

Migratory Bird Permits

50 CFR 21

**THIS DOCUMENT CONTAINS ONLY THE SECTIONS
NEEDED FOR THE API 1169 ICP EXAMS**

Sections

Subpart B: General Requirements and Exceptions

§21.11: General permit requirements.

§21.12: General exceptions to permit requirements.

§21.13: Permit exceptions for captive-reared mallard ducks.

§21.14: Permit exceptions for captive-bred migratory waterfowl other than mallard ducks.

§21.15: Authorization of take incidental to military readiness activities.

Subpart B—General Requirements and Exceptions

§21.11 General permit requirements.

No person may take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts, nests, or eggs of such bird except as may be permitted under the terms of a valid permit issued pursuant to the provisions of this part and part 13 of this chapter, or as permitted by regulations in this part, or part 20 of this subchapter (the hunting regulations), or part 92 of subchapter G of this chapter (the Alaska subsistence harvest regulations). Birds taken or possessed under this part in “included areas” of Alaska as defined in §92.5(a) are subject to this part and not to part 92 of subchapter G of this chapter.

[68 FR 43027, July 21, 2003]

§21.12 General exceptions to permit requirements.

The following persons or entities under the following conditions are exempt from the permit requirements:

(a) *Employees of the Department of the Interior (DOI)*: DOI employees authorized to enforce the provisions of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703-(711), may, without a permit, take or otherwise acquire, hold in custody, transport, and dispose of migratory birds or their parts, nests, or eggs as necessary in performing their official duties.

(b) *Employees of certain public and private institutions*:

(b)(1) State game departments, municipal game farms or parks, and public museums, public zoological parks, accredited institutional members of the American Association of Zoological Parks and Aquariums (AAZPA) and public scientific or educational institutions may acquire by gift or purchase, possess, transport, and by gift or sale dispose of lawfully acquired migratory birds or their progeny, parts, nests, or eggs without a permit: *Provided*, That such birds may be acquired only from persons authorized by this paragraph or by a permit issued pursuant to this part to possess and dispose of such birds, or from Federal or State game authorities by the gift of seized, condemned, r sick or injured birds. Any such birds, acquired without a permit, and any progeny therefrom may be disposed of only to persons authorized by this paragraph to acquire such birds without a permit. Any person exercising a privilege granted by this paragraph must keep accurate records of such operations showing the species and number of birds acquired, possessed, and disposed of; the names and addresses of the persons from whom such birds were acquired or to whom such birds were donated or sold; and the dates of such transactions. Records shall be maintained or reproducible in English on a calendar year basis and shall be retained for a period of five (5) years following the end of the calendar year covered by the records.

(b)(2) Employees of Federal, State, and local wildlife and land management agencies; employees of Federal, State, and local public health agencies; and laboratories under contract to such agencies may in the course of official business collect, possess, transport, and dispose of sick or dead migratory birds or their parts for analysis to confirm the presence of infectious

disease. Nothing in this paragraph authorizes the take of uninjured or healthy birds without prior authorization from the Service. Additionally, nothing in this paragraph authorizes the taking, collection, or possession of migratory birds when circumstances indicate reasonable probability that death, injury, or disability was caused by factors other than infectious disease and/or natural toxins. These factors may include, but are not limited to, oil or chemical contamination, electrocution, shooting, or pesticides. If the cause of death of a bird is determined to be other than natural causes or disease, Service law enforcement officials must be contacted without delay.

(c) *Licensed veterinarians:* Licensed veterinarians are not required to obtain a Federal migratory bird permit to temporarily possess, stabilize, or euthanize sick and injured migratory birds. However, a veterinarian without a migratory bird rehabilitation permit must transfer any such bird to a federally permitted migratory bird rehabilitator within 24 hours after the bird's condition is stabilized, unless the bird is euthanized. If a veterinarian is unable to locate a permitted rehabilitator within that time, the veterinarian must contact his or her Regional Migratory Bird Permit Office for assistance in locating a permitted migratory bird rehabilitator and/or to obtain authorization to continue to hold the bird. In addition, veterinarians must:

(1) Notify the local U.S. Fish and Wildlife Service Ecological Services Office immediately upon receiving a threatened or endangered migratory bird species. Contact information for Ecological Services offices can be located on the Internet at <http://offices.fws.gov>;

(2) Euthanize migratory birds as required by §21.31(e)(4)(iii) and §21.31(e)(4)(iv), and dispose of dead migratory birds in accordance with §21.31(e)(4)(vi); and

(3) Keep records for 5 years of all migratory birds that die while in their care, including those they euthanize. The records must include: the species of bird, the type of injury, the date of acquisition, the date of death, and whether the bird was euthanized.

