

§ 20.151 Purpose and scope.

The rules of this Subpart N apply to the issuance of the annual regulations establishing seasons, bag limits, and other requirements for the seasonal hunting of migratory birds. The rules of this Subpart N do not apply to the issuance of regulations under Part 21 of this title or under Subparts A-J and L-M of this Part 20.

§ 20.152 Definitions.

As used in this Subpart N:

(a) "Flyway Council" means the Atlantic, Mississippi, Central, or Pacific Flyway Council;

(b) "Regulations Committee" means the Migratory Bird Regulations Committee of the Fish and Wildlife Service; and

(c) "Significant," as used in reference to a communication or other form of information or data, means related to the merits of the regulation and received, utilized, or transmitted by an official of the Department who is or may reasonably be expected to be involved in the decisional process on the regulation.

§ 20.153 Regulations committee.

(a) *Notice of meetings.* Notice of each meeting of the Regulations Committee to be attended by any person outside the Department will be published in the FEDERAL REGISTER at least two weeks before the meeting. The notice will state the time, place, and general subject(s) of the meeting, as well as the extent of public involvement.

(b) *Public observation and written comment.* Each meeting of the Regulations Committee for which notice is published pursuant to paragraph(a) of this section will be open to the public for observation and the submission of written comments.

(c) *Public participation.* Except for the mid-summer meetings held in Washington, D.C., in conjunction with the public hearing on waterfowl and other late season frameworks, the public may participate in any meeting of the Regulations Committee for which notice is published pursuant to paragraph (a) of this section through the submission of oral statements that

comply with the rules stated in the notice.

(d) *Minutes of meetings.* Minutes will be made of each meeting of the Regulations Committee for which notice is published pursuant to paragraph (a) of this section.

§ 20.154 Flyway Councils.

(a) *Notice of meetings.* Notice of each meeting of a Flyway Council to be attended by any official of the Department will be published in the FEDERAL REGISTER at least two weeks before the meeting or as soon as practicable after the Department learns of the meeting. The notice will state the time, place, and general subject(s) of the meeting.

§ 20.155 Public file.

(a) *Establishment.* A public file will be established for each rulemaking to which this Subpart N is applicable.

(b) *Contents.* Except for information exempt from disclosure under 5 U.S.C. 552, a public file established pursuant to paragraph (a) of this section will contain:

(1) The minutes of Regulations Committee meetings made pursuant to paragraph (d) of § 20.153;

(2) Any written comments and other significant written communications which occur after the notice of proposed rulemaking;

(3) Summaries, identifying the source, of any significant oral communications which occur after the notice of proposed rulemaking; and

(4) Copies of or references to any other significant data or information.

PART 21—MIGRATORY BIRD PERMITS

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AUTHORITY: Migratory Bird Treaty Act, Sec. 3, Pub. L. 65-186; 40 Stat. 755 (16 U.S.C. 704); Sec. 3(h)(3), Pub. L. 95-616, 92 Stat. 3112 (16 U.S.C. 712).

SOURCE: 39 FR 1178, Jan. 4, 1974, unless otherwise noted.

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, 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).

[39 FR 1178, Jan. 4, 1974, as amended at 46 FR 42680, Aug. 24, 1981]

§ 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 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 offspring 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*) 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).

(d) Migratory birds, their parts, nests or eggs which are lawfully possessed may be imported or exported without a Federal migratory bird permit.

[39 FR 1178, Jan. 4, 1974, as amended at 46 FR 42680, Aug. 24, 1981]

Subpart B—General Requirements and Exceptions**§ 21.11 General permit requirements.**

No person shall take, possess, transport, sell, purchase, barter, or offer for sale, purchase or barter, any migratory bird, or the parts, nests, or eggs of such bird except as may be permitted under the terms of a valid permit issued pursuant to the provisions of this part and Part 13, or as permitted by regulations in this part or Part 20 (the hunting regulations).

