October 1981

Legal Problems Of Bird Damage Control - Protected Species And Practical Solutions

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LEGAL PROBLEMS OF BIRD DAMAGE CONTROL – PROTECTED SPECIES AND PRACTICAL SOLUTIONS

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ABSTRACT: Legal problems in bird damage control can occur from two directions. First, most birds are protected by federal law; all birds are protected by some states and all birds can be protected by local governing agencies. Second, the method of control may be restricted by state or local governments. Some states require permits to use toxicants; shooting is prohibited in some areas by local government. The only practical solution is to know the federal and state regulations pertaining to each individual project and to check each time with local agencies for further restrictions.

A federal permit is required to trap or kill any migratory bird (protected by the Migratory Bird Treaty Act) with some specific exceptions, such as, the blackbird group which can be controlled if they are doing or about to do damage. State permit requirements vary so much that each one has to be consulted individually.

INTRODUCTION

Numerous wildlife species, when found individually in the wrong place at the right time, or in large numbers in the wrong place, can cause serious conflicts with people. Whether it's a cottontail rabbit helping himself to someone's tomato plants or a flock of Giant Canada geese sharing air space at O'Hare Airport these conflicts have to be addressed. The legal protection afforded each wildlife species varies according to each level of government and according to location. To further complicate the picture, the methods of control of damage is regulated by species in some states and all chemicals used in controlling damage must be registered either by federal or state government or both.

PROTECTED SPECIES BY LEVEL OF GOVERNMENT

Federal Government

Migratory birds are protected by the Migratory Bird Treaty Act (16 USC 703-711). The species covered are those listed by several conventions with various other countries. The authority for listing and the list are found in 50 CFR 10. (CFR refers to Code of Federal Regulations.) 50 CFR 21 Subpart D lists the authority to issue depredation permits and exemptions provided for some species and specific localities. No permit is required merely to scare or herd depredating migratory birds other than endangered or threatened species or bald (Haliaeetus leucocephalus) or golden eagles (Aquila chrysaetos). Blackbirds, cowbirds, grackles, crows and magpies can be controlled without a federal permit if committing or about to commit depredation or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance (50 CFR 21.43). This section does not authorize the killing of such birds contrary to any state law or regulation.

In California, meadowlarks; horned larks; golden crowned, white crowned and other crowned sparrow; goldfinches; house finches; acorn woodpeckers;
Lewis woodpeckers; and flickers, where under extraordinary conditions, are seriously injurious to agricultural or other interests can be killed or cause to be killed by the Commissioner of Agriculture (county), without a permit, to safeguard any agricultural or horticultural crop.

In Louisiana, landowners, sharecroppers, tenants or other employees or agents, actually engaged in the production of rice may, without a permit, shoot purple gallinules (Ipornis martinica) when found committing or about to commit serious depredations to growing rice crops on the premises owned or occupied by such persons, provided that purple gallinules may only be killed pursuant to this section between May 1 and August 15 in any year.

In the states of Washington and Oregon, landowner, sharecroppers, tenants or their employees or agents, actually engaged in the production of nut crops may, without a permit, take scrub jays (Aphelocoma coerulescens) and Steller's jays (Cyanocitta stelleri) when found committing or about to commit serious depredations to nut crops on the premises owned or occupied by such persons, provided that scrub jays and Steller's jays may only be taken pursuant to this section between August 1 and December 1 in any year and in only specified counties in each state.

Each of the above exceptions to permit requirements also require extensive record keeping and restrictions upon what can be done with the birds once they are killed.

For control programs on species or in areas where no exceptions exist, the federal regulations require a depredation permit before any person may take, possess or transport migratory birds for depredation control purposes (50 CFR 13). Applications for depredation permits shall be submitted to the appropriate Special Agent-in-Charge (U.S. Fish and Wildlife Service). Each such application must contain the general information and certification required by 50 CFR 13(12a) plus the following additional information:

1. A description of the area where depredations are occurring
2. Nature of the crops or other interest being injured
3. The extent of such injury
4. The particular species of migratory birds committing the injury

50 CFR 21(41c) lists several additional permit conditions that all permit holders should be familiar with.

In addition to restrictions placed upon migratory birds, the Endangered Species Conservation Act of 1969 (16 USC 668aa-668cc-6) further protects many species of birds, mammals, and their habitat that might be encountered in controlling wildlife damage. All programs conducted by a federal agency or permitted by one has to take into account any effect the program might have on any endangered or threatened species.

The regulations based upon the Fish and Wildlife Act of 1956, 85 stat. 480, as amended; 86 stat. 905 (16 USC 742; -1) state that no person shall, while airborne in any aircraft, shoot or attempt to shoot any wildlife or use the aircraft to harass any wildlife. Federal and state employees or their authorized agents are exempt when protecting or administering aid in protecting land, water, wildlife, livestock, domesticated animals, human life or crops. Permits can be obtained to scare or herd (only) migratory birds.
Federal restrictions are also placed upon the use of any chemical compound that can be used to control wildlife species. Regulations require that only registered chemicals can be used to control nuisance wildlife and then only in a prescribed manner by licensed applicators.

State Government

Most migratory birds are protected by most states with some states protecting all species of birds, including starlings (Sturnus vulgaris), house sparrows (Passer domesticus) and feral pigeons (Columba livia).

The protection of mammals also varies greatly from state to state, especially those not considered as either game or fur animals. In Table 1, the last column listed as "Other" under "Mammals" includes many species encountered in damage complaints. Table 1 was compiled to indicate the variability in permit requirements encountered on a state to state basis.

State pesticide licensing agencies control chemical registration and licensing of applicators. In Illinois, the Department of Agriculture controls licensing of agriculture applicators (with no category for vertebrate pest control) and the Health Department licenses structural pest control applicators.

Local Government

County, Township and Municipal governments can place further restrictions on the actual control of wildlife species or the means by which they can be controlled over and above those imposed by the states. Some municipalities have declared themselves wildlife refuges, others restrict shooting, some ban fireworks, and some have noise ordinances. The variety of restrictions is only limited by the number of such units of government encountered.

DISCUSSION

What does all this variation from state to state in necessary permits required to legally conduct wildlife damage control mean when added to local government restrictions and federal permit requirements? To me, it simply means that anyone involved in wildlife damage control has extensive studying to do and several bases to touch before jumping into any control project. Add adverse public reaction to most control projects and it is easy to see why most commercial pest control companies won't accept wildlife, especially bird, control accounts; and those that do, charge large fees.

Practical Solution

I came to the conclusion that there is none because I viewed "practical" as being analogous to simple. Each and every damage control project has to be analyzed as to (1) what, if any, migratory birds are involved and permits required for type of action proposed, (2) whether any endangered or threatened species are affected, (3) what state permits are required, if any, (4) local restrictions as to type of control used and (5) legal and effective methods of control available under such restrictions. Anyone involved with damage control, especially bird damage control, needs to make a sustained effort to know federal, state and local regulations and regularly check with each regulatory agency involved to keep abreast of the constant changes.
Table 1. STATE DNR OR DOC PERMITS¹ REQUIRED TO CONTROL WILDLIFE SPECIES

<table>
<thead>
<tr>
<th>State</th>
<th>Feral Birds</th>
<th>Migratory Birds</th>
<th>Game Birds</th>
<th>Mammals Game</th>
<th>Mammals Fur</th>
<th>Mammals Other</th>
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<td>Yes</td>
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<td>North Dakota</td>
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<td>Ohio</td>
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<td>Oklahoma</td>
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<td>South Dakota</td>
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<td>Yes</td>
<td>Yes</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes(8)</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes(4)</td>
</tr>
<tr>
<td>Wyoming</td>
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<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

Feral Birds: Pigeons, Starlings, House Sparrows
Migratory Birds: All species protected by Migratory Bird Treaty Act
Game Birds: Pheasant, Grouse, Turkey, Prairie Chicken, Quail, etc.
Game Mammals: Deer, Elk, Moose, Rabbits, Tree Squirrels, Javelina, etc.
Fur Mammals: Coyotes, Fox, Beaver, Raccoon, Muskrat, Mink, Bobcat, Nutria, Woodchuck, Opossum
Other Mammals: Armadillo, Field Mice, Commensal Rodents, Ground Squirrels, Prairie Dogs, Gophers, Moles, Bats

(1) Letter of authorization
(2) Damage control permit and permit for use of toxicant
(3) Can control if emergency; must notify state
(4) Permit to use toxicant
(5) Must notify state
(6) Except prairie dogs
(7) Permit for pigeon control
(8) Permit necessary if to trap
PART 13—GENERAL PERMIT PROCEDURES

Subpart A—Introduction

sec. 13.1 General.
13.2 Purpose of regulations.
13.3 Scope of regulations.
13.4 Emergency variation from requirements.

Subpart B—Application for Permits
13.11 Procedure for obtaining a permit.
13.12 Information requirements on permit applications.
13.13 Abandoned application.
13.14 Insufficient fee.

Subpart C—Permit Administration
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13.22 Duration of permit.
13.23 Amendment of applications or permits.
13.24 Renewal of permit.
13.26 Right of succession by certain persons.
13.27 Change of mailing address.
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13.29 Official endorsement of changes required.
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Source: 39 FR 1161, Jan. 4, 1974, unless otherwise noted.

