

instructions for submitting comments on Docket No. FWS-R9-MB-2010-0037.

• *U.S. Mail or hand delivery:* Public Comments Processing, Attn: FWS-R9-MB-2010-0037; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, Suite 222; Arlington, VA 22203-1610.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information that you provide. See the **Public Comments** section below for more information.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703-358-1825.

SUPPLEMENTARY INFORMATION:

Background

The muscovy duck is native to Mexico, and Central and South America. However, the species has recently expanded its range into Hidalgo, Starr, and Zapata Counties in south Texas. As a result of this natural expansion into the United States, on March 1, 2010, we published a final rule (75 FR 9282) adding the muscovy duck (*Cairina moschata*) to the List of Migratory Birds protected under the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–12).

The muscovy duck has been introduced through human intervention to many parts of the United States. These feral muscovy ducks may appear much different than the muscovy duck in its native range, but biologically they are still *Cairina moschata*, and thus are accorded the protection of the MBTA. To reduce the spread of muscovy ducks in the wild, 50 CFR 21.14(g) prohibits the release of captive-reared muscovy ducks to the wild.

On March 1, 2010, we also published a final rule that, among other things, established a control order to manage feral populations (75 FR 9316). The control order at 50 CFR 21.54 allows landowners and Federal, State, Tribal, and local wildlife management agencies, and their tenants, employees, or agents, to remove or destroy muscovy ducks (including hybrids of muscovy ducks), their nests, and eggs, anywhere outside their natural range, without a Federal migratory bird permit. Any muscovy duck removed live under this order must be: (1) placed with a facility where it will be maintained under conditions that will prevent its escape to the wild, (2) donated to public museums or public institutions for scientific or educational purposes, or (3) euthanized

and disposed of by burying or incineration.

In that March 1, 2010, final rule (75 FR 9316), we also amended the regulations at 50 CFR 21 to prohibit sale, transfer, or propagation of muscovy ducks for hunting and any other purpose other than for sale as food. This action required revision of regulations governing permit exceptions for captive-reared migratory waterfowl other than mallard ducks and governing waterfowl sale and disposal permits, as well as the addition of the control order described above. We also rewrote the affected regulations to make them easier to understand.

After that final rule (75 FR 9316) was published, we were contacted by many individuals concerned about provisions in the rule that prohibit long-established muscovy duck activities, particularly keeping the ducks for exhibition, or as barnyard animals for personal consumption and egg production (rather than for sale as food). This document proposes changes to the regulations to address these concerns.

Specific Proposed Changes to 50 CFR 21.14

In 50 CFR 21.14, we would remove the requirement that muscovy ducks may not be acquired, possessed, propagated, sold, or transferred, except for sale as food. We would add the following provisions to the regulations:

- You do not need a permit to acquire, possess, or sell properly-marked, captive-reared muscovy ducks or their eggs;
- You may not release muscovy ducks to the wild or to any location used by wild ducks; and
- You may not sell or distribute muscovy ducks as pets. Muscovy ducks have been sold as pets and given as prizes, activities we intend to disallow. However, we do not consider muscovy show ducks to be pets.

When we published the proposed rule to change the regulations for muscovy ducks on August 22, 2008 (73 FR 49626), we were unaware that muscovy ducks are kept as barnyard animals, for consumption by their owners, and for egg production. We were not made aware of these issues until after our March 1, 2010, final rule was published (75 FR 9316). The changes we are proposing in this document would allow the continued keeping and production of muscovy ducks that were restricted by the March 1, 2010 final rule. We expect that these proposed regulations changes would have a very minimal impact on populations of wild ducks, and would facilitate

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[Docket No. FWS-R9-MB-2010-0037]
[91200-1232-0000]

RIN 1018-AX24

Migratory Bird Permits; Revisions to the Waterfowl Permit Exceptions and Waterfowl Sale and Disposal Permits Regulations for Muscovy Ducks

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to revise the regulations regarding permit provisions for waterfowl. Specifically, we propose to revise certain permit provisions for the muscovy duck (*Cairina moschata*) at 50 CFR 21.14, 21.25, and 21.54. We take this action to address public concerns resulting from a final rule we published on March 1, 2010 (75 FR 9316), that revised the regulations for the muscovy duck. We request comments from the public on these proposed changes to the regulations.

