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believes that to allow comment periods past the dates specified is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)," filed with EPA on June 9, 1988. Notice of Availability was published in the Federal Register on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption ADDRESSES.

Endangered Species Act Consideration

As in the past, hunting regulations this year will be designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species. Consultations are presently under way to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. It is possible that the findings from the consultations, which will be included in a biological opinion, may cause modification of some regulatory measures proposed in this document. Any modifications will be reflected in the final frameworks. The Service's biological opinions resulting from its consultation under section 7 are considered public documents and are

available for public inspection in the Division of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act; Executive Orders (E.O.) 12291, 12612, 12630, and 12778; and the Paperwork Reduction Act

In the Federal Register dated April 9, 1993 (58 FR 19008), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. This information is included in the present document by reference. As noted in the above Federal Register reference, the Service plans to issue its Memorandum of Law for the migratory bird hunting regulations at the same time the first of the annual hunting rules is finalized. This rule does not contain any information collection requiring approval by the Office of Management and Budget under 44 U.S.C. 3504.

Authorship

The primary authors of this proposed rule are William O. Vogel and Robert J. Blohm, Office of Migratory Bird Management.

List of Subjects in 50 CFR part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1993-94 hunting season are authorized under the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703-711); the Fish and Wildlife Improvement Act (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a-d and e-j).

Dated: May 14, 1993.

Richard N. Smith

Acting Director, U.S. Fish and Wildlife Service
(FR Doc. 93-12742 Filed 5-28-93; 8:45 am)

BILLING CODE 4310-56-F

50 CFR Part 21

Release of Captive-reared Mallards

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: This document announces the intent of the Fish and Wildlife Service (hereinafter the Service) to review all aspects of the regulations pertaining to the release and harvest of captive-reared mallards. This notice provides the public with background information on potential conflicts arising from this activity. The Service invites public comment and suggestions on possible options for resolving these conflicts.

DATES: Written comments pertaining to regulations governing the release of captive-reared mallards should be received on or before August 2, 1993.

ADDRESSES: Written comments should be sent to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634—Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Marshall A. Howe, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 634—Arlington Square, Washington, DC 20240, (703) 358-1714.

SUPPLEMENTARY INFORMATION: Under the Migratory Bird Treaty Act (16 U.S.C. 703-711), the Secretary of the Interior has the responsibility for setting appropriate regulations for the hunting of migratory birds, with due regard for maintaining such populations in a healthy state and at satisfactory levels. The Fish and Wildlife Act of 1956 (16 U.S.C. 742 a-d and e-j) more specifically authorizes collection of such information as is necessary and action as may be required to protect wildlife resources.

Background

"Migratory Birds" are defined in 50 CFR 10.12 as meaning any bird, irrespective of its origin in the wild or in captivity, which belongs to the species listed in § 10.13, for the purposes of protection under the Migratory Bird Treaty Act (Act). Mallards are among those species listed. Regulations stated in § 21.13 allow captive-reared mallards, provided they are properly marked prior to 6 weeks of age by removal of hind toe, banding with a seamless metal band, pinioning, or tattooing, to be possessed and disposed of in any number, at any time, by any person, without a permit. Further, these regulations stipulate that such birds may be killed by shooting only in accordance with all applicable hunting regulations governing the take

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of mallard ducks from the wild, with the exception 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. Thus, most regulations regarding migratory bird hunting do not apply to the taking of captive-reared mallards on shooting preserves, except that nontoxic shot is required.

In the past, the Service has not opposed the shooting of captive-reared mallards on shooting preserves to supplement hunting opportunities for the public. This is because prior to 1985, precautions were taken to control these captive-reared mallards and they were not allowed to become free-ranging on the properties where they were released. Interest in the shooting of captive-reared mallards on shooting preserves has increased dramatically since 1985 as numbers of wild ducks have declined and hunting opportunities have become more restricted to protect breeding populations (see September 5, 1985, *Federal Register* at 50 FR 36198). Recently, regulations allowing the shooting of captive-reared mallards detailed in § 21.13, pertaining to shooting preserves, have become more broadly interpreted and captive-reared mallards are being released in free-ranging situations on State-licensed shooting preserves, causing conflicts to arise when these birds are allowed to come in contact with wild ducks.