Subpart A—Introduction

§ 13.1 General.
Each person intending to engage in an activity for which a permit is required by this Subchapter B shall, before commencing such activity, obtain a valid permit authorizing such activity. Each person who desires to obtain the permit privileges authorized by this Subchapter B must make application for such permit in accordance with the requirements of this Part 13 and the other regulations in this Subchapter B which set forth the specific permits desired. If the activity for which permission is sought is covered by the requirements of more than one Part of this Subchapter B, the requirements of each Part must be met. If the information required for each specific permitted activity is included, one application will be accepted for all permits required, and a single permit will be issued.

§ 13.2 Purpose of regulations.
The regulations contained in this part will provide uniform rules and procedures for application, issuance, renewal, conditions, revocation, and general administration of permits issuable pursuant to this Subchapter B.

§ 13.3 Scope of regulations.


§ 13.4 Emergency variation from requirements.
The Director may approve variations from the requirements of this part when he finds that an emergency exists and that the proposed variations will not hinder effective administration of this Subchapter B, and will not be unlawful.

Subpart B—Application for Permits

§ 13.11 Procedure for obtaining a permit.
The following general procedures apply to applications for permits:
(a) Forms. Applications must be submitted on an appropriate Bureau application form, except for those applications for which the regulations provide that a letter application which contains all necessary information, attachments, certification, and signature is acceptable. In no case will oral or telephoned applications be accepted.
(b) Forwarding instructions. Applications must be submitted to the Special Agent in Charge of the Law Enforcement District in which the applicant resides, unless otherwise required in the section which applies to the specific permit desired. Persons not residing in the United States must submit applications to the Director. The address of such officials are listed in §§ 10.21 and 10.22 of this subchapter.
(c) Time requirement. Applications must be received by the appropriate official of the Service at least 30 calendar days prior to the date on which the applicant desires to have the permit made effective. The Service will, in all cases, attempt to process applications in the shortest possible time.
time, and most complete and properly addressed applications will be acted on within 30 days. The Service does not, however, guarantee 30 day issuance and some permits cannot be issued within that time period.

(d) Permit fees. Applications must be accompanied by a permit fee in the form of a check or money order payable to "U.S. Fish and Wildlife Service" for those permits for which a fee is shown on the following schedule. Such permit fees shall not be refunded if that application is denied.

Type of permit: Feather import quota (part 13 of this subchapter):
Importation or entry ..... $10
Marine mammals permits (part 18 of this subchapter):
Scientific research.............. Individual basis.
Public display.............. Individual basis.

§13.12 Information requirements on permit applications.

(a) General information required for all permit applications. All applications for permits must contain the following information:

(1) Applicant’s name, mailing address, and phone number;

(2) Where the applicant is an individual, his date of birth, height, weight, color of hair, color of eyes, and sex; and business or institutional affiliation, if any, having to do with the wildlife or plants to be covered by the permit;

(3) Where the applicant is a corporation, firm, partnership, institution, or agency, either private or public, the name and address of the president or principal officer;

(4) Location where the permitted activity is to be conducted;

(5) Part and section of this subchapter B under which the permit is requested and such additional information and justification, including supporting documents from appropriate authorities, as required by that section (Paragraph (b) of this section contains a list of sections of this subchapter B where the additional information needed on applications for various permits may be found);

(6) Where the permitted activity involves an importation from any foreign country which restricts the taking, possession, transportation, exportation or sale of wildlife or plants, the appropriate documentation, as indicated in §14.42 of this subchapter;

(7) Certification in the following language:

I hereby certify that I have read and am familiar with the regulations contained in Title 50, Part 13, of the Code of Federal Regulations and the other applicable parts in Subchapter B of Chapter I of Title 50, and I further certify that the information submitted in this application for a permit is complete and accurate to the best of my knowledge and belief. I understand that any false statement hereon may subject me to the criminal penalties of 18 U.S.C. 1001.

(8) Desired effective date of permit except where issuance date is fixed by the part under which the permit is issued;

(9) Date;

(10) Signature of the applicant; and

(11) Such other information as the Director determines relevant to the processing of the application.

(b) Additional information required on permit applications. As stated in paragraph (a)(5) of this section certain additional information is required on all applications. These additional requirements may be found by referring to the section of this subchapter B cited after the type of permit for which application is being made:

<table>
<thead>
<tr>
<th>Type of permit</th>
<th>Section</th>
</tr>
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<tbody>
<tr>
<td>Importation at nondesignated ports:</td>
<td>14.31</td>
</tr>
<tr>
<td>Sciencific research</td>
<td>14.32</td>
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<tr>
<td>Endangered wildlife and plant permits:</td>
<td>14.33</td>
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<tr>
<td>Similarity of appearance</td>
<td>14.34</td>
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<td>Symbol marking</td>
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<td>Feather import quota:</td>
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<td>Importation or entry</td>
<td>14.37</td>
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<td>Endangered wildlife</td>
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<td>Endangered plants</td>
<td>14.39</td>
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<td>Scientific propagation</td>
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<tr>
<td>Scientific propagation, or survival for wild life</td>
<td>14.41</td>
</tr>
<tr>
<td>Scientific propagation, or survival for plants</td>
<td>14.42</td>
</tr>
<tr>
<td>Economic hardship</td>
<td>14.43</td>
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<tr>
<td>General for wildlife</td>
<td>14.44</td>
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<td>General for plants</td>
<td>14.45</td>
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<td>American alligator-American alligator in captivity</td>
<td>14.46</td>
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<td>General for persons</td>
<td>14.47</td>
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<tr>
<td>Scientific research</td>
<td>14.48</td>
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<td>Public display</td>
<td>14.49</td>
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<tr>
<td>Migratory bird permits:</td>
<td>14.50</td>
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<td>Import or export</td>
<td>14.51</td>
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<td>Banding or marking</td>
<td>14.52</td>
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<tr>
<td>Scientific collecting</td>
<td>14.53</td>
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<tr>
<td>Taxidermist</td>
<td>14.54</td>
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<tr>
<td>Waterfowl sale and disposal</td>
<td>14.55</td>
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<tr>
<td>Special aviculturist</td>
<td>14.56</td>
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<tr>
<td>Special purpose</td>
<td>14.57</td>
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<tr>
<td>Depredation control</td>
<td>14.58</td>
</tr>
</tbody>
</table>

FWS/LE ENF 4-REG-13 (Rev. 10-12-79)
(3) The applicant has failed to demonstrate a valid justification for the permit and a showing of responsibility;
(4) The authorization requested potentially threatens a wildlife or plant population, or
(5) The Director finds through further inquiry or investigation, or otherwise, that the applicant is not qualified.

(c) Each permit shall bear a serial number. Such number may be reassigned to the permittee to whom issued so long as he maintains continuity of renewal.

(d) The applicant shall be notified in writing of the denial of any permit request, and the reasons therefor. If authorized in the notice of denial, the applicant may submit further information, or reasons why the permit should not be denied. Such further submissions shall not be considered a new application. The final action by the Director shall be considered the final administrative decision of the Department.

§ 13.22 Duration of permit.
Permits shall entitle the person to whom issued to engage in the activity specified in the permit, within the limitations of the applicable statute and regulations contained in this subchapter B, for the period stated on the permit, unless sooner terminated.

§ 13.23 Amendment of applications or permits.
Where circumstances have changed so that an applicant or permittee desires to have any term or condition of his application or permit modified, he must submit in writing full justification and supporting information in conformance with the provisions of this part and the part under which the permit has been issued or requested. Such applications for modification are subject to the same issuance criteria as are original applications, as provided in § 13.21.

§ 13.24 Renewal of permit.
Where the permit is renewable and a permittee intends to continue the activity described in the permit during any portion of the year ensuing its expiration, he shall, unless otherwise notified in writing by the Director, file a request for permit renewal, together with a certified statement that the information in his original application is still currently correct, or a statement of all changes in the original application, accompanied by any required fee at least 30 days prior to the expiration of his permit. Any person holding a valid renewable permit, who has complied with the foregoing provision of this section, may continue such activities as were authorized by his expired permit until his renewal application is acted upon.

§ 13.25 Permits not transferrable; agents.
(a) Permits issued under this part are not transferable or assignable. Some permits authorize certain activities in connection with a business or commercial enterprise and in the event of any lease, sale, or transfer of such business entity, the successor must obtain a permit prior to continuing the permitted activity. However, certain limited rights of succession are provided in § 13.26.

(b) Except as otherwise stated on the face of a permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for the purposes authorized by the permit, may carry out the activity authorized by the permit.

§ 13.26 Right of succession by certain persons.
(a) Certain persons, other than the permittee, are granted the right to carry on a permitted activity for the remainder of the term of a current permit provided they comply with the provisions of paragraph (b) of this section. Such persons are the following:

(1) The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee; and

(2) A receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors.

(b) In order to secure the right provided in this section, the person or persons desiring to continue the activity shall furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity.

§ 13.27 Change of mailing address.
During the term of his permit, a permittee may change his mailing address without procuring a new permit. However, in every case notification of the new mailing address must be forwarded to the issuing official within 30 days after such change. This section does not authorize the change of location of the permitted activity for which an amendment must be obtained in accordance with § 13.23.

§ 13.28 Change in name.
A permittee continuing to conduct a permitted activity is not required to obtain a new permit by reason of a mere change in trade name under which a business is conducted or a change of name by reason of marriage or legal decree: Provided, That such permittee must furnish his permit to the issuing official for endorsement within 30 days from the date the permittee begins conducting the permitted activity under the new name.