(d) *General public:* Any person may remove a migratory bird from the interior of a building or structure under certain conditions.

(1) You may humanely remove a trapped migratory bird from the interior of a residence or a commercial or government building without a Federal permit if the migratory bird:

(i) Poses a health threat (for example, through damage to foodstuffs);

(ii) Is attacking humans, or poses a threat to human safety because of its activities (such as opening and closing automatic doors);

(iii) Poses a threat to commercial interests, such as through damage to products for sale; or

(iv) May injure itself because it is trapped.

(2) You must use a humane method to capture the bird or birds. You may not use adhesive traps to which birds may adhere (such as glue traps) or any other method of capture likely to harm the bird.

(3) Unless you have a permit that allows you to conduct abatement activities with a raptor, you may not release a raptor into a building to either frighten or capture another bird.

(4) You must immediately release a captured bird to the wild in habitat suitable for the species, unless it is exhausted, ill, injured, or orphaned.

(5) If a bird is exhausted or ill, or is injured or orphaned during the removal, the property owner is responsible for immediately transferring it to a federally permitted migratory bird rehabilitator.

(6) You may not lethally take a migratory bird for these purposes. If your actions to remove the trapped migratory bird are likely to result in its lethal take, you must possess a Federal Migratory Bird Permit. However, if a bird you are trying to remove dies, you must dispose of the carcass immediately unless you have reason to believe that a museum or scientific institution might be able to use it. In that case, you should contact your nearest Fish and Wildlife Service office or your State wildlife agency about donating the carcass.

(7) For birds of species on the Federal List of Threatened or Endangered Wildlife, provided at 50 CFR 17.11(h), you may need a Federal threatened or endangered species permit before removing the birds (see 50 CFR 17.21 and 50 CFR 17.31).

(8) You must have a permit from your Regional migratory bird permits office to remove a bald eagle or a golden eagle from a building (see 50 CFR Part 22).

(9) Your action must comply with State and local regulations and ordinances. You may need a State, Tribal, or Territorial permit before you can legally remove the bird or birds.

(10) If an active nest with eggs or nestlings is present, you must seek the assistance of a federally permitted migratory bird rehabilitator in removing the eggs or nestlings. The rehabilitator is then responsible for handling them properly.

(11) If you need advice on dealing with a trapped bird, you should contact your closest Fish and Wildlife Service office or your State wildlife agency.

[39 FR 1178, Jan. 4, 1974, as amended at 50 FR 8638, Mar. 4, 1985; 54 FR 38151, Sept. 14, 1989; 68 FR 61137, Oct. 27, 2003; 72 FR 56928, Oct. 5, 2007]

§21.13 Permit exceptions for captive-reared mallard ducks.

Captive-reared and properly marked mallard ducks, alive or dead, or their eggs may be acquired, possessed, sold, traded, donated, transported, and disposed of by any person without a permit, subject to the following conditions, restrictions, and requirements:

(a) Nothing in this section shall be construed to permit the taking of live mallard ducks or their eggs from the wild.

(b) All mallard ducks possessed in captivity, without a permit, shall have been physically marked by at least one of the following methods prior to 6 weeks of age and all such ducks hatched, reared, and retained in captivity thereafter shall be so marked prior to reaching 6 weeks of age.

(1) Removal of the hind toe from the right foot.

(2) Pinioning of a wing: *Provided*, That this method shall be the removal of the metacarpal bones of one wing or a portion of the metacarpal bones which renders the bird permanently incapable of flight.

(3) Banding of one metatarsus with a seamless metal band.

(4) Tattooing of a readily discernible number or letter or combination thereof on the web of one foot.

(c) When so marked, such live birds may be disposed of to, or acquired from, any person and possessed and transferred in any number at any time or place: *Provided*, That all such birds shall be physically marked prior to sale or disposal regardless of whether or not they have attained 6 weeks of age.