DATES: Send comments on this proposal on or before December 30, 2010.

ADDRESSES: You may submit comments by either one of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the

longstanding activities by muscovy duck owners.

We also propose editorial changes to reorganize the material in this section of the regulations, and to use simpler words and more straight-forward sentences in order to clarify, and use consistent terminology in, the requirements.

Specific Proposed Changes to 50 CFR 21.25

In 50 CFR 21.25, we would remove the specific restrictions for muscovy ducks, including:

- Disposing of muscovy ducks or eggs (see current § 21.25(b)(7));
- Limiting propagation of muscovy ducks only for sale as food (see current § 21.25(b)(8));
- Releasing muscovy ducks to the wild or transferring them for release to the wild (see current § 21.25(b)(8)(i)); and
- Selling or transferring muscovy ducks to be killed by shooting (see current § 21.25(b)(8)(ii)).

The proposed regulations at § 21.14 address these issues; therefore, these topics do not need to be repeated in § 21.25.

We would add the following provision to the regulations at § 21.25:

- You do not need a permit to acquire, possess, sell, or dispose of properly marked, captive-reared muscovy ducks or their eggs.

Like the changes we are proposing to § 21.14, these proposed changes would allow the continued keeping and production of muscovy ducks that were restricted by the March 1, 2010, final rule (75 FR 9316). We expect that these proposed regulations changes would have a very minimal impact on populations of wild ducks, and would facilitate longstanding activities by muscovy duck owners.

In § 21.25, we also propose to clarify the marking requirements for live or dead birds transferred or sold by referencing the requirements at § 21.13(b). This should help affected persons more easily understand, and comply with, the regulations.

We propose editorial changes that reorganize the material in this section of the regulations, and clarify regulatory requirements by using simpler words, more straight-forward sentences, and consistent terminology.

Specific Proposed Changes to 50 CFR 21.54

We would revise paragraph (c) to better address disposal of muscovy ducks removed from the wild.

Public Comments

We request comments or suggestions on this proposed rule from any interested parties. You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection at <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of our previous actions concerning this subject by mail (see **FOR FURTHER INFORMATION CONTACT**) or by visiting the *Federal eRulemaking Portal* at <http://www.regulations.gov>.

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant, and has not reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government;

(b) Whether the rule will create inconsistencies with other Federal agencies' actions;

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; and

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement

Fairness Act (SBREFA) of 1996 (Pub. L. 104-121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. We have examined this proposed rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action would not have a significant economic impact on a substantial number of small entities, because the changes we are proposing are intended primarily to reduce the spread of an invasive species little used in commercial endeavors.

This rule addresses captive-reared muscovy ducks that, for the most part, were already held when the species was added to our List of Migratory Birds at 50 CFR 10.13. We expect no significant economic impacts to result from a regulations change allowing possession and sale of these ducks to continue. Further, there would be very minimal costs, if any, associated with this regulations change. Consequently, we certify that because this proposed rule would not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This proposed rule is not a major rule under SBREFA (5 U.S.C. 804(2)). It would not have a significant impact on a substantial number of small entities.

a. This proposed rule would not have an annual effect on the economy of \$100 million or more.

b. This proposed rule would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

c. This proposed rule would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This proposed rule would not “significantly or uniquely” affect small governments. A small government agency plan is not required. Actions under the proposed regulation would not affect small government activities in any significant way.

b. This proposed rule would not produce a Federal mandate of \$100 million or greater in any year; i.e., it is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, the rule would not have significant takings implications. This proposed rule would not contain a provision for taking of private property. Therefore, a takings implication assessment is not required.