§ 13.29 Official endorsement of changes required.
Any change in a permit must be made by endorsement of the Director or issuing officer. Any modification or change in an issued permit, other than those specifically provided for in this subpart, may be granted or denied in the discretion of the Director.

§ 13.30 Certain continuance of activity.
A permittee who furnishes his permit to the issuing official for endorsement or correction in compliance with the provisions of this subpart may continue his operations pending its return.

§ 13.31 Discontinuance of activity.
When any permittee discontinues his activity, he shall, within 30 days thereof, mail his permit and a request for cancellation to the issuing officer, and said permit shall be deemed void upon receipt. No refund of any part of an amount paid as a permit fee shall be made where the operations of the permittee are, for any reason, discontinued during the tenure of an issued permit.

Subpart D—Conditions
§ 13.34 Recall and amendment of permit during its term.
Except for marine mammal permits (see Part 18), all permits are issued subject to the condition that the Service reserves the right to recall and amend the provisions of a permit for just cause at any time during its term.
Such amendments take effect on the date of notification, unless otherwise specified.

§ 13.42 Permits are specific.

The authorizations on the face of a permit which set forth specific times, dates, places, methods of taking, numbers and kinds of wildlife or plants, location of activity, authorize certain circumscribed transactions, or otherwise permit a specifically limited matter, are to be strictly construed and shall not be interpreted to permit similar or related matters outside the scope of strict construction.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977]

§ 13.43 Alteration of permits.

Permits shall not be altered, erased, or mutilated, and any permit which has been altered, erased, or mutilated shall immediately become invalid. Unless specifically permitted on the face thereof, no permit shall be copied, nor shall any copy of a permit issued pursuant to this Subchapter B be displayed, offered for inspection, or otherwise used for any official purpose for which the permit was issued.

§ 13.44 Display of permit.

Any permit issued under this part shall be displayed for inspection upon request to the Director or his agent, or to any other person relying upon its existence.

§ 13.45 Filing of reports.

Permittees may be required to file reports of the activities conducted under the permit. Any such reports shall be filed not later than March 31 for the preceding calendar year ending December 31, or any portion thereof, during which a permit was in force, unless the regulations of this subchapter B or the provisions of the permit set forth other reporting requirements.

§ 13.46 Maintenance of records.

From the date of issuance of the permit, the permittee shall maintain complete and accurate records of any taking, possession, transportation, sale, purchase, barter, exportation, or importation of plants obtained from the wild (excluding seeds) or wildlife, pursuant to such permit. Such records shall be kept current and shall include names and addresses of persons with whom any plant obtained from the wild (excluding seeds) or wildlife has been purchased, sold, bartered, or otherwise transferred, and the date of such transaction, and such other information as may be required or appropriate. Such records, unless otherwise specified, shall be entered in books, legibly written in the English language. Such records shall be retained for 5 years from the date of issuance of the permit.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977]

§ 13.47 Inspection requirement.

Any person holding a permit under this subchapter B shall allow the Director's agent to enter his premises at any reasonable hour to inspect any wildlife or plant held or to inspect, audit, or copy any permits, books, or records required to be kept by regulations of this subchapter B.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977]

Subpart E—Violations of the Permit

§ 13.51 Penalties for violation of a permit, notice; demonstration of compliance.

(a) Any violation of the applicable provisions of this Subchapter, or of the statute under which the permit was issued, or a condition of the permit, may subject the permittee to the following penalties:

(1) The penalty provided in the statute under which the permit was issued;

(2) Temporary suspension of the permit for a specified period; and

(3) Revocation of the permit. When revoked, permits must be surrendered to the Director on demand.

(b) Except in cases of willfulness or those in which the public health safety or interest requires, and prior to any suspension or revocation of a permit, the permittee shall be given:

(1) Notice by the Service in writing of the facts or conduct which may warrant the suspension or revocation; and

(2) Opportunity to demonstrate or achieve compliance with all permit requirements.
PART 10—GENERAL PROVISIONS

Subpart A—Introduction

Sec.
10.1 Purpose of regulations.
10.2 Scope of regulations.
10.3 Other applicable laws.
10.4 When regulations apply.

Subpart B—Definitions

10.11 Scope of definitions.
10.12 Definitions.
10.13 List of Migratory Birds.

Subpart C—Addresses

10.21 Director.
10.22 Law enforcement districts.


Source: 38 FR 22015, Aug. 15, 1973, unless otherwise noted.

Subpart A—Introduction

§ 10.1 Purpose of regulations.

The regulations of this Subchapter B are promulgated to implement the following statutes enforced by the U.S. Fish and Wildlife Service which regulate the taking, possession, transportation, sale, purchase, barter, exportation, and importation of wildlife:

Lacey Act, 18 U.S.C. 42-44.
Bald Eagle Protection Act, 16 U.S.C. 668-668d.

§ 10.2 Scope of regulations.

The various parts of this Subchapter B are interrelated, and particular note should be taken that the parts must be construed with reference to each other.

§ 10.3 Other applicable laws.

No statute or regulation of any State shall be construed to relieve a person from any other requirements imposed by a statute or regulation of any State or of the United States, including any applicable health, quarantine, agricultural, or customs laws or regulations, or other Service enforced statutes or regulations.

§ 10.4 When regulations apply.

The regulations of this Subchapter B shall apply to all matters arising after the effective date of such regulations, with the following exceptions:

(a) Civil penalty proceedings. Except as otherwise provided in § 11.25, the civil penalty assessment procedures contained in this Subchapter B shall apply only to any proceeding instituted by notice of violation dated subsequent to the effective date of these regulations, regardless of when the act or omission which is the basis of a civil penalty proceeding occurred.

(b) Permits. The regulations in this Subchapter B shall apply to any permit application received after the effective date of the appropriate regulations in this Subchapter B and, unless as appropriate, to any permit which is renewed after such effective date.

§ 10.11 Scope of definitions.

In addition to and subject to definitions contained in applicable statutes and subsequent parts or sections of this Subchapter B, words or their variants shall have the meanings ascribed in this subpart. Throughout this Subchapter B words in the singular form shall include the plural, words in the plural form shall include the singular, and words in the masculine form shall include the feminine.

§ 10.12 Definitions.

"Aircraft" means any contrivance used for flight in the air.
"Amphibians" means a member of the class, Amphibia, including, but not limited to, frogs, toads, and salamanders; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.
"Animal" means an organism of the animal kingdom, as distinguished from the plant kingdom; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.
"Birds" means a member of the class, Aves; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.
"Service" means the United States Fish and Wildlife Service, Department of the Interior.
"Country of exportation" means the country from which the animal was exported before importation into the United States.
"Country of origin" means the country where the animal was taken from the wild, or the country of natal origin of the animal.
"Crustacea" means a member of the class, Crustacea, including but not limited to, crayfish, lobsters, shrimps, crabs, barnacles, and some terrestrial forms; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.
"Director" means the Director of the United States Fish and Wildlife Service, Department of the Interior, or his authorized representative.
"Endangered wildlife" means any wildlife listed in § 17.11 or § 17.12 of this subchapter.
“Fish” means a member of any of the following classes: (1) Chondrichthyes, including, but not limited to, hagfishes and lampreys; (2) Elasmobranchii, including but not limited to, sharks, skates, and rays; and (3) Pisces, including but not limited to trout, perch, bass, minnows, and cutfish, including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

“The term ‘fish or wildlife’ means any wild animal, whether alive or dead, including without limitation any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, invertebrate, or other invertebrate, whether or not bred, hatched, or born in captivity, and including any part, product, egg, or offspring thereof.”

“Foreign commerce” includes, among other things, any transaction (1) between persons within one foreign country, or (2) between persons in two or more foreign countries, or (3) between a person within the United States and a person in one or more foreign countries, or (4) between persons within the United States, where the fish or wildlife in question are moving in any country or countries outside the United States.

“Fossil” means the remains of an animal or plant kingdom, including seeds, roots and other parts thereof.

“The term ‘fossil’ means the remains of an animal or plant kingdom, including seeds, roots and other parts thereof.”

“Import” means to bring on, land, or introduce into, or attempt to bring on, land, or introduce into, any place subject to the jurisdiction of the United States, whether or not with landing, bringing, or introduction constitutes an importation within the meaning of the tariff laws of the United States.

“Injurious Wildlife” means any wildlife for which a permit is required under Subpart 3 of Part 18 of this subchapter before being imported or shipped between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States.

“Mammal” means a member of the class Mammalia including any part, product, egg, or offspring, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

“Migratory bird” means any bird, whatever its origin and whether or not raised in captivity, which belongs to a species listed in § 10.13, or which is a mutation or a hybrid of any such species, including any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof.

“Migratory game birds”: See § 20.11 of this subchapter.

“Mollusk” means a member of the phylum, Mollusca, including but not limited to, snails, mussels, clams, oysters, scallops, abalone, squid, and octopuses; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

“Permit” means any document so designated as a permit by the Service and signed by an authorized official of the Service.

“Possession” means the detention and control, or the manual or ideal custody of anything which may be the subject of property, for one’s use and enjoyment, either as owner or as the propietor of a qualified right in it, and either held personally or by another who exercises it in one’s place and name. Possession includes the act or state of possessing and that condition of facts under which one can exercise his power over a corporeal thing at his pleasure to the exclusion of all other persons. Possession includes constructive possession which means not actual but assumed to exist, where one claims to hold by virtue of some title, without having actual custody.