(d) When so marked, such live birds may be killed, in any number, at any time or place, by any means except shooting. Such birds may be killed by shooting only in accordance with all applicable hunting regulations governing the taking of mallard ducks from the wild: *Provided*, That such birds may be killed by shooting, in any number, at any time, within the confines of any premises operated as a shooting preserve under State license, permit, or authorization; or they may be shot, in any number, at any time or place, by any person for bona fide dog training or field trial purposes: *Provided further*, That the provisions:

(1) The hunting regulations (part 20 of this subchapter), with the exception of §20.108 (Nontoxic shot zones), and

(2) The Migratory Bird Hunting Stamp Act (duck stamp requirement) shall not apply to shooting preserve operations as provided for in this paragraph, or to bona fide dog training or field trial operations.

(e) At all times during possession, transportation, and storage until the raw carcasses of such birds are finally processed immediately prior to cooking, smoking, or canning, the marked foot or wing must remain attached to each carcass: *Provided*, That persons, who operate game farms or shooting preserves under a State license, permit, or authorization for such activities, may remove the marked foot or wing when either the number of his State license, permit, or authorization has first been legibly stamped in ink on the back of each carcass and on the container in which each carcass is maintained, or each carcass is identified by a State band on leg

or wing pursuant to requirements of his State license, permit, or authorization. When properly marked, such carcasses may be disposed of to, or acquired from, any person and possessed and transported in any number at any time or place.

[40 FR 28459, July 7, 1975, as amended at 46 FR 42680, Aug. 24, 1981; 54 FR 36798, Sept. 5, 1989]

§21.14 Permit exceptions for captive-bred migratory waterfowl other than mallard ducks.

You may acquire captive-bred and properly marked migratory waterfowl of all species other than mallard ducks (*Anas platyrhynchos*), alive or dead, or their eggs, and possess and transport such birds or eggs and any progeny or eggs for your use without a permit, subject to the following conditions and restrictions. Additional restrictions on the acquisition and transfer of muscovy ducks (*Cairina moschata*) are in paragraph (g) of this section.

(a) You may acquire live waterfowl or their eggs only from a holder of a valid waterfowl sale and disposal permit in the United States. You also may lawfully acquire them outside of the United States with appropriate permits (*see* §21.21 of subpart C of this part).

(b) All progeny of captive-bred birds or eggs from captive-bred birds must be physically marked as set forth in §21.13(b).

(c) You may not transfer or dispose of captive-bred birds or their eggs, whether alive or dead, to any other person unless you have a waterfowl sale and disposal permit (*see* §21.25 of subpart C of this part).

(d) Lawfully possessed and properly marked birds may be killed, in any number, at any time or place, by any means except shooting. Such birds may be killed by shooting only in accordance with all applicable hunting regulations governing the taking of like species from the wild (*see* part 20 of this subchapter).

(e) At all times during possession, transportation, and storage until the raw carcasses of such birds are finally processed immediately prior to cooking, smoking, or canning, you must leave the marked foot or wing attached to each carcass, unless the carcass was marked as provided in §21.25(b)(6) and the foot or wing was removed prior to your acquisition of the carcass.

(f) If you acquire captive-bred waterfowl or their eggs from a waterfowl sale and disposal permittee, you must retain the FWS Form 3-186, Notice of Waterfowl Sale or Transfer, from the permittee for as long as you have the birds, eggs, or progeny of them.

(g) You may not acquire or possess live muscovy ducks, their carcasses or parts, or their eggs, except to raise them to be sold as food, and except that you may possess any live muscovy duck that you lawfully acquired prior to March 31, 2010. If you possess muscovy ducks on that date, you may not propagate them or sell or transfer them to anyone for any purpose, except to be used as food. You may not release them to the wild, sell them to be hunted or released to the wild, or transfer them to anyone to be hunted or released to the wild.

(h) Dealers in meat and game, hotels, restaurants, and boarding houses may serve or sell to their customers the carcass of any bird acquired from a holder of a valid waterfowl sale and disposal permit.

[75 FR 9320, Mar. 1, 2010]

§21.15 Authorization of take incidental to military readiness activities.