Description of Existing State-Licensed Programs

Currently, several States allow the permitting or licensing of regulated shooting preserves which are authorized to release captive-reared mallards for shooting purposes. Criteria governing the issuance of these licenses are established by the respective States. Captive-reared mallards are usually purchased from various producers at varying ages and are fed on release sites without containment. Feeding is suspended prior to the time any shooting takes place to alleviate conflicts involving baiting of wild birds. Although regulations allow shooting to occur at any time on these designated areas, in most instances States confine their shooting of released mallards to the regularly-held season dates for wild ducks to avoid the inadvertent but unlawful harvest of any wild mallards.

At present, shooting preserves are not required to obtain their release stocks from certified disease-free suppliers and routine, on-site inspections of either the shooting preserves or suppliers are not

mandatory. Disease risks from captive-reared ducks have not been assessed, but are viewed as a potential problem to wild ducks and domestic poultry operations. Health concerns regarding the release of game-farm waterfowl have been expressed in a report developed by the Southeastern Cooperative Wildlife Disease Study (University of Georgia, Athens) for the Louisiana Department of Wildlife and Fisheries in 1989.

Areas of Potential Conflict

As defined in Section 10.12, "migratory bird" means any species listed in § 10.13, whether or not it was raised in captivity. This interpretation implies full protection under the Migratory Bird Treaty Act for all species listed, including captive-reared mallards, and requires the establishment of hunting season frameworks to regulate a legal take. Section 21.13 provides an exception that, once properly marked and within the confines of a State-regulated shooting preserve, captive-reared birds may be taken in any number, at any time, by any person, without a permit. Despite this language, broad interpretation of § 21.13 may be in conflict with existing migratory bird treaties, since it allows taking of free-ranging, treaty-protected birds during closed seasons and without bag limits. Thus an issue arises. At what point do free-ranging captive-reared mallards become wild for purposes of enforcement under the Migratory Bird Treaty Act?

In addition, shooting of wild mallards on shooting preserves is subject to regulations outlined in § 20.21 governing hunting methods, including those restricting the presence of live decoys (§ 20.21 (f)) and bait (§ 20.21 (i)) during the hunting season. The use of live ducks as decoys and baiting for taking waterfowl has been illegal by Federal regulations since 1935 because of their effectiveness in luring wild waterfowl to the gun. Under existing regulations, live decoys are not only defined in the traditional sense as birds pinioned, tethered, wing-clipped, or caged, but also include those capable of free flight. Birds in these situations may exhibit tameness or reluctance to fly or leave an area in the presence of man and hunting activity, because of previous conditioning to humans. However, the question of when unrestrained, captive-reared mallards constitute a "live-decoying" situation during the hunting season is subject to interpretation and may vary on a case-by-case basis, dependent on their behavior in the presence of human activity, as evidenced by Federal court decisions.

This situation necessitates a discretionary interpretation by enforcement personnel in the field. Concerns over enforcement problems and inconsistencies in interpretation have been expressed by the Service, State wildlife agencies, and several private hunting clubs.

The influx of large numbers of captive-reared mallards into certain areas inhabited by wild ducks has raised concerns by the Service, Flyway Councils, and the International Association of Fish and Wildlife Agencies over the potential threat of disease transmission to wild populations. The appearance of new diseases in previously unexposed waterfowl populations may result in major health problems. Of particular concern are infectious diseases where survivors of an outbreak become carriers capable of initiating additional outbreaks as they disperse. Highly-infectious diseases, such as duck plague and avian cholera, are capable of causing large-scale losses in wild waterfowl.

Duck plague, also known as duck virus enteritis (DVE), is of particular concern because of its frequency of occurrence in captive, semi-captive, and feral waterfowl. The first appearance of this disease in the United States was in the Long Island domestic duck industry in 1967. In 1973, a major outbreak in wild, migratory waterfowl inflicted heavy losses on ducks, geese, and swans, and was responsible for the death of 40,000 to 50,000 mallards. Avian cholera is another example of a highly-infectious disease that originated in the domestic poultry industry and spread eventually to wild stocks. First appearing in wild waterfowl in the 1940s, avian cholera is presently a disease affecting North American waterfowl.

Currently, captive-reared mallards purchased from game farms do not require State health certification prior to release on shooting preserves. Confined situations allow the rapid spread of diseases through close contact and contamination by waste products. Consequently, contact between captive birds and wild waterfowl and outbreaks involving captive-reared waterfowl scheduled for release into the wild represent an increasing threat to wild waterfowl. Declining waterfowl populations may be sensitive to any increase in frequency of diseases, particularly the introduction and establishment of new diseases. Finally, waterfowl diseases, originating with captive-reared birds, could threaten endangered species and pose a problem for domestic poultry flocks.