[39 FR 1178, Jan. 4, 1974, as amended at 46 FR 42680, Aug. 24, 1981]

§ 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 as 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, and disposed of by any person without a permit, subject to the following conditions, restrictions, and requirements:

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

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

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

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

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

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

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

(d) When so marked, such live birds may be killed, in any number, at any time or place, by any means except shooting. Such birds may be killed by shooting only in accordance with all applicable hunting regulations governing the taking of mallard ducks from the wild: *Provided*, That such birds may be killed by shooting, in any number, at any time, within the confines of any premises operated as a shooting preserve under State license, permit, or authorization; or they may be shot, in any number, at any time or place, by any person for bona fide dog training or field trial purposes: *Provided further*, That the provisions of the hunting regulations (Part 20 of this subchapter) and the Migratory Bird Hunting Stamp Act (duck stamp requirement) shall not apply to shooting preserve operations, as provided for in this paragraph, or to bona fide dog training or field trial operations.

(e) At all times during possession, transportation, and storage until the raw carcasses of such birds are finally processed immediately prior to cooking, smoking, or canning, the marked

foot or wing must remain attached to each carcass: *Provided*, That persons, who operate game farms or shooting preserves under a State license, permit, or authorization for such activities, may remove the marked foot or wing when either the number of his State license, permit, or authorization has first been legibly stamped in ink on the back of each carcass and on the container in which each carcass is maintained, or each carcass is identified by a State band on leg or wing pursuant to requirements of his State license, permit, or authorization. When properly marked, such carcasses may be disposed of to, or acquired from, any person and possessed and transported in any number at any time or place.

[40 FR 28459, July 7, 1975, as amended at 46 FR 42680, Aug. 24, 1981]

§ 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 therefrom 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, unless lawfully acquired outside of the United States, 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. Such birds may be killed by shooting only in accordance with all applicable hunting regulations governing the taking of like species from the wild. (See Part 20 of this subchapter.)

(e) At all times during possession, transportation, and storage until the raw carcasses of such birds are finally processed immediately prior to cooking, smoking, or canning, 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.

[40 FR 28459, July 7, 1975, as amended at 46 FR 42680, Aug. 24, 1981]

Subpart C—Specific Permit Provisions

§ 21.21 [Reserved]

§ 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.

(b) *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 gen-

eral 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 permit 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 operations posters (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 must 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 purpose permit (See § 21.27) authorizing 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 conformance 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.

(4) In addition to any reporting requirement set forth in the permit, a report of the scientific collecting activities conducted under authority of such permit shall be submitted to the issuing officer on or before January 10 of each calendar year following the year of issue unless a different date is stated in the permit.

(d) *Tenure of permit.* The tenure of scientific collecting permits 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 must 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 acquired 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 addition 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, confirming his acquisition of captive reared, properly marked migratory waterfowl from the holder of a current waterfowl sale and disposal permit.

(2) Notwithstanding the provisions of paragraph (c) of this section, the receipt, 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 subchapter. The required tags may be removed during the taxidermy operations but must be retained by the taxidermist with the other records required to be kept and must be reattached to the mounted specimen after mounting. The tag must then remain attached until the mounted specimen is delivered to the owner.

(e) *Tenure of permit.* The tenure of taxidermist permits or renewals thereof 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 permits.

(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 captive-reared and properly marked migratory 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.* Applications for waterfowl sale and disposal 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 in § 13.12(a) of this subchapter, plus the following additional information:

(1) A description of the area where waterfowl are to be kept;

(2) Species and numbers of waterfowl now in possession and a statement 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 conditions:

(1) Permittees may not take migratory waterfowl or their eggs from the wild, and may not acquire such birds or their eggs from any person not authorized by a valid permit issued pursuant to this part to dispose of such birds or their eggs.

(2) All live migratory waterfowl possessed 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-

finied in § 21.13(b). All offspring of such birds hatched, reared, and retained 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 captivity at public zoological parks, and public scientific or educational institutions.

(3) Such properly marked birds may be killed, in any number, at any time or place, by any means except shooting. Such birds may be killed by shooting only in accordance with all the applicable 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 cooking, smoking, or canning, the marked foot or wing must remain attached to each carcass: *Provided*, That permittees who are also authorized to sell game under a State license, permit or authorization may remove the marked foot or wing from the raw carcasses if 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 wrapping or 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.