(a) *Take authorization and monitoring.* (1) Except to the extent authorization is withdrawn or suspended pursuant to paragraph (b) of this section, the Armed Forces may take migratory birds incidental to military readiness activities provided that, for those ongoing or proposed activities that the Armed Forces determine may result in a significant adverse effect on a population of a migratory bird species, the Armed Forces must confer and cooperate with the Service to develop and implement appropriate conservation measures to minimize or mitigate such significant adverse effects.

(2) When conservation measures implemented under paragraph (a)(1) of this section require monitoring, the Armed Forces must retain records of any monitoring data for five years from the date the Armed Forces commence their action. During Integrated Natural Resource Management Plan reviews, the Armed Forces will also report to the Service migratory bird conservation measures implemented and the effectiveness of the conservation measures in avoiding, minimizing, or mitigating take of migratory birds.

(b) *Suspension or Withdrawal of take authorization.* (1) If the Secretary determines, after seeking the views of the Secretary of Defense and consulting with the Secretary of State, that incidental take of migratory birds during a specific military readiness activity likely would not be compatible with one or more of the migratory bird treaties, the Secretary will suspend authorization of the take associated with that activity.

(2) The Secretary may propose to withdraw, and may withdraw in accordance with the procedures provided in paragraph (b)(4) of this section the authorization for any take incidental to a specific military readiness activity if the Secretary determines that a proposed military readiness activity is likely to result in a significant adverse effect on the population of a migratory bird species and one or more of the following circumstances exists:

(i) The Armed Forces have not implemented conservation measures that:

(A) Are directly related to protecting the migratory bird species affected by the proposed military readiness activity;

(B) Would significantly reduce take of the migratory bird species affected by the military readiness activity;

(C) Are economically feasible; and

(D) Do not limit the effectiveness of the military readiness activity;

(ii) The Armed Forces fail to conduct mutually agreed upon monitoring to determine the effects of a military readiness activity on migratory bird species and/or the efficacy of the conservation measures implemented by the Armed Forces; or

(iii) The Armed Forces have not provided reasonably available information that the Secretary has determined is necessary to evaluate whether withdrawal of take authorization for the specific military readiness activity is appropriate.

(3) When the Secretary proposes to withdraw authorization with respect to a specific military readiness activity, the Secretary will first provide written notice to the Secretary of Defense. Any such notice will include the basis for the Secretary's determination that withdrawal is warranted in accordance with the criteria contained in paragraph (b)(2) of this section, and will identify any conservation measures or other measures that would, if implemented by the Armed Forces, permit the Secretary to cancel the proposed withdrawal of authorization.

(4) Within 15 days of receipt of the notice specified in paragraph (b)(3) of this section, the Secretary of Defense may notify the Secretary in writing of the Armed Forces' objections, if any, to the proposed withdrawal, specifying the reasons therefore. The Secretary will give due consideration to any objections raised by the Armed Forces. If the Secretary continues to believe that withdrawal is appropriate, he or she will provide written notice to the Secretary of Defense of the rationale for withdrawal and response to any objections to the withdrawal. If objections to the withdrawal remain, the withdrawal will not become effective until the Secretary of Defense has had the opportunity to meet with the Secretary within 30 days of the original notice from the Secretary proposing withdrawal. A final determination regarding whether authorization will be withdrawn will occur within 45 days of the original notice.

(5) Any authorized take incidental to a military readiness activity subject to a proposed withdrawal of authorization will continue to be authorized by this regulation until the Secretary makes a final determination on the withdrawal.

(6) The Secretary may, at his or her discretion, cancel a suspension or withdrawal of authorization at any time. A suspension may be cancelled in the event new information is provided that the proposed activity would be compatible with the migratory bird treaties. A proposed withdrawal may be cancelled if the Armed Forces modify the proposed activity to alleviate significant adverse effects on the population of a migratory bird species or the circumstances in paragraphs (b)(2)(i) through (iii) of this section no longer exist. Cancellation of suspension or withdrawal of authorization becomes effective upon delivery of written notice from the Secretary to the Department of Defense.

(7) The responsibilities of the Secretary under paragraph (b) of this section may be fulfilled by his/her delegatee who must be an official nominated by the President and confirmed by the Senate.

[72 FR 8949, Feb. 28, 2007]