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Uncontrolled releases of thousands of free-flighted, captive-reared mallards into habitats now managed for wild birds, render various data-gathering activities by Federal, State, and flyway waterfowl management programs less effective. Specific areas of concern include:

Midwinter waterfowl surveys: The release of thousands of free-flying mallards has increased mallard midwinter survey indices in recent years. The presence of these birds has diminished the usefulness of this survey in guiding management efforts for the mallard in certain areas.

Harvest surveys: There is no reliable method of distinguishing between wild and hand-reared mallard wings in the Service's Waterfowl Parts Collection Survey. As a result, harvest survey information, including harvest estimates and age/sex data, is biased by the release of captive-reared mallards. These biases not only influence State estimates but affect flyway estimates as well, thus compromising harvest management strategies for wild birds at the State and flyway level.

Banding Programs: Recoveries of hunter-shot mallards banded prior to each hunting season by the Service and cooperating States usually provide a direct measure of harvest rates for wild mallards. However, large numbers of captive-reared mallards banded with either State or private bands confuse hunters and bias their reports of banded wild mallards and other ducks. With potential problems in reporting rates, it becomes extremely difficult for the

Service to properly assess and interpret harvest pressure on wild mallards.

Population Unit Management: Flyway management of duck populations (i.e., mallards) is, in part, based on information pertaining to unique population units, segments, or reference areas. With large, uncontrolled releases of captive-reared birds, the capability of waterfowl managers to detect discrete populations of wild stocks is made more difficult, thus interfering with the development of reliable databases for this species.

Regulations Development: Databases used to establish annual duck hunting regulations within each flyway, such as population, harvest, and banding information, may be biased due to the presence of large numbers of free-flying mallards. The ability to develop sound management decisions, based on this information, may be compromised to some unknown degree.

Genetic Diversity: Releasing large numbers of captive-reared mallards in certain localities may affect the genetic make-up of wild mallards using those areas. Black ducks, known to hybridize easily with mallards, may be similarly affected. If large releases continue, certain regions of the continent may no longer contain wild-stock mallards or genetically sound black ducks.

Public Comment Invited

Under existing regulations contained in Section 21.13, the release of captive-reared mallards on licensed shooting preserves is subject to broad interpretation. As a result, numerous conflicts with established regulations

prohibiting the use of live decoys and baiting have resulted. In addition, aspects involving ownership and control are unclear when flighted, captive-reared birds are allowed to range freely over a wide area. Risks of disease transmission among wild ducks associating with captive-reared mallards may occur.

The Service believes there are a variety of options available to alleviate potential conflicts and resolve management problems associated with captive-reared mallard release programs. Many of these options would require some modification of 50 CFR parts 20 or 21. The Service intends to explore these options and invites public comment on any options that may alleviate this problem. Comments may be sent to the address indicated under the caption ADDRESSES.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Authority: The Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703-711); the Fish and Wildlife Improvement Act (November 8, 1978), as amended (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended (16 U.S.C. 742 a-d and e-j).

Dated: January 21, 1993.

Richard N. Smith,
Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93-12743 Filed 5-28-93; 8:45 am]
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U.S. Fish and Wildlife Serv., Interior

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Subpart B—Definitions

§ 10.11 Scope of definitions.

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

§ 10.12 Definitions.

Aircraft means any contrivance used for flight in the air.

Amphibians means a member of the class, Amphibia, including, but not limited to, frogs, toads, and salamanders; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

Animal means an organism of the animal kingdom, as distinguished from the plant kingdom; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

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

Country of exportation means the last country from which the animal was exported before importation into the United States.

Country of origin means the country where the animal was taken from the wild, or the country of natal origin of the animal.

Crustacean means a member of the class, Crustacea, including but not limited to, crayfish, lobsters, shrimps, crabs, barnacles, and some terrestrial forms; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a man-

ufactured product or in a processed food product.

Director means the Director of the United States Fish and Wildlife Service, Department of the Interior, or his authorized representative.

Endangered wildlife means any wildlife listed in § 17.11 or § 17.12 of this subchapter.

