states: “You must notify your issuing Migratory Bird Permit Office within 24 hours of acquiring a ...bald or golden eagle, whether live or dead” and standard condition 1 of your REHAB permit which states: “You must report within 24

hours to the migratory bird permit issuing office the acquisition of any (dead or live) bald eagles(s) or golden eagles(s)..."

2. Failure to comply with 50 CFR §21.31(e)(4)(ii)(A) which states: "You may not retain migratory birds longer than 180 days without additional authorization from your Regional Migratory Bird Permit Office" and standard condition 4 of your REHAB permit which states: "You must receive prior authorization from the migratory bird permit issuing office to hold migratory birds requiring additional rehabilitation of more than 180 days."
3. Failure to comply with 50 CFR §21.31(e)(1)(i) which states: "rehabilitation facilities for migratory birds must be secure and provide protection from ...undue human disturbance..." and (vi), which states: "Birds may not be displayed to the public..." and standard condition 13 of your REHAB permit, which states "Migratory birds must be separated from pets. ...human living or work space or migratory birds held under other permits authorization..." This issue was previously addressed in our site visit on October 23, 2014, and in our letter to you dated January 29, 2015, as we observed REHAB birds being housed with SPDAVE birds and REHAB birds on display to the public which are violations of your permit conditions. Agent Bak also reported observing the same violations during his site visit on March 17, 2017. We previously asked you to report back to us by April 1, 2015, on how you were going to correct these deficiencies. To date we have no records of you reporting these corrections. Additionally, on May 29, 2014, via email, the Service requested detailed enclosure information and a "birds eye view" of your facilities to get a better understanding of your facility setup and you replied that you would send the requested information. We never received this information.
4. Failure to submit timely and accurate annual reporting in violation of 50 CFR §13.45 for your REHAB, SPDAVE and EAEX permits. Additionally, under your REHAB permit, you violated 50 CFR §21.31(e)(7) as your recordkeeping is not complete and accurate based on DEC Report of Violation (Enclosure 4). Also, under your SPDAVE permit, you violated 50 CFR §21.27(c)(1) by not having your records available for inspection by Service personnel during regular business hours.
5. Failure to disclose material facts in violation of 50 CFR §13.21(b)(2) by not reporting the acquisition of eagles and other migratory birds under your REHAB, EAEX and SPDAVE permits within the designated timeframe and without proper documentation as required by your permit conditions.
6. Failure to euthanize non-releasable migratory birds under your REHAB permit in accordance with the governing regulation at 50 CFR §21.31(e)(4)(iii) and standard condition 6 of your REHAB permit.
7. Your 2016 annual report under your REHAB permit indicates you received 2 bald eagles that had been reportedly shot. We have no record that you reported this to the Service Office of Law Enforcement as required by 50 CFR §21.31(e)(5)(ii).

On October 22, 2019, the Service conducted a site visit of your facilities along with DEC to assess your compliance with MBTA, BGEPA, permit regulations, permit standard conditions, and prior permit office requirements. In addition to the previously documented violations, we observed the following violations:

- a. Failure to report the acquisition of an eagle under your REHAB permit in violation of 50 CFR §21.31(e)(5)(i) which states: "You must notify your issuing Migratory Bird Permit Office within 24 hours of acquiring a ...bald or golden eagle, whether live or dead" and standard condition 1 of your REHAB permit which states: "You must report within 24 hours to the migratory bird permit issuing office the acquisition of any (dead or live) bald eagles(s) or golden eagles(s)..." *We discovered an immature bald eagle in your possession that had not been reported by you to the Service or the DEC. Furthermore, you stated that you had no knowledge of the eagle being at your facility.*
- b. Failure to comply with 50 CFR §21.31(e)(4)(ii)(A) which states: "You may not retain migratory birds longer than 180 days without additional authorization from your Regional Migratory Bird Permit Office" and standard condition 4 of your REHAB permit which states: "You must receive prior authorization from the migratory bird permit issuing office to hold migratory birds requiring additional rehabilitation of more than 180 days." *We discovered 1 black vulture in your possession which you stated was a REHAB bird but your REHAB intake log fails to record the bird within the last 200 days. We observed 1 snowy owl that has been in your possession since approximately 2014 without authorization from the Service to retain beyond the 180 day limit.*
- c. Failure to comply with 50 CFR §21.31(e)(1)(i) which states: "rehabilitation facilities for migratory birds must be secure and provide protection from ...undue human disturbance..." and (vi), which states: "Birds may not be displayed to the public..." and standard condition 13 of your REHAB permit, which states "Migratory birds must be separated from pets. ...human living or work space or migratory birds held under other permits authorization...". *We observed 2 snowy owls being housed together and in view of the public for exhibition of which 1 owl has been on your SPDAVE permit since 2014 and the other owl has been on your REHAB permit since approximately 2014. We observed 1 short-eared owl and 1 long-eared owl being housed together and in view of the public for exhibition of which the short-eared owl has been on your SPDAVE permit and the long-eared owl is on your REHAB permit at least since April 22, 2019 based on the veterinarian's statement; however, this bird was not recorded in your REHAB intake log.*
- d. Failure to submit timely and accurate annual reporting in violation of 50 CFR §13.45 for your REHAB and SPDAVE permits. You violated 50 CFR §21.31(e)(7). *We discovered that your recordkeeping is not complete and accurate based on the DEC Report of Violation (Enclosure 4) and that your rehabilitation log did not record 1 bald eagle and 1 black vulture in your possession. Your log does not have the date received, disposition and disposition dates for migratory birds in your possession.*

