

CITIZEN PETITION FORM

Date: ~~June 7, 2021~~
Amended petition received by CPW on
10/8/2021

Issue:	Release of privately-owned game birds for falconry training.
Which rule are you seeking to create or revise? Please include a copy of the rule you are proposing to create or change, preferably with the change made in redline format.	
Authority to make either of the alternative changes here requested is found in section 33-1-106 of the Colorado Revised Statutes.	
Change is requested to 2 CCR § 406-0 #009 as follows:	
#009 - RELEASE OF TERRESTRIAL WILDLIFE	
A. Except as allowed by these regulations it shall be unlawful for any person to release or possess for release any species of wildlife (native or non-native). Provided further, that as concerns licensed wildlife rehabilitators, possession and release of native species listed on the Division prohibited list (#008(B)) must be pursuant to prior authorization in writing from the Division. Such authorization may include restrictions regarding the location or timing of any release.	
B. Only the following live game birds may be released in Colorado: ring-necked pheasants, Gambel's, scaled, and bobwhite quail, chukar, gray partridge, and mallard ducks. Release is prohibited on public lands unless authorized in Chapter 9 of these regulations. Release is prohibited during any established season for that species <u>except when the release is of privately-owned game birds performed as part of the training of raptors held by licensed falconers and the number of game birds released does not exceed the daily falconry bag limit for the species.</u> Exceptions to this species list may occur with the approval of the Director Division. Any exceptions, granted by the Director must follow the criteria established by the Commission for the release of wildlife pursuant to this subsection.	
1. Up to 25 privately-owned game birds may be released on private land.	
2. Privately-owned game birds may be released on State Wildlife Areas specifically authorized for that purpose in #901 of these regulations. Up to 25 game birds may be released for dog training. More than 25 game birds may be released for field trials authorized under #801 of these regulations.	
3. Privately-owned game birds may only be hunted on the day of release, and there is no hunting license required except as required by #804 of these regulations. The total number of game birds taken shall not exceed the number of birds released.	
4. All released privately-owned game birds not taken by hunting on the day of release shall become property of the state.	
5. Such wildlife shall be accompanied by a receipt showing that the wildlife have been lawfully acquired, to include the source and the purchase or acquisition date.	
6. Migratory birds shall be banded with a USFWS band except for falconry activities authorized by Chapter 6 of these regulations.	
C. Except for falconry activities authorized by Chapter 6 of these regulations the release of species and hybrids of raptors not native to Colorado is prohibited.	
Why are you seeking to create or revise this rule? Please include a general statement of the reasons for the requested rule or revision and any relevant information related to the request.	

Falconry is the sport of using a trained raptor to hunt wild prey. The training of a hawk or falcon for the hunting of wild game is a difficult and challenging endeavor. Unlike an inanimate gun or bow, a raptor thinks. If success is not accomplished after several tries there is a risk that the bird will become discouraged and may abandon these attempts as a natural way to conserve energy. Thus during training falconers occasionally “serve” quarry for their birds to chase. Serving a falconry raptor means to turn loose quarry at a distance, height, and speed that simulates a wild flush but in a manner that enhances the raptor’s chance of catching the quarry.

Unlike a bird dog praise means nothing to a raptor. Finding and pointing and then being praised for doing so is not in the raptor’s thought process. Only an instantly rewarded attempt and catch has any meaning to it.

For these reasons, serving live quarry can benefit a raptor in a variety of ways. For a young or inexperienced bird, it may provide an introduction to hunting that simulates the way a parent bird would introduce its young to hunting. For an older bird, it may assist in the transition from a restful molt to the more demanding hunting season. A variety of legal options are available for the acquisition of quarry that might be served, including pigeons and game birds purchased from licensed breeders.

The closest comparable practice recognized (and protected) by the CPW’s regulations is the deliberate release of game birds for use in dog training and field trials. Another relevant practice is the release of game birds at licensed “Commercial Wildlife Parks.” CPW’s regulations protect and regulate these activities; yet some of the pertinent provisions and certainly common practices *directly contradict* at least one CPW regulation from which falconry arguably does not enjoy any exception.