Federalism

This proposed rule would not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It would not interfere with the States’ ability to manage themselves or their funds. This rule addresses captive-reared muscovy ducks that, for the most part, were already held when the species was added to our List of Migratory Birds at 50 CFR 10.13. Therefore, no significant economic impacts are expected to result from a regulations change allowing possession and sale of these ducks to continue.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

We examined this proposed rule under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). There are no new information collection requirements associated with this proposed rule. We are not requiring any new permits, reports, or recordkeeping in this proposed rule. The FWS form we reference in the **Proposed Regulation Promulgation** section, FWS Form 3-186, Notice of Waterfowl Sale or Transfer, is approved under OMB Control Number 1018-0022, which expires November 30, 2010. An agency may not collect or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have analyzed this proposed rule in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and part 516 of the U.S. Department of the Interior Manual (516 DM). The change we propose is to allow people and agencies to continue ongoing activities with muscovy ducks. We completed an Environmental Action Statement addressing these changes, in which we concluded that the proposed regulations change requires no additional assessment of potential environmental impacts.

Environmental Consequences of the Proposed Action

This proposal would allow some activities with captive-reared muscovy ducks that the current regulations prohibit. Because release of muscovy ducks to the wild is currently prohibited, and would remain prohibited under this proposal, the environmental consequences of the proposed regulations changes are negligible. However, because these regulation changes will allow possession of muscovy ducks for uses that were previously prohibited, the number of muscovy ducks held in captivity will likely be higher, which may lead to an increase in the number of muscovy ducks escaping into the wild.

Socioeconomic. This proposed rule would not have significant socioeconomic impacts.

Migratory bird populations. This proposed rule would not affect wild migratory bird populations.

Endangered and threatened species. The proposed rule would not affect endangered or threatened species or critical habitats.

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that “The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter” (16 U.S.C. 1536(a)(1)). It further states that the Secretary must “insure that any action authorized, funded, or carried out... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat” (16 U.S.C. 1536(a)(2)).

Government-to-Government Relationship with Tribes

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations

with Native American tribal Governments” (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects. This proposed rule would not interfere with the tribes’ ability to manage themselves or their funds or to regulate migratory bird activities on tribal lands.

Energy Supply, Distribution, or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 addressing regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under E.O. 13211, and would not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and record keeping requirements, Transportation, Wildlife.

For the reasons stated in the preamble, we propose to amend part 21 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 21—MIGRATORY BIRD PERMITS

1. The authority for part 21 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Public Law 95-616, 92 Stat. 3112 (16 U.S.C. 712(2)); Public Law 106-108, 113 Stat. 1491, Note following 16 U.S.C. 703.

2. Revise § 21.14 to read as follows:

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

(a) You may acquire live or dead, captive-reared, properly marked migratory waterfowl of all species, other than muscovy ducks (*Cairina moschata*) or their eggs, only from a holder of a valid waterfowl sale and disposal permit in the United States. You may possess and transport such waterfowl species and any progeny or eggs for your use without a permit. You also may lawfully acquire such waterfowl species outside of the United States with appropriate permits (*see* § 21.21 of subpart C of this part). If you acquire captive-reared waterfowl or their eggs (other than muscovy ducks and their eggs) from a waterfowl sale and disposal permittee, you must retain the FWS

Form 3-186, Notice of Waterfowl Sale or Transfer, from the permittee for as long as you have the birds, eggs, or their progeny.

(b) All progeny of captive-reared birds or from eggs of captive-reared birds must be physically marked in accordance with § 21.13(b).

(c) With the exception of muscovy ducks, you may transfer or dispose of captive-reared birds or their eggs, whether alive or dead, to any other person only if you have a valid waterfowl sale and disposal permit (see § 21.25 of subpart C of this part).

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

(e) At all times during possession, transportation, and storage, until the raw carcasses of such birds are finally processed immediately prior to cooking, smoking, or canning, you must leave the marked foot or wing attached to each carcass, unless the carcass is marked as provided in § 21.13(b).