- e. Failure to disclose material facts in violation of 50 CFR §13.21(b)(2). *We discovered that you failed to present 1 immature bald eagle even though you were given multiple opportunities to disclose any additional migratory birds being held at the facility. This eagle was not listed on your REHAB log, which we collected during the site visit. You failed to report the acquisition of this eagle under your REHAB permit within the designated timeframe and without proper documentation as required by your permit conditions. In fact, you stated that you “did not know the eagle was at the facility” and your staff initially indicated that they had no idea the eagle was at the facility. You failed to adhere to the banding requirements of your EAEX and SPDAVE permits because you did not properly band any of the required birds, you did not report that the birds were banded in the allotted timeframe, and you failed to communicate any issues related to banding attempt(s). Placing the bird bands on the cages themselves does not meet the criteria for bird banding. We observed 4 of the 26 bird bands that the Service provided you improperly applied to 4 cages. You failed to produce any of the remaining bands when asked. You also failed to initially disclose 1 black vulture during the site visit. You failed to record the black vulture on your REHAB log.*
- f. Failure to maintain birds in a secure facility in violation of 50 CFR §21.31(e)(1)(i). *We discovered 1 immature bald eagle in your possession. When you and your staff were questioned, you stated that you “had no knowledge of the bird being at the facility” but guessed that it had been there for approximately 1 week and was put in the cage by whoever dropped the bird off. When asked if the bird had been seen by a veterinarian or fed you stated “not to my knowledge, since I did not know the eagle was at the facility.”*
- g. Failure to house birds in accordance with National Wildlife Rehabilitators Association and the International Wildlife Rehabilitation Council’s (Minimum Standards for Wildlife Rehabilitation, 2000) in violation of 50 CFR §21.31(e)(1),(ii) and (iv). *We discovered 1 immature bald eagle being held in an enclosure previously used for housing bears. This enclosure had shredded, tarp-like material hanging from the wire roofing which puts the eagle in danger of entanglement. There was no natural substrate and inadequate perches available and the concrete floor does not meet the minimum standards for housing which puts the eagle in danger of developing foot issues. The enclosure was solid concrete on all 4 sides, did not have any windows, and has metal poles throughout the structure increasing the danger of collision.*
- h. Failure to comply with 50 CFR §13.50 Acceptance of Liability and 50 CFR §21.31(e)(7) Recordkeeping. *You failed to accept responsibility for the eagle discovered in your possession. You failed to accept responsibility for your subpermittees, staff and volunteers whom all denied knowledge of the eagle in your possession. The eagle was not listed on your REHAB log. You are ultimately responsible for all activity under your federal permits.*
- i. Failure to comply with 50 CFR §13.48 Compliance with conditions of permit, all applicable laws and regulations governing the permitted activity. *You failed to band the birds as required by conditions D and E of your SPDAVE and EAEX permit conditions*

(see Enclosure 3). We observed no bands on any birds. Of the 26 bird bands that the Service provided you, 4 were attached to 4 cages instead of the bird. You failed to report your banding efforts. You failed to communicate any issues related to banding attempt(s). Placing the bird bands on the cages themselves does not meet the criteria for bird banding.