(5) Such properly marked birds, alive or dead, or their eggs may be disposed 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 regardless 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 transferred to another person, the permittee 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). (Service will provide supplies of form.) The permittee will furnish the original of

completed Form 3-186 to the person acquiring the birds or eggs; retain one copy in his files as a record of his operations; attach one copy to the shipping container for the birds or eggs, or include the copy in shipping documents which accompany the shipment; and, on or before the last day of each month, mail two copies of each form completed during that month to the office of the Fish and Wildlife Service which issued his permit.

(6) Permittees shall submit an annual report within 10 days following the 31st day of December of each calendar year to the office of the Fish and Wildlife Service which issued the permit. The information provided shall give the total number of waterfowl by species in possession on that date and the method or methods by which individual birds are marked as required by the provisions of this Part 21.

(d) *Tenure of permits.* The tenure of waterfowl sale and disposal permits or renewals thereof shall be from date of issue through the 31st day of December of the second full calendar year following the year of issue.

[40 FR 28460, July 7, 1975]

§ 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 permits of this part, upon a sufficient showing of benefit to the migratory bird resource, important research reasons, humane, or other compelling justification.

(a) *Permit requirement.* A special purpose permit is required before any person may lawfully take, salvage, otherwise 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.* Applications for special purpose 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 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 conducted. (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 *Falconidae*, 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 appropriate agency of that State. Each such application must incorporate a completed official form approved 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 from a State listed in § 21.29(k) of this subchapter and the name of the State and the date and file 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 a golden eagle (*Aquila chrysaetos*) unless authorized in writing under § 22.24 of this subchapter;

(2) A permittee may trade or transfer a raptor to another permittee if the transaction occurs entirely within a State and no money or other consideration is involved. A permittee may trade or transfer a raptor to another permittee in an interstate transaction if the prior written approval of the State agency which issued the permit is obtained and no money or other consideration is involved in the transaction.

(3) A permittee may not take, possess, or transport a raptor in violation of the restrictions, conditions, and requirements of § 21.29 of this subpart; and

(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, marker number, sex (if known), 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, marker number, sex (if known), age (if known), date 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.

[41 FR 2238, Jan. 15, 1976]

§ 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) *Review 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 another 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.*

(i) Permittee shall be at least 14 years old;

(ii) A sponsor who is a holder of a General or Master Falconry Permit or equivalent class is required for the first two years in which an apprentice permit is held, regardless of the age of the permittee. A sponsor may not have more than three apprentices at any one time;

(iii) Permittee shall not possess more than one raptor and may not obtain more than one raptor for replacement during any 12-month period; and

(iv) Permittee shall possess only an American kestrel (*Falco sparverius*), a red-tailed hawk (*Buteo jamaicensis*), a red-shouldered hawk (*Buteo lineatus*), or in Alaska a goshawk (*Accipiter gentilis*).

(2) *General (or equivalent) class.* (i) A permittee shall be at least 18 years old;

(ii) A permittee shall have at least two years experience in the practice of falconry at the apprentice level or its equivalent;

(iii) A permittee may not possess more than two raptors and may not obtain more than two raptors for re-

placement birds during any 12-month period; and

(iv) A permittee may not take, transport, or possess any golden eagle or any species listed as threatened or endangered in Part 17 of this subchapter.

(3) *Master (or equivalent) class.* (i) An applicant shall have at least five years experience in the practice of falconry at the general class level or its equivalent.

(ii) A permittee may not possess more than three raptors, and may not obtain more than two raptors for replacement birds during any 12-month period;

(iii) A permittee may not take, transport, or possess any species listed as endangered in Part 17 of this subchapter;

(iv) A permittee may not take, transport, or possess any golden eagle for falconry purposes unless authorized in writing under § 22.24 of this subchapter;

(v) A permittee may not take, transport, or possess as part of his three-bird limitation, more than one raptor listed as threatened in Part 17 of this subchapter, and then only in accordance with Part 17 of this subchapter.