“Public” as used in referring to museums, zoological parks, and scientific or educational institutions, refers to such as are open to the general public and are either established, maintained, and operated as a governmental service or are privately endowed and organized but not operated for profit.

“Reptile” means a member of the class Reptilia including but not limited to, turtles, snakes, lizards, crocodiles, and alligators; including any part, product, egg, or offspring thereof, or the dead body or parts thereof.

“Secretary” means the Secretary of the Interior or his authorized representative.

“Shellfish” means an aquatic invertebrata animal having a shell, including, but not limited to, (a) an oyster, clam, or other mollusk; and (b) a lobster or other crustacean; or any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

“State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam.

“Take” means to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect. (With reference to marine mammals, see Part 18 of this subchapter.)

“Transportation” means to ship, convey, carry or transport by any means whatever, and deliver or receive for such shipment, conveyance, carriage, or transportation.

“United States” means the several States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam.

“Whoever” means the same as person.

“Wildlife” means the same as fish or wildlife.

The following is a list of all species of migratory birds protected by the Migratory Bird Treaty Act (16 U.S.C. 703-711) and subject to the regulations contained in this subchapter. The species listed are those included in the Convention for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment, March 4, 1972, T.I.A.S. No. 7990. The species are arranged alphabetically by groups, with the scientific name following the English language common name. All species of ducks are listed together under the heading "DUCKS".

### List of Migratory Birds

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<th>Scientific Name</th>
<th>English Common Name</th>
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<td>American Black Duck</td>
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<td><em>Anas clypeata</em></td>
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Junco: Charadrius vociferus.
Killdeer: Charadrius vociferus.
Kingfisher: "null.
Kite: Falco tinnunculus.
Kittiwake: Rissa brevirostris.
Limpkin: Aeonema woodhousei.
Lark, Horned: "null.
Martin: "null.
Mango: "null.
Mockingbird: Mimus polyglottos.
Millerbird: "null.
Mockingbird: "null.
Murre: "null.
Murrelet: "null.

Nighthawk: "null.

Northern Cardinal: "null.

South American Cardinal: "null.

Eastern Sapsuckers phoebe.
Say's Sapsuckers saya.
Pigeon: Band-tailed Columba fasciata.
Puerto Rican Plain Columba (ornata). Re-billed Columba flavirostris.
Scaly-naped Columba squamata.

Pintail: see DUCKS.
Pipit: Indian Tree Anthus hodgsoni.
Porchana Anthus gustavi.
Red-throated Anthus cervinus.
Sprague's Anthus spraguei.
Water Anthus spinolaeta.

Plow: Rallus elegans.
American Golden Plovers dominica.
Black-bellied Plovers squarrosa.
Greater Sand Charadrius leschenaultii.
Little Ringed Charadrius dubius.
Mongolian Charadrius mongolus.
Mountain Charadrius montanus.
Piping Charadrius melodus.
Ringed Charadrius hiaticula.
Semipalmated Charadrius semipalmatus.
Snowy Charadrius alexandrinus.
Upland Bartramia longicauda.
Wilson's Charadrius wilsonia.
Pochard: see DUCKS.
Poor-will Phalaenoptilus nuttallii.

Puffin: "null.

Rail: "null.
Black Laterallus amabilis.
Clapper Rail Laterallus lateralis.
King Rail Laterallus vociferus.
Virginia Rail Laterallus philadelphia.
Yellow Cuckoos Laterallus philadelphia.
Tufted Lunda erithaca.

Pyrrhuloxia Cardinals stinutius.
Quail-Dove: Bridled Geotrygon mystacea.
Key West Geotrygon chrysa.
Ruddy Geotrygon montana.

Robin: "null.
Black Laterallus amabilis.
Clapper Rail Laterallus lateralis.
King Rail Laterallus vociferus.
Virginia Rail Laterallus philadelphia.
Yellow Cuckoos Laterallus philadelphia.
Tuffed Lunda erithaca.

Raven: "null.

Common Corvus corax.
White-necked Corvus cryptoleucus.
Razorbill Alca torda.
Redhead: see DUCKS.
Redpoll: "null.
Common Carduelis flammea.
Hoary Carduelis hornemanni.
Redshank: Spotted Tringa erythropus.
Redstart: "null.
American Setophaga ruticilla.
Painted Myioborus pictus.
Slaty-throated Myioborus minimus.
Roadrunner Geococcyx californicus.
Robin: "null.
American Turdus migratorius.
Rufous-backed Turdus rufopallidus.
Rosy Finch: see Fruscii.
Rubythroat: Siberian Luscinia calliope.
Ruff Philomachus pugnax.
Sanderling Calidris alba.
Sandpiper: also see Sintii.

Baird's Calidria bairdi.
Broad-billed Limicola falcinellus.
Buff-breasted Tringa subruficollis.
Common Actitis hypoleucos.
Curlew Calidris ferruginea.
Least Calidris minuta.
Pectoral Calidris melanotos.
Purple Calidris maritima.
Red-backed Calidris alpina.
Rock Calidris ptilocnemis.
Sapsucker.  

Sowatea: White-collared Siskin, Pine Shearwater: Sora  

Porzana Carolina.  

Snipe. Shoveler: see DUCKS. Sparrow  

Myadestes townsendi. Solitaire: Townsend’s Aua:  

'kirnmer. Black  

FWS/LE F.NF 4-REG-10  

Williamson’s Sphyrapticus thyroideus. Yellow-bellied Sphyrapticus varius.  

Scapu see DUCKS. Scaup: see DUCKS.  

Scaup: see DUCKS. Sooty  

Sterna sandvicensis.  

Sterna maxima. Royal  

Roseate Anous stolidus.  

Sterna albifrons. Gray-backed Elegant  


Black-throated Green Dendroica virens.  

Vireo: Catharus fuscescens. Veery  

Dendroica caerulescens. Blackpoll  

Vireo solitarius. Red-eyed  


Whooper Olor cygnus.  

Olor columbianus. Whistling  

Tachycineta thalassina. Violet-green  


Swift:  


White-throated Aeronautes saxatilis.  


Titler: Polynesian Heteroscelus brevipes. Wandering Heteroscelus incanus. Teal: see DUCKS.  


Thrasher:  

Bendire’s Toxostoma bendirens. Brown Toxostoma rubin.  


Timmemted: Brinded Parus willowb. Plain Parus inornatus.  

Total (incl. Black-throated) Parus bicolor. Towhee:  

Aber's Pipilo aberti. Black-capped Pipilo fuscus. Green-tailed Pipilo Chlorurus. Ruff-billed Pipilo erythropthalmus. Tree Duck; see DUCKS.  


Verdin Auriparus flaviceps.  

Vireo:  


Vulture:  

Black Coragyps atratus. King Sagamoreopsis papua. Turkey Cathartes aura.  

Wasp:  


Warbler:  

Fan-tailed *Eu Sylvias lachrymosa*.
Gold-cheeked *Dendroica chrysoparia*.
Gold-winged *Vermivora chrysoptera*.
Grace's *Dendroica gracilis*.
Hermits *Dendroica occidentalis*.
Hooded *Wilsonia citrina*.
Kentucky *Oporornis formosa*.
Kirtland's *Dendroica kirtlandii*.
Lucy's *Vermivora luciae*.
MacGillivray's *Oporornis tolmiei*.
Mangolia *Dendroica magnolta*.
Middendorf's *Grasshopper Dendroica soconusco*.

**Mourning *Oporornis philadelphia*.
Myrtle *Oreodryas eremicus*.
Nuttall's *Dendroica nuttalli*.
Orange crowned *Vermivora petechia*.

*Vermivora virginea*.
*Vermivora ruficapilla*.

*Vermivora citrea*.

*Oporornis tolmiei*.

*Grasshopper Dendroica soconusco*.

*Vermivora citrea*.

*Oporornis tolmiei*.

*Oporornis Philadelphia*.

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PART 21—MIGRATORY BIRD PERMITS

Subpart A—Introduction

§ 21.1 Purpose of regulations.

The regulations contained in this part supplement the general permit regulations of Part 13 of this subchapter with respect to permits for the taking, possession, transportation, sale, purchase, barter, export, import, banding and marking of migratory birds. This part also provides certain exceptions to permit requirements for public, scientific or educational institutions, and establishes depredation orders which provide certain limited exceptions to the Migratory Bird Treaty Act (16 U.S.C. 703-711).

Subpart B—General Requirements and Exceptions

§ 21.2 Scope of regulations.

(a) Migratory birds, their parts, nests, or eggs, lawfully acquired prior to the effective date of Federal protection under the Migratory Bird Treaty Act (16 U.S.C. 703-711) may be possessed or transported without a Federal permit, but may not be imported, exported, purchased, sold, bartered, or offered for purchase, sale, trade, or barter, and all shipments of such birds must be marked as provided by 18 U.S.C. 44 and §14.81 of this subchapter: Provided, That no exemption from any statute or regulation shall accrue to any of such birds. (b) This Part 21, except for §21.22 (banding or marking permits), does not apply to the bald eagle (Haliaeetus leucocephalus) or the golden eagle (Aquila chrysaetos) or the golden eagle (Aquila chrysaetos) or the golden eagle (Aquila chrysaetos) or the golden eagle (Aquila chrysaetos) for which regulations are provided in Part 22 of this subchapter. (c) The provisions of this part are in addition to and are not in lieu of other regulations of this Subchapter B which may require a permit or prescribe additional restrictions or conditions for the importation, exportation, and interstate transportation of wildlife (see also Part 13.)