Fish means a member of any of the following classes:

(1) Cyclostomata, including, but not limited to, hagfishes and lampreys;

(2) Elasmobranchii, including but not limited to, sharks, skates, and rays; and

(3) Pisces, including but not limited to trout, perch, bass, minnows, and catfish; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

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

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

Fossil means the remains of an animal of past geological ages which has been preserved in the earth's crust through mineralization of the object.

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

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Injurious Wildlife means any wildlife for which a permit is required under subpart B of part 16 of this subchapter before being imported into or shipped between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States.

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

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

Migratory game birds: See § 20.11 of this subchapter.

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

Permit means any document designated as a "permit," "license," "certificate," or any other document issued by the Service to authorize, limit, or describe activity and signed by an authorized official of the Service.

Person means any individual, firm, corporation, association, partnership, club, or private body, any one or all, as the context requires.

Plant means any member of the plant kingdom, including seeds, roots and other parts thereof.

Possession means the detention and control, or the manual or ideal custody of anything which may be the subject of property, for one's use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one's place and name. Possession includes the act or state of

possessing and that condition of facts under which one can exercise his power over a corporeal thing at his pleasure to the exclusion of all other persons. Possession includes constructive possession which means not actual but assumed to exist, where one claims to hold by virtue of some title, without having actual custody.

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

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

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

Service means the United States Fish and Wildlife Service, Department of the Interior.

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

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

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

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

United States means the several States of the United States of America.

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the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam.

Whoever means the same as person.

Wildlife means the same as fish or wildlife.

[38 FR 22015, Aug. 15, 1973, as amended at 42 FR 32377, June 24, 1977; 42 FR 59358, Nov. 16, 1977; 45 FR 56673, Aug. 25, 1980; 50 FR 52889, Dec. 26, 1985]

§ 10.13 List of Migratory Birds.

The following is a list of all species of migratory birds protected by the Migratory Bird Treaty Act (16 U.S.C. 703-711) and subject to the regulations on migratory birds contained in this subchapter B of title 50 CFR. The species listed are those protected by the Convention for the Protection of Migratory Birds, August 16, 1916, United States-Great Britain (on behalf of Canada), 39 Stat. 1702, T.S. No. 628; the Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States-Mexico, 50 Stat. 1311, T.S. No. 912; the Convention for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment, March 4, 1972, United States-Japan, 25 U.S.T. 3329, T.I.A.S. No. 7990; and the Convention for the Conservation of Migratory Birds and Their Environment, United States-U.S.S.R., November 26, 1976, 92 Stat. 3110, T.I.A.S. 9073, 16 U.S.C. 703, 712. The species are listed two ways. In the first part of the List species are arranged alphabetically by English (common) name groups, with the scientific name following the English (common) name. All species of ducks are listed together under the heading "DUCKS". In the second part of the List, species are listed by scientific name arranged in taxonomic order. Taxonomy and nomenclature follows the American Ornithologists' Union's Check-list of North American Birds (6th Edition, 1983).

I. ALPHABETICAL LISTING

Accentor, Siberian, *Prunella montanella*

Albatross:

Black-footed, *Diomedea nigripes*

Laysan, *Diomedea immutabilis*

Short-tailed, *Diomedea albatrus*

Yellow-nosed, *Diomedea chlororhynchus*

Anhinga, *Anhinga anhinga*

Ani:

Groove-billed, *Crotophaga sulcirostris*

Smooth-billed, *Crotophaga ani*

Auklet:

Cassin's, *Ptychoramphus aleuticus*

Crested, *Aethia cristatella*

Least, *Aethia pusilla*

Parakeet, *Cyclorhynchus psittacula*

Rhinoceros, *Cerorhinca monocerata*

Whiskered, *Aethia pygmaea*

Avocet, American, *Recurvirostra americana*

Barn-Owl, Common, *Tyto alba*

Beardless-Tyrannulet, Northern,

Camptostoma imberbe

Becard, Rose-throated, *Pachyramphus aglaiae*

Bittern:

American, *Botaurus lentiginosus*

Chinese, *Ixobrychus sinensis*

Least, *Ixobrychus exilis*

Schrenk's, *Ixobrychus eurhythmus*

Black-Hawk, Common, Northern, *Buteogallus*

anthracinus

Blackbird:

Brewer's, *Euphagus cyanocephalus*

Red-winged, *Agelaius phoeniceus*

Rusty, *Euphagus carolinus*

Tawny-shouldered, *Agelaius humeralis*

Tricolored, *Agelaius tricolor*

Yellow-headed, *Xanthocephalus*

xanthocephalus

Yellow-shouldered, *Agelaius xanthomus*

Bluebird:

Eastern, *Sialia sialis*

Mountain, *Sialia currucoides*

Western, *Sialia mexicana*

Bluethroat, *Luscinia svecica*

Bobolink, *Dolichonyx oryzivorus*

Booby:

Blue-footed, *Sula nebouxii*

Brown, *Sula leucogaster*

Masked, *Sula dactylatra*

Red-footed, *Sula sula*

Brambling, *Fringilla montifringilla*

Brant, *Branta bernicla*

Bufflehead (see DUCKS)

Bullfinch:

Eurasian, *Pyrrhula pyrrhula*

Puerto Rican, *Loxigilla portoricensis*

Bunting:

Indigo, *Passerina cyanea*

Lark, *Calamospiza melanocorys*

Lazuli, *Passerina amoena*

McKay's, *Plectrophenax hyperboreus*

Painted, *Passerina ciris*

Reed (see Reed-Bunting)

Rustic, *Emberiza rustica*

Snow, *Plectrophenax nivalis*

Varied, *Passerina versicolor*

Bush-tit, *Psaltriparus minimus*

Canvasback (see DUCKS)

Caracara, Crested, *Polyborus plancus*

Cardinal, Northern, *Cardinalis cardinalis*

Carib, Green-throated, *Eulampis holosericeus*

Catbird, Gray, *Dumetella carolinensis*

Chat, Yellow-breasted, *Icteria virens*

Chickadee (see Tit):

Black-capped, *Parus atricapillus*

Boreal, *Parus hudsonicus*

Carolina, *Parus carolinensis*

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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, 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 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. Records shall be maintained or reproducible in English on a calendar year basis and shall be retained for a period of five (5) years following the end of the calendar year covered by the records.

[39 FR 1178, Jan. 4, 1974, as amended at 50 FR 8638, Mar. 4, 1985; 54 FR 38151, Sept. 14, 1989]

§ 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:

(1) The hunting regulations (part 20 of this subchapter), with the exception of § 20.108 (Nontoxic shot zones), and

(2) 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.

ATTACHMENT 3

§ 21.14

50 CFR Ch. I (10-1-00 Edition)

(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; 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: *Pro-*

vided. 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 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

ATTACHMENT 4

NINETY-NINTH CONGRESS

ALTEK B. JONES NORTH CAROLINA CHAIRMAN
MARK MAGDO NEW YORK
GLENN M. ANDERSON CALIFORNIA
JOHN B. ENLEAU LOUISIANA
GERRY E. STUDDZ MASSACHUSETTS
CARROLL HUBBARD JR. KENTUCKY
DON BOMARÉ WASHINGTON
JAMES L. OBERSTAR MINNESOTA
WILLIAM J. HUGHES NEW JERSEY
BARBARA A. MIKULSKY MARYLAND
MIKE LOWMY WASHINGTON
EARL BUTTG FLORIDA
W. J. BILLY TAUZIN LOUISIANA
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SOLOMON P. ORTIZ TEXAS
CHARLES E. BENNETT FLORIDA
THOMAS J. MANTON NEW YORK
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JOHN F. MAERZAN JR. MAINE
WEBB FRANKLIN MISSISSIPPI
THOMAS F. HARTNETT SOUTH CAROLINA
GENE A. CHAPPE CALIFORNIA
JIM SARTON NEW JERSEY
SONNY CALLAHAN ALABAMA
JOHN R. MILLER WASHINGTON
HELEN DELUCH BENTLEY MARYLAND

CHIEF COUNSEL
EDMUND B. WELCH
MINORITY STAFF DIRECTOR
GEORGE C. PENCE

U.S. House of Representatives Committee on

Merchant Marine and Fisheries

Room 1334, Longworth House Office Building
Washington, DC 20515

October 4, 1985

..

Mr. Ron Lambertson
Associate Director-Wildlife Resources
U.S. Fish and Wildlife Service
Department of the Interior
(AWR) Room 3252
18th & C Streets, N.W.
Washington, D.C. 20240

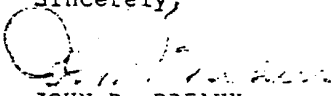
Dear Ron:

As we discussed, the Maryland Department of Natural Resources has designated a number of non-commercial shooting preserves in Maryland pursuant to regulations contained in 50 CFR 21.13 et seq. You have indicated, and the comments relating to the issuance of waterfowl regulations also indicate, that such an approach is an appropriate way to allow for the harvest of pen-reared mallards. The DNR regulations regarding the harvest of such mallards will only permit the harvest in accordance with established waterfowl regulations, similar to regulations established for similar game preserves in other states.

