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AUTHORITY: 16 U.S.C. 703–712.

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, importation, exportation, and banding or 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 limited exceptions to the Migratory Bird Treaty Act (16 U.S.C. 703–712).

[54 FR 38150, Sept. 14, 1989]

§ 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. 703–712) may be possessed or transported without a permit, but may not be imported, exported, purchased, sold, bartered, or offered for purchase, sale or barter, and all shipments of such birds must be marked as provided by part 14 of this subchapter: *Provide*, no exemption from any statute or regulation shall accrue to any offspring of such migratory birds.

(b) This part, except for § 21.12(a), (c), and (d) (general permit exceptions); § 21.22 (banding or marking); § 21.29 (falconry); and § 21.31 (rehabilitation), 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).

[39 FR 1178, Jan. 4, 1974, as amended at 46 FR 42680, Aug. 24, 1981; 68 FR 61137, Oct. 27, 2003; 73 FR 59465, Oct. 8, 2008]

§ 21.3 Definitions.

In addition to definitions contained in part 10 of this chapter, and unless the context requires otherwise, as used in this part:

Armed Forces means the Army, Navy, Air Force, Marine Corps, Coast Guard, and the National Guard of any State.

Bred in captivity or *captive-bred* refers to raptors, including eggs, hatched in captivity from parents that mated or

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otherwise transferred gametes in captivity.

Captivity means that a live raptor is held in a controlled environment that is intensively manipulated by man for the purpose of producing raptors of selected species, and that has boundaries designed to prevent raptors, eggs or gametes of the selected species from entering or leaving the controlled environment. General characteristics of captivity may include, but are not limited to, artificial housing, waste removal, health care, protection from predators, and artificially supplied food.

Conservation measures, as used in §21.15, means project design or mitigation activities that are reasonable from a scientific, technological, and economic standpoint, and are necessary to avoid, minimize, or mitigate the take of migratory birds or other adverse impacts. Conservation measures should be implemented in a reasonable period of time.

Falconry is caring for and training raptors for pursuit of wild game, and hunting wild game with raptors. Falconry includes the taking of raptors from the wild to use in the sport; and caring for, training, and transporting raptors held for falconry.

Hacking is the temporary release of a raptor held for falconry to the wild so that it must survive on its own.

Hybrid means offspring of birds listed as two or more distinct species in §10.13 of subchapter B of this chapter, or offspring of birds recognized by ornithological authorities as two or more distinct species listed in §10.13 of subchapter B of this chapter.

Imprint, for the purposes of falconry, means a bird that is hand-raised, from 2 weeks of age until it has fledged, and has identified itself with humans rather than its own species. An imprinted bird is considered to be so for its entire lifetime.

Livestock depredation area means a specific geographic location in which depredation by golden eagles has been recognized. The boundaries and duration of a livestock depredation area are declared by U.S.D.A. Wildlife Services or by a State governor.

Military readiness activity, as defined in Pub. L. 107–314, §315(f), 116 Stat. 2458

(Dec. 2, 2002) [Pub. L. §319 (c)(1)], includes all training and operations of the Armed Forces that relate to combat, and the adequate and realistic testing of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat use. It does not include (a) routine operation of installation operating support functions, such as: administrative offices; military exchanges; commissaries; water treatment facilities; storage facilities; schools; housing; motor pools; laundries; morale, welfare, and recreation activities; shops; and mess halls, (b) operation of industrial activities, or (c) construction or demolition of facilities listed above.

Population, as used in §21.15, means a group of distinct, coexisting, conspecific individuals, whose breeding site fidelity, migration routes, and wintering areas are temporally and spatially stable, sufficiently distinct geographically (at some time of the year), and adequately described so that the population can be effectively monitored to discern changes in its status.

Raptor means a migratory bird of the Order Falconiformes or the Order Strigiformes listed in §10.13 of this chapter, including the bald eagle (*Haliaeetus leucocephalus*) and the golden eagle (*Aquila chrysaetos*).

Resident Canada geese means Canada geese that nest within the lower 48 States and the District of Columbia in the months of March, April, May, or June, or reside within the lower 48 States and the District of Columbia in the months of April, May, June, July, or August.

Secretary of Defense means the Secretary of Defense or any other national defense official who has been nominated by the President and confirmed by the Senate.

Service or we means the U.S. Fish and Wildlife Service, Department of the Interior.

Significant adverse effect on a population, as used in §21.15, means an effect that could, within a reasonable period of time, diminish the capacity of a population of migratory bird species to sustain itself at a biologically viable level. A population is “biologically viable” when its ability to maintain its genetic diversity, to reproduce, and to

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function effectively in its native ecosystem is not significantly harmed. This effect may be characterized by increased risk to the population from actions that cause direct mortality or a reduction in fecundity. Assessment of impacts should take into account yearly variations and migratory movements of the impacted species. Due to the significant variability in potential military readiness activities and the species that may be impacted, determinations of significant measurable decline will be made on a case-by-case basis.

[48 FR 31607, July 8, 1983, as amended at 64 FR 32774, June 17, 1999; 71 FR 45986, Aug. 10, 2006; 72 FR 8949, Feb. 28, 2007; 72 FR 46408, Aug. 20, 2007; 73 FR 59465, Oct. 8, 2008; 75 FR 931, Jan. 7, 2010]

§21.4 Information collection requirements.

(a) The Office of Management and Budget approved the information collection requirements contained in this part 21 under 44 U.S.C. 3507 and assigned OMB Control Number 1018-0022. The Service may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. We are collecting this information to provide information necessary to evaluate permit applications. We will use this information to review permit applications and make decisions, according to criteria established in the Migratory Bird Treaty Act, 16 U.S.C. 703-712 and its regulations, on the issuance, suspension, revocation, or denial of permits. You must respond to obtain or retain a permit.

(b) We estimate the public reporting burden for these reporting requirements to vary from 15 minutes to 4 hours per response, with an average of 0.803 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the forms. Direct comments regarding the burden estimate or any other aspect of these reporting requirements to the Service Information Collection Control Officer, MS-222 ARLSQ, U.S. Fish and Wildlife Service, Washington, DC 20240, or the Office of Management and Budget, Paperwork

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Reduction Project (1018-0022), Washington, DC 20603.

[63 FR 52637, Oct. 1, 1998]

Subpart B—General Requirements and Exceptions

§21.11 General permit requirements.

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

[68 FR 43027, July 21, 2003]

§21.12 General exceptions to permit requirements.

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

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

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

(b)(1) State game departments, municipal game farms or parks, and public museums, public zoological parks, accredited institutional members of the American Association of Zoological Parks and Aquariums (AAZPA) and public scientific or educational institutions may acquire by gift or purchase, possess, transport, and by gift or sale dispose of lawfully acquired migratory birds or their progeny, parts, nests, or eggs without a permit: *Provided*, That