Subpart C—Specific Permit Provisions

§ 21.11 General permit requirements.

No person shall take, possess, transport, sell, purchase, barter, or offer for sale, purchase or barter, export or import 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 or as permitted by regulations in this part or Part 20 (the hunting regulations).

§ 21.12 General exception to permit requirements.

The following exceptions to the permit requirement are allowed:
(a) Employees of the Department of the Interior 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 necessary in performing their official duties. (b) State game departments, municipal game farms or parks, and public museums, public zoological parks, 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, or 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. These records shall be maintained on a calendar year basis and shall be retained for a period of 5 years following the end of the calendar year covered by the records.

§ 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, exported (but not imported), 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 5 weeks of age and all such ducks hatched, reared, and retained in captivity thereafter shall be so marked prior to reaching 5 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.
(c) Banding of one metatarsus with a seamless metal band. (d) Tattooing of a readily discernible number or letter or combination thereof on the web of one foot.
shall be physically marked prior to shooting. Such birds may be killed by sale or disposal regardless of whether applicable hunting regulations govern shooting only in accordance with all applicable age or not they have attained 6 weeks of age.

(b) All progeny of such birds or eggs hatched, reared and retained in captivity must be physically marked as defined in §21.13(b).

(c) No such birds or eggs or any progeny or eggs thereof may be disposed of by any means, alive or dead, to any other person unless a waterfowl sale and disposal permit has first been secured authorizing such disposal. Provided, that bona fide clubs, hotels, restaurants, boarding houses, and dealers in meat and game may serve or sell to their customers the carcass of any such birds which they have acquired from the holder of a valid waterfowl sale and disposal permit.

(d) Lawfully possessed and properly marked birds may be killed, in any number, at any time or place, by any means except 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, with the confines of any premises operated as a shooting preserve under State license, permit, or authorization; or they may be taken 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 of the hunting regulations (Part 20 of this Subchapter) or the Migratory Bird Hunting Stamp Act (dusk 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.

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

Any person may, without a permit, lawfully acquire captive-reared and properly marked migratory waterfowl of all species other than mallard ducks, alive or dead, or their eggs, and possess and transport such birds or eggs and any progeny or eggs thereof for solely for his own use subject to the following conditions and restrictions:

(a) Such birds, alive or dead, or their eggs may be lawfully acquired only from holders of valid waterfowl sale and disposal permits except that properly marked carcasses of such birds may also be lawfully acquired as provided under paragraph (c) of this section.

(b) All progeny of such birds or eggs hatched, reared and retained in captivity must be physically marked as defined in §21.13(b).

(c) No such birds or eggs or any progeny or eggs thereof may be disposed of by any means, alive or dead, to any other person unless a waterfowl sale and disposal permit has first been secured authorizing such disposal: Provided, That bona fide clubs, hotels, restaurants, boarding houses, and dealers in meat and game may serve or sell to their customers the carcass of any such birds which they have acquired from the holder of a valid waterfowl sale and disposal permit.

(d) Lawfully possessed and properly marked birds may be killed, in any number, at any time or place, by any means except 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, the marked foot or wing must remain attached to each carcass, unless such carcasses were marked as provided in §21.25(c)(4) and the foot or wing removed prior to acquisition.

(f) When any such birds, alive or dead, or their eggs are acquired from a waterfowl sale and disposal permittee, the permittee shall furnish a copy of Form 3-186, Notice of Waterfowl Sale or Transfer, indicating all information required by the form and the method or methods by which individual birds are marked as required by §21.25(c)(2). The buyer shall retain the Form 3-186 on file for the duration of his possession of such birds or eggs or progeny or eggs thereof.

§21.21 Import and export permits.

(a) Permit requirement. (1) A permit from the U.S. Department of Agriculture is required before any live migratory birds or eggs of the family Anatidae (wild ducks, geese, brant, and swans) may be imported. The permit required by this paragraph may be obtained by letter of application addressed to USDA—ARS—ANH, Import—Export Animals and Products, Hyattsville, Md. 20782.

(2) An importation permit is required before any live birds other than waterfowl or their eggs, or dead migratory birds, or their parts, nests, or eggs may be imported. Exempted from the permit required by this paragraph are: (i) Live birds of the family Anatidae, the importation of which is regulated by the preceding paragraph and (ii) migratory birds taken pursuant to the migratory bird hunting regulations, part 20 of this subchapter.

(b) A permit is required before any migratory birds, or their parts, nests, or eggs may be exported. Provided that captive-reared mallards may be exported without a permit as provided in §21.13.

(b) Application procedures. Applications for permits to import or export migratory birds shall be submitted to the appropriate Special Agent in Charge (see §13.11(b) of this subchapter). Each such application must contain the general information and certification required by §21.12(a) of this subchapter plus the following additional information:

(1) Whether importation or exportation is requested;

(2) Species and numbers of migratory birds or their parts, nests, or eggs to be imported or exported;

(3) Name and address of the person from whom such birds are being imported or to whom they are being exported;

(4) Purpose for which importation or exportation is being made;

(5) Estimated date of arrival or departure of shipment, and the port of entry or exit through which the shipment will be imported or exported; and

(6) Federal and State permit numbers and type of permits authorizing possession, acquisition, or disposition of such birds, their parts, nests, or eggs where such a permit is required.

(c) Additional permit conditions. In addition to the general conditions set forth in Part 13 of this Subchapter B, import and export permits shall be subject to the following conditions:

In addition to any reporting requirement set forth in the permit, a report of the importations or exports made under authority of such permit shall be submitted in writing to the Director. Such report must be postmarked or address delivered no later than 10 days following such importation or exportation.

§21.22 Banding or marking permits.

(a) Permit requirement. A banding or marking permit is required before
any person may capture migratory birds for banding or marking purposes or use official bands issued by the Service for banding or marking any migratory bird.

(5) Application procedures. Applications for banding or marking permits shall be submitted by letter of application addressed to the Bird Banding Laboratory, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Laurel, Maryland 20810. Each such application shall contain the general information and certification set forth by §13.12(a) of this subchapter plus the following additional information:

(1) Species and numbers proposed to be banded or marked;
(2) Purpose of banding or marking;
(3) State or States in which authorization is requested; and
(4) Name and address of the public, scientific, or educational institution to which any specimens will be donated that are salvaged pursuant to paragraphs (c) (3) and (4) of this section.

(c) Additional conditions. In addition to the general conditions set forth in Part 13 of this Subchapter B, banding or marking permits shall be subject to the following conditions:

(1) The banding of migratory birds shall only be by official numbered leg bands issued by the Bureau. The use of any other band, clip, dye, or other method of marking is prohibited unless specifically authorized in the permit.
(2) All traps or nets used to capture migratory birds for banding or marking purposes shall have attached thereto a tag or label clearly showing the name and address of the permittee and his permit number, or the area in which such traps or nets are located must be posted with notice of banding or marking operations (Form 3-1155, available upon request from the Bird Banding Laboratory, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Laurel, Md. 20810) which shall bear the name and address of the permittee and the number of his permit.
(3) The holder of a banding or marking permit may salvage, for the purpose of donating to a public scientific or educational institution, birds killed or found dead as a result of the permittee's normal banding operations, and casualties from other causes. All dead birds salvaged under authority of a migratory bird banding or marking permit must be donated and transferred to a public scientific or educational institution at least every 6 months or within 60 days of the time such permit expires or is revoked, unless the permittee has been issued a special permit authorizing possession for a longer period of time.

(4) Permittees must keep accurate records of their operations and file reports as set forth in the North American Bird Banding Manual, or supplements thereto, in accordance with instructions contained therein.

(d) Tenure of permits. Banding or marking permits are valid for a period of 2 years from the date of issue, unless otherwise stated on the face of the permit.

§21.23 Scientific collecting permits.

(a) Permit requirement. A scientific collecting permit is required before any person may take, transport, or possess migratory birds, their parts, nests, or eggs for scientific research or educational purposes.

(b) Application procedures. Applications for scientific collecting permits shall be submitted to the appropriate Special Agent in Charge (See: §13.11(b) of this subchapter). Each such application shall contain the general information and certification required by §13.12(a) of this subchapter plus the following additional information:

(1) Species and numbers of migratory birds or their parts, nests, or eggs to be taken or acquired when it is possible to determine same in advance;
(2) Location or locations where such scientific collecting is proposed;
(3) Statement of the purpose and justification for granting such a permit, including an outline of any research project involved;
(4) Name and address of the public, scientific, or educational institution to which all specimens ultimately will be donated; and
(5) If a State permit is required by State law, a statement as to whether or not the applicant possesses such State permit, giving its number and expiration date.

(c) Additional permit conditions. In addition to the general conditions set forth in Part 13 of this Subchapter B, scientific collecting permits shall be subject to the following conditions:

(1) All specimens taken and possessed under authority of a scientific collecting permit must be donated and transferred to the public scientific or educational institution designated in the permit application within 60 days following the date such permit expires or is revoked, unless the permittee has been issued a special permitted possession for a longer period of time.
(2) Unless otherwise provided on the permit, all migratory game birds taken pursuant to a scientific collecting permit during the open hunting season for such birds must be in conformity with Part 20 of this subchapter.