(f) *Muscovy ducks.* You do not need a permit to acquire, possess, or sell properly-marked, captive-reared muscovy ducks (*Cairina moschata*) or their eggs. You may not release captive-reared muscovy ducks to the wild or to any location used by wild ducks. You may not sell muscovy ducks to be hunted or released to the wild, sell them or distribute them as pets, or transfer them to anyone to be hunted or released to the wild. Nothing in this section shall be construed to permit the taking of live muscovy ducks or their eggs from the wild.

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

3. Amend § 21.25 as follows:

a. By redesignating paragraphs (a), (b), (c), (d), and (e) as paragraphs (b), (c), (d), (e), and (f);

b. By adding a new paragraph (a) to read as set forth below; and

c. By revising newly designated paragraphs (b) and (c) to read as set forth below.

§ 21.25 Waterfowl sale and disposal permits.

(a) *Prohibition on taking waterfowl from the wild.* You may not take migratory waterfowl or their eggs from the wild, except as provided for elsewhere in this subchapter.

(b) *Permit requirement.* You do not need a permit to acquire, possess, sell, or dispose of properly-marked, captive-reared mallard ducks (*Anas platyrhynchos*) or properly-marked, captive-reared muscovy ducks (*Cairina moschata*), or their eggs. You must have a waterfowl sale and disposal permit before you may lawfully sell, trade, donate, or otherwise dispose of other species of properly-marked, captive-reared migratory waterfowl or their eggs.

(c) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter B, waterfowl sale and disposal permits are subject to the following conditions:

(1) You may acquire waterfowl, other than mallard ducks or muscovy ducks, or their eggs, only from a person who has a valid waterfowl sale and disposal permit.

(2) You must physically mark all offspring hatched in captivity before they are 6 weeks of age in accordance with § 21.13(b), unless you hold them at a public zoological park or a public scientific or educational institution.

(3) Properly marked captive-reared birds may be killed, in any number, at any time or place, by any means except shooting. They may be killed by shooting only in accordance with all the applicable hunting regulations for the species (see part 20 of this subchapter).

(4) 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. However, if you have a State license, permit, or authorization that allows you to sell game, you may remove the marked foot or wing from the raw carcasses if the number of your State license, permit, or authorization has been legibly stamped in ink on the back of each carcass and on the wrapping or container in which each carcass is maintained, or if each carcass is identified by a State band on a leg or wing pursuant to requirements of your State license, permit, or authorization.

(5) You may transfer or sell live or dead birds marked by a method listed in § 21.13(b), or their eggs, at any time or place.

(6) If you transfer captive-reared birds or their eggs, other than mallard ducks or muscovy ducks or their eggs, to another person, you must complete FWS Form 3-186, Notice of Waterfowl Sale or Transfer, and provide all information required on the form, plus the method or methods listed in § 21.13(b) by which the birds are marked.

(i) Give the original of the completed form to the person acquiring the birds or eggs.

(ii) Retain one copy in your files.

(iii) Attach one copy to the shipping container for the birds or eggs, or include it with shipping documents that accompany the shipment.

(iv) By the end of the month in which you complete the transfer, mail two copies to the Fish and Wildlife Service Regional Office that issued your permit.

* * * * *

4. Revise § 21.54(c) as follows:

(c) *Disposal of muscovy ducks.* Any muscovy duck removed live under this order must be: Any muscovy duck removed live under this order must be: (1) placed with a facility where it will be maintained under conditions that will prevent its escape to the wild, (2) donated to public museums or public institutions for scientific or educational purposes, or (3) euthanized and disposed of by burying or incineration. Any muscovy duck taken lethally under this order may be donated to a public museum or public institution for scientific or educational purposes. If it is not donated to a public museum or public institution, it must be disposed of by burying or incineration. You may not retain for personal use or consumption, offer for sale, or sell a muscovy duck removed under authority of this section, nor may you release it in any other location.

Dated: August 31, 2010

Eileen Sobeck,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010-23139 Filed 9-30-10; 8:45 am]

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