The isolated use of served quarry in falconry is very different in important ways from the deliberate release of game birds for dog training and field trials and for licensed hunting preserves:

- A falconer will typically serve one head of quarry in a single day to an individual raptor whereas larger quantities of game birds are often released at licensed hunting preserves or even for a single dog trial event.
- The number of falconers that might serve quarry to their birds in a season is a small fraction of the number of hunters and dog trainers who benefit from deliberately released game birds. (Falconry is practiced by at most a few hundred dedicated enthusiasts in Colorado, and many falconers fly birds that do not require regular service of quarry.)
- The intent when serving quarry to a trained raptor in falconry is for the quarry to be captured, and escape of the quarry to the wild is thus infrequent. In contrast, escape of large numbers of game birds deliberately released for hunting at licensed hunting preserves and for dog training and field trial events is taken for granted. *See, e.g., 2 CCR § 406-0 #009.B.4* (noting that “[a]ll released privately-owned game birds not taken by hunting on the day of release shall become property of the state”).

Raptors molt during the summer. During this time the bird is not flown and its weight is increased to facilitate the growth of strong new feathers. Training during this molting season is not possible. Thus unlike dog training, which occurs in all months of the year, most raptor training must occur during the fall and winter, precisely when game bird seasons are open. The regulation that is *most* problematic for falconers is the italicized portion of the following:

Only the following live game birds may be released in Colorado: ring-necked pheasants, Gambel’s, scaled, and bobwhite quail, chukar, gray partridge, and mallard ducks. Release is prohibited on public lands unless authorized in Chapter 9 of these regulations. **Release is prohibited during any established season for that species.**

This provision is an unqualified prohibition—there are no exceptions stated. The concern for falconers is that this regulation can be interpreted to prohibit a falconer from serving certain lawfully acquired quarry to his or her bird for training purposes. Falconers have encountered this interpretation in interaction with CPW field officers.

So interpreted and applied, this regulation constitutes arbitrarily selective (and, as illustrated above, unwarranted) regulation. Specifically, *the regulation is expressly contradicted by the italicized portion of the following provision pertaining to dog training:*

No license is required to hold any field trial on private land, or on public lands managed by agencies other than Colorado Parks and Wildlife. However, the person sponsoring the event is required to notify Colorado Parks and Wildlife on forms provided by the Division at least 30 days in advance of the trial, providing the date, location, species and number of *birds to be released*. Such field trials may be held anywhere in the state, *year-round*, provided permission to hold such trial has been obtained from the owner of the property, person in charge, or land managing agency.

2 CCR § 406-8 #801.B.1 (emphasis added). This provision allows release of game birds for certain field trials “year-round” without regard to seasons.

A similar accepted practice that appears to directly contradict the prohibition against release during an established season is the practice of hunting preserve licensees of regularly releasing game birds on dates within regular hunting seasons. According to one website, “birds are released just prior to the hunters arrival” between September 1 and March 31. Yet efforts to find an express exception to the prohibition in the regulations pertaining to “Upland Bird and Waterfowl Hunting and Producers Park” licensees reveal no such exception. *See generally* 2 CCR § 406-11 #1104.A.5. To be very specific, while section 406-11 #1104.A.5.c describes the species that “may be released” on private hunting preserves, it states no time parameter and makes no mention of 2 CCR § 406-0 #009. Yet the common practice is to treat it as *overriding* that section’s prohibition against release during an established season.

Other rights are also extended to dog trainers that are not enjoyed by falconers. For instance, those conducting field trials and group dog training enjoy the right to release game birds on public land administered by CPW. *See* 2 CCR § 406-9 #900.C(13); 2 CCR § 406-8 #801. Yet of the two practices—deliberate release of numerous game birds versus isolated service to a raptor of a *single* bird that is typically recovered—it is the protected practice that is more likely to impact wild game bird populations.

In these circumstances it is simply unfair for falconers not to enjoy at least some of the protections afforded to others. The proposed change has been narrowly tailored to seek a very modest change.

It is important to note that no definition for “release” could be located in the pertinent regulations or statutes.

Signing petitioners are longstanding master Colorado falconers who have both served as president of the Colorado Hawking Club. The board of directors of the Colorado Hawking Club approved this petition.

Petitioner’s name:

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