(3) Unless specifically stated on the permit, a scientific collecting permit does not authorize the taking of live migratory birds from the wild.

(d) Tenure of permit. The tenure of a scientific collecting permit shall be from date of issue through the 31st day of December of the second full calendar year following the year of issue unless a different period of time is prescribed in the permit.

§21.24 Taxidermist permits.

(a) Permit requirement. A taxidermist permit is required before any person may perform taxidermy services on migratory birds or their parts, nests, or eggs for any person other than himself.

(b) Application procedures. Application for taxidermist permits shall be submitted to the appropriate Special Agent in Charge (See: §13.11(b) of this subchapter). Each such application shall contain the general information and certification set forth by §13.12(a) of this subchapter plus the following additional information:

(1) The address of premises where taxidermist services will be provided;
(2) A statement of the applicant's qualifications and experience as a taxidermist; and
(3) If a State permit is required by State law, a statement as to whether or not the applicant possesses such State permit, giving its number and expiration date.

(c) Permit authorizations. A permit authorizes a taxidermist to:

(1) Receive, transport, hold in custody or possession, mount or otherwise prepare, migratory birds, and their parts, nests, or eggs, and return them to another.
(2) Sell properly marked, captive reared migratory waterfowl which he has lawfully purchased and mounted. Such mounted birds may be placed on consignment for sale and may be possessed by such consignee for the purpose of sale.

(d) Additional permit conditions. In addition to the general conditions set forth in Part 13 of this Subchapter B, taxidermist permits shall be subject to the following conditions:

(1) Permittees must keep accurate records of operations, on a calendar year basis, showing the names and addresses of persons from and to whom migratory birds or their parts, nests, or eggs were received or delivered, the
number and species of such, and the
dates of receipt and delivery. In addi-
tion to the other records required by
this paragraph, the permittee must
maintain in his files, the original of
the completed Form 3-186. Notice of
Waterfowl Sale or Transfer, confirm-
ing his acquisition of captive reared,
properly marked migratory waterfowl
from the holder of a current water-
fowl sale and disposal permit.

(2) Notwithstanding the provisions of paragraph (c) of this section, the re-
cipient, possession, and storage by a
taxidermist of any migratory game
birds taken by another by hunting is
not authorized unless they are tagged
as required by § 20.36 of this sub-
chapter. The required tags may be re-
moved during the taxidermy oper-
ations but must be retained by the
taxidermist with the other records re-
quired to be kept and must be reat-
tached to the mounted specimen after
mounting. The tag must then remain
attached until the mounted specimen
is delivered to the owner.

(c) Tenure of permit. The tenure of
taxidermist permits or renewals there-
of shall be from date of issue through
the 31st day of December of the
second full calendar year following
the year of issue.

§ 21.25 Waterfowl sale and disposal per-
mits.

(a) Permit requirement. A waterfowl
sale and disposal permit is required
before any person may lawfully sell,
trade, donate, or otherwise dispose of,
to another person, any species of cap-
tive-reared and properly marked mi-
gatory waterfowl or their eggs, except
that such a permit is not required for
such sales or disposals of captive-
reared and properly marked mallard
ducks or their eggs.

(b) Application procedures. Applica-
tions for waterfowl sale and disposal
permits shall be submitted to the ap-
propriate Special Agent in Charge (see
§ 13.1Kb) of this subchapter. Each
such application must contain the
general information and certifica-
tion required in § 13.12(a) of this sub-
chapter, plus the following additional
information:

(1) A description of the area where
waterfowl are to be kept;
(2) Species and numbers of water-
fowl now in possession and a state-
ment showing from whom these were
obtained;
(3) A statement indicating the
method by which individual birds are
marked as required by the provisions
of this Part 21; and
(4) If a State permit is required by
State law, a statement as to whether
or not the applicant possesses such
State permit, giving its number and
expiration date.

(c) Additional permit conditions. In
addition to the general conditions set
forth in Part 13 of this Subchapter B,
waterfowl sale and disposal permits
shall be subject to the following condi-
tions:

(1) Permittees may not take migrat-
ory waterfowl or their eggs from the
wild, and may not acquire such birds
or their eggs from any person not au-
thorized by a valid permit issued pur-
suant to this part to dispose of such
birds or their eggs.

(2) All live migratory waterfowl pos-
sessed in captivity under authority of
a valid waterfowl sale and disposal
permit shall have been, prior to 6
weeks of age, physically marked as de-
defined in § 21.13(b). All offspring of
such birds hatched, reared, and re-
tained in captivity shall be so marked
prior to attaining 6 weeks of age. The
preceding does not apply to captive
adult geese, swans, and brant which
were marked previous to March 1,
1967, by a V notch in the web of one
foot, nor to such birds held in captiv-
ity at public zoological parks, and
public scientific or educational institu-
tions.

(3) Such properly marked birds may
be killed, in any number, at any time
or place, by any means except shoot-
ing. Such birds may be killed by shoot-
ing only in accordance with all the ap-
licable hunting regulations governing
the taking of like species from the
wild.

(4) At all times during possession,
transportation, and storage until the
raw carcasses of such birds are finally
processed immediately prior to cook-
ning, smoking, or canning, the marked
foot or wing must remain attached to
each carcass: Provided, That permit-
tees who are also authorized to sell
game unprocessed, permit or author-
ization may remove the marked
foot or wing from the raw carcasses if
the number of his State license,
permit, or authorization has first been
legally stamped on the back of each
carcass, or the handling or wrapping
or container in which each carcass is
maintained, or each carcass is identi-
fied by a State band on leg or wing
pursuant to requirements of his State
license, permit, or authorization.

(5) Such properly marked birds,
avive or dead, or their eggs may be dis-
posed of in any number, at any time or
place, to any person: Provided,
That all such birds shall be physically
marked prior to sale or disposal re-
guardless of whether or not they have
attained 6 weeks of age: And provided
further, That on each date that any
such birds or their eggs, are trans-
ferred to another person, the permit-
tee must complete a Form 3-186,
Notice of Waterfowl Sale or Transfer,
indicating all information required by
the form and the method or methods
by which individual birds are marked
as required by § 21.25(c)(2).

§ 21.26 [Reserved]

§ 21.27 Special purpose permits.

Subject to the discretion and policies
of the Bureau, permits may be issued
for migratory bird activities outside
the scope of the standard form per-
mits of this part, upon a sufficient
showing of benefit to the migratory
bird resource, important research rea-
sons, humane, or other compelling jus-
tification.

(a) Permit requirement. A special
purpose permit is required before any
person may lawfully take, salvage, oth-
erwise acquire, transport, or possess
migratory birds, their parts, nests, or
eggs for any purpose not covered by
the standard form permits of this part.

(b) Application procedures. Applica-
tions for special purpose permits shall
be submitted to the appropriate Spe-
cial Agent in Charge (see § 13.11(b)
of this subchapter). Each such applica-
tion must contain the general informa-
tion and certification required by
§ 13.12(a) of this subchapter plus the
following additional information:

(1) A detailed statement describing
the project or activity which requires
issuance of a permit, purpose of such
project or activity, and a delineation
of the area in which it will be conduct-
ed. (Copies of supporting documents,
research proposals, and any necessary State permits should accompany the application;
(2) Numbers and species of migratory birds involved where same can reasonably be determined in advance; and
(3) Statement of disposition which will be made of migratory birds involved in the permit activity.
(c) Additional permit conditions. In addition to the general conditions set forth in Part 13 of this Subchapter B, special purpose permits shall be subject to the following conditions:
(1) Permittees shall file with the issuing officer an annual report of operations not later than January 31 of each year for the preceding calendar year or any portion thereof during which the permit was in force, describing in detail operations under the permit, number and species of migratory birds acquired, disposed of, and an inventory of those on hand as of December 31.
(2) Permittees shall make such other reports as may be requested by the issuing officer.
(d) Tenure of permits. The tenure of special purpose permits shall be limited to the dates which appear on its face, but in no case shall be longer than the second full calendar year ending December 31 following the date of issue.

