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

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

### § 21.14 Permit exceptions for captive-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.)

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(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]

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

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(1) Except to the extent authorization is withdrawn or suspended pursuant to paragraph (b) of this section, the Armed Forces may take migratory birds incidental to military readiness activities provided that,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

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

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

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

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

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

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

(C) Are economically feasible; and

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

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

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

(3) When the Secretary proposes to withdraw authorization with respect to a specific military readiness activity, the Secretary will first provide written notice to the Secretary of Defense. Any such notice will include the basis for the Secretary's determination that withdrawal is warranted in accordance with the criteria contained in para-

graph (b)(2) of this section, and will identify any conservation measures or other measures that would, if implemented by the Armed Forces, permit the Secretary to cancel the proposed withdrawal of authorization.

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

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

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

(7) The responsibilities of the Secretary under paragraph (b) of this section may be fulfilled by his/her

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delegatee who must be an official nominated by the President and confirmed by the Senate.

[72 FR 8949, Feb. 28, 2007]

### Subpart C—Specific Permit Provisions

#### §21.21 Import and export permits.

(a) *Permit requirement.* (1) Except for migratory game birds imported in accordance with the provisions of subpart G of part 20 of this subchapter B, an import permit is required before any migratory birds, their parts, nests, or eggs may be imported.

(2) An export permit is required before any migratory birds, their parts, nests, or eggs may be exported: *Provided*, that captive-reared migratory game birds that are marked in compliance with the provisions of §21.13(b) may be exported to Canada or Mexico without a permit. *Provided further*, that raptors lawfully possessed under a falconry permit issued pursuant to §21.28 of this part may be exported to or imported from Canada or Mexico without a permit for the purposes of attending bona fide falconry meets, as long as the person importing or exporting the birds returns the same bird(s) to the country of export following any such meet. Nothing in this paragraph, however, exempts any person from the permit requirements of parts 17, 22, and 23 of this subchapter.

(b) *Application procedures.* Applications for permits to import or export migratory birds shall be submitted to the appropriate issuing office (see §§10.22 and 13.11(b) of this subchapter). Each such application must contain the general information and certification required by §13.12(a)(5) of this subchapter plus the following additional information:

- (1) Whether importation or exportation is requested;
- (2) The species and numbers of migratory birds or their parts, nests, or eggs to be imported or exported;
- (3) The name and address of the person from whom such birds are being imported or to whom they are being exported;
- (4) The purpose of the importation or exportation;

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(5) The estimated date of arrival or departure of the shipment(s), 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 any requirements set forth in the permit.

(d) *Term of permit.* An import or export permit issued or renewed under this part expires on the date designated on the face of the permit unless amended or revoked, but the term of the permit shall not exceed three (3) years from the date of issuance or renewal.

[54 FR 38151, Sept. 14, 1989]

#### §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 20708. 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 permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter B,