(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 de-

pending upon climatic conditions, the issuing authority may require only one of the facilities described below.

(i) *Indoor 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 easily closed. The floor of the mews shall permit easy cleaning and shall be well drained. Adequate perches shall be provided.

(ii) *Outdoor 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 6½ 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 Alymeri 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 $\frac{1}{2}$ ounce (15 gram) shall be provided.

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

(4) *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.

(h) *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 is listed in paragraph (k) of this section unless the person acquiring the raptor first obtains a numbered, non-reusable marker supplied by the Service, and attaches it to the raptor immediately upon acquisition.

(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:

(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) In 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 may be retrapped at any time; and

(4) Only American kestrels (*Falco sparverius*) and great-horned owls (*Bubo virginianus*) may be taken when over one year old, except that any raptor other than endangered or threatened species taken under a depredation (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) A 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 bird band shall be attached to such birds by the State or Service-authorized Federal bird 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 those 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.

- | | |
|----------------|-----------------|
| *Alabama | *Missouri |
| *Alaska | *Montana |
| *Arizona | *Nebraska |
| *Arkansas | *Nevada |
| *California | *New Jersey |
| *Colorado | *New Mexico |
| *Florida | *New York |
| *Georgia | *North Dakota |
| *Idaho | *North Carolina |
| *Illinois | *Oklahoma |
| *Indiana | *Oregon |
| *Iowa | *Pennsylvania |
| *Kentucky | *South Carolina |
| *Louisiana | *South Dakota |
| *Maine | *Texas |
| *Massachusetts | *Utah |
| *Maryland | *Virginia |
| *Michigan | *Washington |
| *Minnesota | *Wisconsin |
| *Mississippi | *Wyoming |

[NOTE: States which are participants in a joint Federal/State permit system will be designated by an asterisk.]

[41 FR 2238, Jan. 15, 1976; 41 FR 8053, Feb. 24, 1976, as amended at 42 FR 42353, Aug. 23, 1977; 43 FR 968, Jan. 5, 1978; 43 FR 10566, Mar. 14, 1978; 43 FR 34150, Aug. 3, 1978; 43 FR 57606, Dec. 8, 1978; 45 FR 25066, Apr. 14, 1980; 45 FR 70276, Oct. 23, 1980]

Subpart D—Control of Depredating Birds

§ 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; and
- (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.

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

§ 21.42 Authority to issue depredating 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, crows and magpies.

A Federal permit shall not be required to control yellow-headed red-winged, bi-colored red-winged, tri-colored red-winged, Rusty and Brewer's blackbirds, cowbirds, all grackles, crows, 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 or deputy game agent, 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

§ 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 Commissioner of Agriculture 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 (*Jonornis 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 be-

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tween 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 carcasses 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 or deputy game agent, 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 Steller'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 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*:

(a) That scrub jays and Steller'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 Steller'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 Steller'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]

PART 22—EAGLE PERMITS

Subpart A—Introduction

Sec.

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- 22.2 Scope of regulations.
- 22.3 Definitions.

Subpart B—General Requirements

- 22.11 General permit requirements.
- 22.12 General restrictions.
- 22.13 [Reserved]

Subpart C—Eagle Permits

- 22.21 Permits for scientific or exhibition purposes.
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- 22.23 Permits to take depredating eagles.
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- 22.31 Golden eagle depredations control order on request of Governor of a State.
- 22.32 Conditions and limitations on taking under depredation control order.

AUTHORITY: Eagle Protection Act, sec. 2, 54 Stat. 251, as amended by 76 Stat. 1246, 86 Stat. 1065, and 92 Stat. 3114 (16 U.S.C. 668a).

SOURCE: 39 FR 1183, Jan. 4, 1974, unless otherwise noted.

Subpart A—Introduction

§ 22.1 Purpose of regulations.

The regulations contained in this part govern the taking, possession, and transportation of bald and golden eagles for scientific, educational, and depredations control purposes and for the religious purposes of Indian tribes. The import, export, purchase, sale, or barter of bald or golden eagles, their parts, nests, or eggs is not permitted by any regulation of this Subchapter B.