§ 21.28 Falconry permits.
(a) Definitions. In addition to definitions contained in Part 10 of this subchapter, and unless the context requires otherwise, in this section and § 21.29:
"Raptor" means a live migratory bird of the family Accipitridae, other than the bald eagle (Haliaeetus leucocephalus), or of the family Falcenidae, or the great horned owl (Bubo virginianus) of the family Strigidae.
"Take" means to trap or capture, or attempt to trap or capture, a raptor for the purpose of falconry.
"Falconry" means the sport of taking quarry by means of a trained raptor.
(b) Permit requirements. A falconry permit is required before any person may take, transport, or possess raptors for falconry purposes.
(c) Application procedures. (1) An applicant who wishes to practice falconry in a State listed in § 21.29(k) and which has been designated as a participant in a joint Federal/State permit system must submit an application for a falconry permit to the Special Agent in Charge designated by § 13.11(b) of this subchapter. Each such application must incorporate a completed official application form provided by the Service, and must include all of the following information:
(i) The number of raptors the applicant possesses at the time the application is submitted and the species, age (if known), sex (if known), date of acquisition, and source of each; and
(ii) Any additional information required by the State to which the application is submitted.
(2) An applicant who wishes to practice falconry in a State listed in § 21.29(k) and designated as a non-participant in a joint Federal/State permit system must submit an application for a falconry permit to the Special Agent in Charge designated by § 13.11(b) of this subchapter. Each such application must incorporate a completed official application form provided by the Service, and must include all of the following information:
(i) The number of raptors which the applicant possesses at the time the application is submitted and the species, age (if known), sex (if known), date of acquisition, and source of each; and
(ii) A statement as to whether the applicant has applied for a State falconry permit, which was issued in § 21.29(k) of this subchapter and the name of the State and the date and any number of any application or other correspondence.
(d) Issuance criteria. Upon receiving an application completed in accordance with paragraph (c) of this section, the Director will decide whether a permit should be issued. In making his decision, the Director shall consider, in addition to the general criteria in § 13.21(b) of this subchapter, the following factors:
(1) Whether such action would have a significant effect on the wild population of raptors; and
(2) Whether the Service and a State listed in § 21.29(k) of this subpart concur that the applicant has met the appropriate requirements of State and Federal law and, in the case of a State listed in § 21.29(k) as a participant in a joint Federal/State permit system, that a joint Federal/State permit should be issued or, in the case of a State listed in § 21.29(k) as a non-participant in a joint Federal/State permit system, that separate permits should be issued by each authority.
(e) Permit conditions. In addition to the general conditions set forth in Part 13 of this subchapter, every permit issued under this section shall be subject to the following special conditions:
(1) A permittee may not take, transport, or possess golden eagle (Aquila chrysaetos) unless authorized in writing under § 22.24 of this subchapter;
(2) A permittee may not take, transport, or possess golden eagle (Aquila chrysaetos) unless authorized in writing under § 22.24 of this subchapter;
(3) A permittee may not take, transport, or possess golden eagle (Aquila chrysaetos) unless authorized in writing under § 22.24 of this subchapter;
(4) By July 31 of each year, a permittee shall submit a falconry report to the authority which issued the permit. A report shall contain the following:
(i) A listing of all raptors in his possession on June 30 of the year in which the report is filed by species, age (if known), and date and where or from whom acquired;
(ii) A listing of all raptors possessed or acquired since the previous annual report, but no longer possessed, by species, age (if known), and where and where or from whom acquired or given to, whether escaped, died, or released, and when the event occurred; and
(iii) Any other information required by the authority to which the report is submitted.
(f) Duration of permits. A permit or the renewal of a permit is valid when issued by the Service and expires on June 30 of the second calendar year after it is issued, unless a different period is specified on the permit or the renewal.

§ 21.29 Federal falconry standards.
(a) General. Under § 21.28(d) of this subpart, a falconry permit will not be issued by the Service unless there is a joint concurrence in that decision by the Service and an appropriate official of a State listed in paragraph (k) of this section. A person who has obtained a valid falconry permit issued by the Service may take, possess and transport raptors for falconry in a State only in accordance with laws and regulations of that State, and he may not violate any of the minimum Federal standards, restriction, conditions, or requirements of this section even if not adopted by the State in question.
(b) More restrictive State laws. Nothing in this section shall be construed to prevent a State from making and enforcing laws or regulations not inconsistent with the standards contained in any convention between the United States and any foreign country for the protection of raptors or with the Migratory Bird Treaty Act, and
which shall give further protection to raptors.

c) Renesto and determination Any State may obtain a review and determination of its existing laws or regulations relating to falconry from the Director within 90 days by submitting a written request to that effect to the Director accompanied by a complete set of the laws and regulations relating to falconry, certified as complete, true, and correct by the appropriate State official, and including sample permits. In order for the Director to make a determination that State laws or regulations meet Federal falconry standards, such laws or regulations must provide as a minimum those restrictions, conditions, and requirements contained in paragraphs (d) through (j) of this section. When a determination is made that State laws or regulations meet or exceed these standards, notice will be published in the Federal Register and the State will be listed in paragraph (k) of this section.

d) Permit State laws or regulations shall provide that a valid State falconry permit from either that State or an other State meeting Federal falconry standards and listed in paragraph (k) of this section is required before any person may take, possess, or transport a raptor for falconry purposes or practice falconry in that State.

e) Classes of permits. States may have any number of classes of falconry permits provided the standards are not less restrictive than the following:

(1) Apprentice (or equivalent) class

(2) General (or equivalent) class

(3) Master (or equivalent) class

(f) Examination. State laws or regulations shall provide that before any State falconry permit is issued the applicant shall be required to answer correctly at least 80 percent of the questions on a supervised examination provided or approved by the Service and administered by the State, relating to basic biology, care, and handling of raptors, literature, laws, regulations or other appropriate subject matter.

g) Facilities and equipment. State laws or regulations shall provide that before a State falconry permit is issued the applicant's raptor housing facilities and falconry equipment shall be inspected and certified by a representative of the State wildlife department as meeting the following standards:

(1) Facilities The primary consideration for raptor housing facilities whether indoors (mews) or outdoors (weathering area) is protection from the environment, predators, or undue disturbance. The applicant shall have the following facilities, except that depending upon climatic conditions, the issuing unit may require only one of the facilities described below.

(a) Indoors facilities (mews) shall be large enough to allow easy access for caring for the raptors housed in the facility. If more than one raptor is to be kept in the mews, the raptors shall be tethered or separated by partitions and the area for each bird shall be large enough to allow the 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 readily closed. The floor of the mews shall permit easy cleaning and shall be well drained. Adequate perches shall be provided.

(b) Outdoors facilities (weathering area) shall be fenced and covered with netting or wire, or roofed to protect the birds from disturbance and attack by predators except that perches more than 6'/2 feet high need not be covered or roofed. The enclosed area shall be large enough to insure the birds cannot 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.

(2) Equipment. The following items shall be in the possession of the applicant before he can obtain a permit or license:

(i) Jesses At least 1 pair of aluminum, jesses or similar type constructed of pliable, high-quality leather or suitable synthetic material to be used when any raptor is flown free. Traditional 1-piece jesses may be used on raptors when not being flown.

(ii) Leashes and swivels. At least 1 flexible, weather-resistant leash and 1 strong swivel of acceptable falconry design.

(iii) Bath container. At least 1 suitable container, 2 to 6 inches deep and wider than the length of the raptor, for drinking and bathing for each raptor.

(iv) Outdoor perches. At least 1 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) held and graduated to increments of not more than 1/16 ounce (15 gram) shall be provided.

(h) Maintenance. All facilities and equipment shall be kept at or above the preceding standards at all times.

(i) Transportation. Temporary holding. A raptor may be transported or held in temporary facilities which shall be provided with an adequate perch and protected from extreme temperatures and excessive disturbance, for a period not to exceed 30 days.

(j) Marking. (1) State laws or regulations shall provide that an inventory and description of all raptors held within that State, except those held for scientific or zoological purposes, shall be made and reported to that State within 90 days of the date when
that State is listed in paragraph (k) of this section. This paragraph applies to all such raptors, whether or not the owner intends to submit an application for a falconry permit.

(2) State laws or regulations shall provide that no raptor may be acquired after the date when that State provides that no raptor may be acquired by the permittee, whether or not the owner intends to submit an application for a falconry permit.

(3) State laws or regulations shall also provide that the alteration, counterfeiting or defacing of a marker is prohibited except that permittees may remove the rear tab on markers and may smooth any imperfect surface provided the integrity of the marker and numbering are not affected.

(i) Taking restrictions. State laws or regulations shall provide the following restrictions on the taking of raptors from the wild, as listed in paragraph (k) of this section.

(1) Young birds not yet capable of flight (eyasses) may only be taken by a General or Master Falconer during the period specified by the State and no more than two eyasses may be taken by the same permittee during the specified period.

(2) First-year (passage) birds may be taken only during the period specified by the State.

(3) No case shall the total of all periods of taking of eyasses or passage birds exceed 180 days during a calendar year, except that a marked raptor (or special purpose) permit may be used for falconry by General and Master falconers.

(j) Other restrictions. State laws or regulations shall provide the following restrictions or conditions:

(1) A person who possesses a lawfully acquired raptor before the enactment of these regulations and who fails to meet the permit requirements shall be allowed to retain the raptors. All such birds shall be identified with markers supplied by the Service and cannot be replaced if death, loss, release, or escape occurs.

(2) A person who possesses raptors before the enactment of these regulations, in excess of the number allowed under his class permit, shall be allowed to retain the extra raptors. All such birds shall be identified with markers supplied by the Service and no replacement can occur, nor may an additional raptor be obtained, until the number in possession is at least one less than the total number authorized by the class of permit held by the permittee.

(3) The falconry permit holder shall obtain written authorization from the appropriate State wildlife department before any species not indigenous to that State is intentionally released to the wild, at which time the marker from the released bird shall be removed and surrendered to the State wildlife department. The marker from an intentionally released bird which is indigenous to that State shall also be removed and surrendered to the State wildlife department. A standard Federal band shall be attached to such birds by the State or Service-authorized Federal bander whenever possible.

(4) Another person may care for the birds of a permittee if written authorization from the permittee accompanies the birds when they are transferred: Provided, That if the period of care will exceed thirty (30) days, the appropriate State wildlife department shall be informed in writing by the permittee of this action within three (3) days of the transfer and informed where the birds are being held, the reason for the transfer, who is caring for them, and approximately how many days they will be in the care of the second person; and

(5) Feathers that are molted or other feathers from birds held in captivity that die, may be retained and exchanged by permittees only for imping purposes.