- j. Failure to comply with MBTA and BGEPA. Possession of migratory birds without applicable federal permits is a direct violation of MBTA and BGEPA. *You have retained migratory birds without federal permits since November 18, 2018.*

Conclusion

Per 50 CFR §13.48, any person holding a permit under subchapter B, and any person acting under authority of such permit, must comply with all conditions of the permit and with all applicable laws and regulations governing the permitted activity. You failed to comply with the Service's recommendations to you in our January 29, 2015, August 14, 2017, and July 13, 2018 letters regarding the remedies, deficiencies, violations and banding requirements under your federal permits.

Your repeated failure to comply with your permit conditions, applicable laws and regulations governing the previously permitted activity constitutes violations of MBTA and BGEPA for the activities under 50 CFR Parts 21 and 22. This failure demonstrates a lack of responsibility on your part and is justification for the denial of your pending federal permit applications under 50 CFR §13.21(b)(3) and §13.22(d). Furthermore, we find that your failure to submit timely, accurate and valid reports as required is a disqualifying factor for these permits under 50 CFR §13.21(c)(4).

Immediate Actions

Because you failed to renew your permits 30 days prior to their expiration date per 50 CFR §13.22(a), you have not been authorized to possess migratory birds under your REHAB and SPDAVE permits since November 14, 2018 (see 50 CFR §13.22(c)). Continued possession of migratory birds without the applicable federal permits will result in additional violations and/or penalties. Accordingly, you must immediately cease acquiring any migratory birds under these permits and cease conducting educational programs with your SPDAVE permit. You must dispose of all birds held under your expired REHAB and SPDAVE permits within 60 days of the date of this letter by submitting a USFWS Migratory Bird and Eagle Acquisition and Transfer Request Form 3-202-12 (transfer form) to this office for all transfers from your SPDAVE permit. For all transfers from your REHAB permit you must follow the instructions on the transfer form. Here is a link to the transfer form: <https://www.fws.gov/forms/3-202-12.pdf>. **If you have any questions regarding the transfer process, please contact Valerie Slocumb by email at Valerie.Slocumb@fws.gov. Email your completed forms to Mrs. Slocumb at the email provided above for processing.**

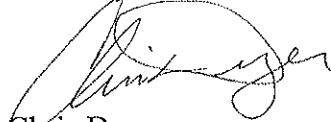
Enclosed are your five transfer forms (Enclosure 6) requesting transfer from your REHAB to SPDAVE permit which we have denied for the following species because you are not currently

authorized to possess birds under either permit: *2 Barred Owls, 1 Snowy Owl, 1 Long-eared Owl and 1 Black vulture.*

On October 23, 2019 via electronic mail (Enclosure 7), you were directed by the Service to dispose of the immature bald eagle found unlawfully in your possession by October 28, 2019. You were directed to get a veterinarian determination of status of the eagle and either transfer it to another REHAB facility if continued care is needed, release it to the wild, or if it was determined that the eagle is non-releaseable then transfer it to an entity with a valid EAEX permit. You were also directed to keep the Service informed of your progress regarding the disposition possibilities of this eagle. Additionally, you were directed to cease the acquisition of any migratory birds and notify your staff of this requirement.

As provided in 50 CFR §13.29, you may request reconsideration of this denial of your permit applications. Your request for reconsideration must be submitted in writing to this office within 45 calendar days of the date of this letter and state the reason(s) for the reconsideration, including presentation of any new information pertinent to the issues raised in this letter. Your request for reconsideration must also contain certification in substantially the same form as provided by 50 CFR §13.12(a)(5). ***Here is a link to all the applicable laws and regulations cited throughout this letter: <https://www.fws.gov/permits/ltr/ltr.html>.*** If you have any questions, please contact me by phone (413) 253-8541 or by email at: Chris_Dwyer@fws.gov.

Sincerely,



Chris Dwyer

Acting Chief, Migratory Bird Permit Office

Enclosures:

- Enclosure 1 FWS Permit Denial Letter - 8/14/17
- Enclosure 2 FWS Grants Request for Reconsideration - 11/8/17
- Enclosure 3 FWS Banding Requirement Letter-Amended Permits SPDAVE, EAEX - 7/13/18
- Enclosure 4 DEC Notice of Violation and Bird Disposition - 7/5/19
- Enclosure 5 FWS Site Visit Notice and Recommendations - 1/29/15
- Enclosure 6 FWS Form 3-202-12 Denials – 10/16/19
- Enclosure 7 FWS email to Hall-Cease Permitted Activity REHAB, SPDAVE – 10/23/19

cc: Amanda Bossie – DOI, SOL
Ryan Noel – FWS, OLE
Joseph Therrien – NYDEC

bcc: Scott Johnston – FWS, MB
Christine Eustis – FWS, EA