

RAPTOR REGULATIONS

Senate Bill 1283 (Substitute H-1*) First Analysis (12-1-98)

Sponsor: Sen. George A. McManus, Jr.
**House Committee: Conservation,
Environment and Recreation**
**Senate Committee: Hunting, Fishing,
and Forestry**

THE APPARENT PROBLEM:

A raptor is a migratory bird, such as a peregrine hawk, kestrel, great horned owl, or snowy owl, and is used, when trained to capture quarry, in the sport of falconry. Such birds are generally protected under endangered species laws, and there are strict federal and state laws regulating their use. Part 21, Chapter I, Title 50 of the Code of Federal Regulations (50 CFR 21.29) restricts the species and age of raptors that may be taken, and imposes various limits on their capture. For example, the holder of a valid state falconry permit may only own an American kestrel, a red-tailed hawk, a red-shouldered hawk, or -- in Alaska -- a goshawk. (According to the code, Michigan is one of the states that meet federal falconry standards, and is also a participant in a joint federal/state permit system.) In Michigan, the Natural Resources Commission (NRC) managed raptors under the provisions of the Wildlife Conservation Act until 1995, when the effects of Executive Order 1991-31, transferring the commission's powers and duties to the Department of Natural Resources (DNR), became effective. A Wildlife Conservation Order issued by the Natural Resources Commission (NRC) in 1989 specifies that a person may "possess, transport, and use raptors for falconry purposes provided the person obtains a falconry permit" from a DNR wildlife division permit specialist. In addition, a falconer must purchase a hunting license. (See **Background Information** for more information on falconry.)

Although owning raptors and using them for hunting is permitted, Michigan is one of the few states that prohibits *capturing* them in order to breed and train them for falconry purposes. For example, under the NRC's conservation order, a raptor may only be acquired through "lawful importation, purchase or barter, or gift or donation." Attempts have been made over the years to alter this policy. The Natural Resources Commission (NRC) granted permission for

the capture of raptors in 1991 (*Amendment No. 7 of 1991 to the Wildlife Conservation Act Commission Order*). However, a permanent injunction was obtained by the Michigan Audubon Society to overturn the regulation. The ruling was later upheld on appeal (*Mich Audubon Society v NRC, 206 Mich App 1, 1994*), when the court ruled that the act did not give the NRC the authority to issue permits allowing the taking of animals not defined as game in the act. Some people believe that Michigan's regulations concerning raptors should be modified to allow state-licensed falconers to breed raptors, to sell and buy captive-bred raptors, and to capture wild raptors for use in falconry.

THE CONTENT OF THE BILL:

Senate Bill 1283 would amend Part 365 (MCL 324.36505) of the Natural Resources and Environmental Protection Act (NREPA), which concerns the protection of endangered species, and would add a new section to Part 401 (MCL 324.40107a), which regulates Wildlife Conservation, to establish guidelines for the use of raptors in falconry. The provisions would be repealed five years after the bill's effective date.

Raptors. The bill would permit the "possession, transfer, transportation, importation, or exportation or the transport or receipt for shipment by a common or contract carrier of a raptor, or the captive-bred progeny of a raptor, a raptor egg, or raptor semen acquired in accordance with applicable state and federal laws and regulations that allow raptors, raptor eggs, or raptor semen to be used in falconry or in the captive propagation of raptors for use in falconry," subject to any permits required by the Department of Natural Resources (DNR).

Sale of Raptors. The bill would also specify that, subject to any permit required by the DNR, a person could sell, offer for sale, buy, or offer to buy, either a raptor or the semen from a raptor that had been captive-bred, in accordance with applicable state and federal laws and regulations allowing raptors or raptor semen to be used in falconry, or in captive propagation of raptors for use in falconry.

Falconry Season Order. The bill also would add a provision to Part 401 of the NREPA, which concerns wildlife conservation, to require that the DNR issue an order establishing a season, or seasons, for falconers, and to specify that the order comply with the act's requirement that public notice, public comment, and a regard for traditional methods and practices that were lawful prior to October 1, 1988, be adhered to. Under such an order, falconers could take up to 25 live raptors, in any combination of red-tailed hawks (*Buteo Jamaicensis*), Cooper's hawk (*Accipiter cooperii*), American kestrels (*Falco sparverius*), and sharp-shinned hawks (*Accipiter striatus*), for use in falconry.