(k) States Meeting Federal Falconry Standards. In accordance with this section, the Director has determined that the following States meet or exceed the minimum Federal standards for regulating the taking, possession, and transportation of raptors for the purpose of falconry as set forth herein.

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(Nor: States which are participants in a Joint Federal/State permit system will be designated by an asterisk.)

§ 21.41 Depredation permits.

(a) Permit requirement. Except as provided in §§ 21.42 through 21.46, a depredation permit is required before any person may take, possess, or transport migratory birds for depredation control purposes. No permit is required merely to scare or herd depredating migratory birds other than endangered or threatened species or bald or golden eagles.

(b) Applicant procedures. Applications for depredation permits shall be submitted to the appropriate Special Agent in Charge (see § 13.11(b) of this subchapter). Each such application must contain the general information and certification required by § 13.12(a) of this subchapter plus the following additional information:

(1) A description of the area where depredations are occurring;

(2) The nature of the crops or other interests being injured;

(3) The extent of such injury;

(4) The particular species of migratory birds committing the injury.

(c) Additional permit conditions. In addition to the general conditions set forth in Part 13 of this Subchapter B, depredation permits shall be subject to requires, in this section:

(1) Permittees may not kill migratory birds unless specifically authorized on the permit.

(2) Unless otherwise specifically authorized, when permittees are authorized to kill migratory birds they may do so only with a shotgun not larger than No. 10 gauge fired from the shoulder, and only on or over the threatened area or area described on the permit.

(3) Permittees may not use blinds, pits, or other means of concealment, decoys, duck calls, or other devices to lure or entice birds within gun range.

(4) All migratory birds killed shall be retrieved by the permittee and turned over to a Bureau representative or his designee for disposition to charitable or other worthy institutions for use as food, or otherwise disposed of as provided by law.

(5) Only persons named on the permit are authorized to act as agents of the permittee under authority of the permit.

(d) Tenure of permits. The tenure of depredation permits shall be limited to the dates which appear on its face, but in no case shall be longer than one year.

§ 21.42 Authority to issue depredation orders to permit the killing of migratory game birds.

Upon the receipt of evidence clearly showing that migratory game birds have accumulated in such numbers in a particular area as to cause or about to cause serious damage to agricultural, horticultural, and fish cultural interests, the Director is authorized to issue by publication in the FEDERAL REGISTER a depredation order to permit the killing of such birds under the following conditions:

(a) That such birds may only be killed by shooting with a shotgun not larger than No. 10 gauge fired from the shoulder, and only on or over the threatened area or areas;

(b) That shooting shall be limited to such time as may be fixed by the Director on the basis of all circumstances involved. If prior to termination of the period fixed for such shooting, the Director receives information that there no longer exists a serious threat to the area or areas involved, he shall without delay cause to be published in the FEDERAL REGISTER an order of revocation;

(c) That such migratory birds as are killed under the provisions of any depredation order may be used for food or donated to public museums or public scientific and educational institutions for exhibition, scientific, or educational purposes, but shall not be sold, offered for sale, bartered, or shipped for purpose of sale or barter, or be wantonly wasted or destroyed; Provided, That any migratory game birds which cannot be so utilized shall be disposed of as prescribed by the Director;

(d) That any order issued pursuant to this section shall not authorize the killing of the designated species of depredating birds contrary to any State laws or regulations. The order shall specify that it is issued as an emergency measure designed to relieve depredations only and shall not be construed as opening, reopening, or extending any open hunting season contrary to any regulations promulgated pursuant to section 3 of the Migratory Bird Treaty Act.

§ 21.43 Depredation order for blackbirds, cowbirds, grackles, cows, and magpies.

A Federal permit shall not be required to control yellow-headed red-winged, bi-colored red-winged, tri-colored red-winged, Red billed little bird, Brewer's blackbirds, cowbirds, all magpies, cows, and magpies, when found committing or about to commit depredations upon ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance:

Provided:

(a) That none of the birds killed pursuant to this section, nor their plumage, shall be sold or offered for sale, but may be possessed, transported, and otherwise disposed of or utilized;

(b) That any person exercising any of the privileges granted by this section shall permit at all reasonable times including during actual operations, any Federal or State game officer, warden, protector, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted; and shall furnish promptly to such officer whatever information he may require, concerning said operations;

(c) That nothing in this section shall be construed to authorize the killing of such birds contrary to any State laws or regulations; and that none of the privileges granted under this section shall be exercised unless the person possesses whatever permit as may be required for such activities by the State concerned.

[39 FR 1178, Jan 4, 1974, as amended at 42 FR 17122, Mar 31, 1977]

§ 21.44 Depredation order for designated species of depredating birds in California.

In any county in California in which meadowlarks, horned larks, golden-crowned, white-crowned, and other crowned sparrows, goldfinches, house finches, acorn woodpeckers, Lewis woodpeckers, and flickers are, under extraordinary conditions, seriously injurious to agricultural or other interests, the Commissioner of Agriculture may, without a permit, kill or cause to be killed under his general supervision such of the above migratory birds as may be necessary to safeguard any agricultural or horticultural crop in the county:

Provided:

(a) That such migratory birds shall be killed only when necessary to protect agricultural or horticultural crops from depredation; that none of the above migratory birds killed, or the parts thereof, or the plumage of such birds, shall be sold or removed from the area where killed; but that all such dead migratory birds shall be buried or otherwise destroyed within this area, except that any specimens needed for scientific purposes, as determined by the State or the Director shall not be destroyed.

(b) That any person exercising the privileges granted by this section shall keep records of the persons authorized by the Commissioner to kill such migratory birds, and the estimated number of such birds killed pursuant to the exercise of his authority, and the Commissioner shall submit a report thereof to the Director on or before December 31 of each year or whenever the Director so requests.

§ 21.45 Depredation order for depredating purple gallinules in Louisiana.

Landowners, sharecroppers, tenants, or their employees or agents, actually engaged in the production of rice in Louisiana, may, without a permit, shoot purple gallinules (Porphyrula martinica) when found committing or about to commit serious depredations to growing rice crops on the premises owned or occupied by such persons:

Provided:

(a) That purple gallinules may only be killed pursuant to this section between May 1 and August 15 in any year;

(b) That purple gallinules killed pursuant to this section shall not be transported or sold or offered for sale except that such transportation within the area, as may be necessary to bury or otherwise destroy the carcases of such birds is permitted: Provided, That the Director or the State agricultural department, college, or other public institution may requisition such purple gallinules killed as may be needed for scientific investigations:

Provided further, That any purple gallinules killed under authority of this section may also be donated to charitable institutions for food purposes.

(c) That any person exercising any of the privileges granted by this section shall permit at all reasonable times, including during actual operations, any Federal or State game officer, warden, protector, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted; and shall furnish promptly to such officer whatever information he may require, concerning said operations.

(d) That nothing in this section shall be construed to authorize the killing of such migratory birds contrary to any State laws or regulations; and that none of the privileges granted under this section shall be exercised unless the person possesses whatever permit
as may be required for such activities by the State of Louisiana.

(e) That any person authorized by this section to exercise the privileges granted therein shall maintain records of the number of birds killed on the premises and shall submit a report thereof, on or before December 31 of each year, to the Director.

§ 21.46 Depredation order for depredating scrub jays and Steiler's jays in Washington and Oregon.

Landowners, sharecroppers, tenants, or their employees or agents actually engaged in the production of nut crops in Washington and Oregon may, without a permit, take scrub jays (Aphelocoma coerulescens) and Steiler's jays (Cyanocitta stelleri) when found committing or about to commit serious depredations to nut crops on the premises owned or occupied by such persons: Provided:

(a) That scrub jays and Steiler's jays may only be taken pursuant to this section between August 1 and December 1 in any year, in the Washington counties of Clark, Cowlitz, and Lewis; and the Oregon counties of Benton, Clackamas, Lane, Linn, Marion, Multnomah, Polk, Washington, and Yamhill.

(b) That scrub jays and Steiler's jays taken pursuant to this section shall not be transported or sold or offered for sale except that, such transportation within the area, as may be necessary to bury or otherwise destroy the carcasses of such birds is permitted: Provided, That the Director of the State agricultural department, college, or other public institution may requisition such scrub jays and Steiler's jays killed as may be needed for scientific investigations.

(c) That such birds may be taken only by trapping or shooting and on areas where serious depredations are being or are about to be committed.

(d) That any person exercising any of the privileges granted by this section shall permit at all reasonable times, including during actual operations, any Federal or State game or deputy game agent, warden, protector, or other law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted; and shall furnish promptly to such officer whatever information he may require, concerning said operations.

(e) That nothing in this section shall be construed to authorize the killing of such migratory birds contrary to any State laws or regulations; and that none of the privileges granted under this section shall be exercised unless the person possesses whatever permit as may be required for such activities by the States of Washington and Oregon.

(f) That any person authorized by this section to exercise the privileges granted therein shall maintain records of the number of birds killed on the premises and shall submit a report thereof, on or before December 31 of each year, to the appropriate Special Agent in Charge (see § 10.22 of this subchapter).

[39 FR 31326, Aug. 28, 1974]