A falconry season order would also have to designate the numbers of raptors that could be taken and possessed, and any other conditions pertaining to this that the DNR considered advisable. In addition, an order would have to specify the following:

- That the taking of raptors would be prohibited on national lakeshores and recreation areas, and on all state lands.
- That licensed falconers would have to contact property owners or land managers and obtain written permission before making direct contact with any raptor nest.
- That only licensed falconers could have direct contact with the raptor nest, and that a minimum of two healthy young raptors would have to be left in the nest.
- That a raptor's nest location would have to be reported to the DNR, by township, range, and section, within five business days after the bird was taken.

Public Education Program. The bill would specify that, within one year after an falconry season order had been issued, the DNR would have to establish a public education program on raptors. The department would also be required to institute a study to establish survey protocols to monitor raptor populations likely to be used for falconry purposes.

Other. The bill also specifies that its provisions concerning a falconry season order would not, and an

order issued under those provisions could not, designate any species of raptor as game. However, the bill would not prohibit the DNR from determining that any species of raptor was a protected animal.

HOUSE COMMITTEE ACTION:

The House Conservation, Environment and Recreation Committee adopted a substitute which deleted provisions from the Senate bill pertaining to mute swans. The substitute bill also limits the taking of live raptors to 25 per year; and requires that the DNR establish a public education program on raptors, and also a study to establish survey protocols to monitor raptor populations likely to be used for falconry purposes.

BACKGROUND INFORMATION:

In Chapter 10, Section 10.1 of the Wildlife Conservation Order issued in 1989 by the Natural Resources Commission (NRC), "falconry" is defined as the sport of taking quarry by means of a trained raptor. There are three classes of falconry permits: apprentice falconry, general falconry, and master falconry. An apprentice must be at least 14 years old, have a sponsor who is a general or master falconer, not own more than one raptor (which must be either an American kestrel or a red-tailed hawk taken from the wild), and pass a written examination administered by the Department of Natural Resources (DNR). A general falconer must be at least 18 years old, have at least two years of falconry apprentice experience, not own more than two raptors, and not obtain more than two raptors for replacement during a 12-month period. A master falconer must have at least five years of falconry experience, not own more than three raptors, and not obtain more than two raptors for replacement during a 12-month period. In addition, before a falconry permit is issued, an applicant's raptor housing facilities and falconry equipment must be inspected and approved by a conservation officer. According to the DNR, there are currently 66 licensed falconers in the state.

Evidently, the process of training a raptor comprises several phases. The first phase is known as "manning", when the raptor learns to be carried on the

falconer's glove and experiences the food reward system. In the second phase, the raptor is tied to a creance, or light training tether, and is called over greater and greater distances while eventually hunting a "lure" that resembles quarry. The final stage is known as "entering," when the raptor is introduced to wild quarry and the sport of falconry begins. In addition to the training, the raptors require ongoing physical conditioning and exercise.

FISCAL IMPLICATIONS:

The House Fiscal Agency (HFA) estimates that the bill would have no impact on state funds. (11-12-98)

ARGUMENTS:

For:

Falconry is a highly regulated and monitored sport. Apparently, 48 states allow a person to capture a wild raptor in the state to breed and train for falconry purposes. Currently, falconers in Michigan must import raptors from other states for their sport, since it is illegal to capture these birds within the state. Since the raptors used in the sport of falconry are not considered an endangered species, the bill would allow licensed falconers to take, sell, buy, and breed live raptors in Michigan.

Against:

It is inappropriate to take wildlife, such as raptors, from their natural habitat for possession and training toward a sport. Currently, Michigan is the only state in the contiguous lower 48 states that doesn't allow the capture of wild raptors, and, as such, serves as a scientific control group from which a comparison can be made of species in other states. Also, it should be noted that, in view of the Department of Natural Resource's (DNR) dwindling staff, it is unlikely that the taking of raptors will be monitored closely.

POSITIONS:

The Department of Natural Resources (DNR) supports the bill. (11-19-98)

The Michigan United Conservation Clubs (MUCC) supports the bill. (11-18-98)

The Michigan Hawking Club supports the bill. (11-20-98)

The Michigan Audubon Society supports the bill. (11-25-98)

Analyst: R. Young

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.