Since Maryland is concerned that Federal enforcement officials may not recognize the legality of these preserves, it would be helpful if you could confirm this policy in a letter to Mr. Donald MacLauchlan, of the Forest, Parks and Wildlife Service Division of the Department of Natural Resources. His address is Tawes Office Building, 580 Taylor Avenue, Annapolis, Maryland 21401.

As the season opens on October 11, time is of the essence. Thank you for your cooperation in the matter.

Sincerely,


JOHN B. BREAUX
Chairman
Subcommittee on Fisheries
and Wildlife Conservation
and the Environment

JBB/jcgf

ATTACHMENT 5

In Reply Refer
To: FWS/MBMO

OCT 24 1985

Mr. Donald E. MacLauchlan
Director, Forest, Park and Wildlife Service
Department of Natural Resources
Taves State Office Building
Annapolis, Maryland 21401

Dear Mr. MacLauchlan:

Congressman Breaux has asked that the U.S. Fish and Wildlife Service (Service) confirm its position in regard to the establishment of special hunting regulations for captive-reared mallards on certain designated properties.

The Service's position on shooting captive-reared mallards, is as published in Section 21.13 of Title 50 Code of Federal Regulations (CFR) Part 21 (copy enclosed): Captive-reared and properly marked mallard ducks may be killed by shooting only in accordance with all applicable Federal hunting regulations governing the taking of mallard ducks from the wild, with two exceptions. The exceptions are 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.

Wild birds may be killed in such situations only in circumstances that fully comply with the provisions of Section 20, Title 50 CFR, particularly Section 20.21(f) relating to live decoys, and Section 20.21(i) concerning baiting (copy enclosed). We note that full compliance with those laws may be difficult if captive-reared mallards are being fed or used as live decoys.

If you have need for further clarification of these regulations you should contact Clark Bavin, Chief, Division of Law Enforcement, telephone (202) 343-9242.

Thank you for your interest in this matter. Please advise if additional information is needed.

Sincerely,

/sgd/ Ronald E. Lambertson

Acting Deputy Director

Enclosures

cc: 3252 MI - Directorate Reading File and DD Chron
536 MC - Reading File, MBMO and Regs File
FWS/MBMO:CGEssling:vgj:10-09-85:MAC
300 HM - LE

ATTACHMENT 6



Department of Natural Resources
MARYLAND FOREST, PARK & WILDLIFE SERVICE
Tawes Office Building
Annapolis, Maryland 21401

TORREY C. BROWN, M.D.
SECRETARY

DONALD E. MACLAUCHLAN
DIRECTOR

November 21, 1985

Ronald Lambertson
Acting Assistant Director
U. S. Fish & Wildlife Service
Department of the Interior
Washington, DC 20240

Dear Mr. Lambertson:

Thank you very much for your recent letter approving our regulated shooting area laws and regulations for the taking of pen-reared mallards.

We have been anxious to find ways to take more of the pen-reared birds released annually without having to be trammled by the State-wide waterfowl hunting regulations. Of course we have permitted the shooting of mallards that were flighted, but have never allowed individuals who release mallards to take over their regular daily State-wide bag limit. With this interpretation we will be able to issue regulated shooting area licenses to individuals who want to release mallards for free-flight on their properties. We will be certain that when we issue these licenses to include a copy of the regulations which you sent me so that the landowners are aware of their responsibilities in this activity.

Thanks very much for your help with this situation.

Sincerely,

A handwritten signature in cursive script that reads "Don MacLauchlan".

Donald E. MacLauchlan
Director

cc: Waterfowl Advisory Commission
E. Hodil
Regional Managers
Steve Schneider
Larry Hindman

DEM/pal

FWS

1085

MBM

Telephone 301-269-3776
TTY FOR DEAF: STATEWIDE 1-800-492-5062; BALTIMORE 269-2609

ATTACHMENT 7



ADDRESS ONLY THE DIRECTOR,
FISH AND WILDLIFE SERVICE

United States Department of the Interior

FISH AND WILDLIFE SERVICE
WASHINGTON, D.C. 20240

Bob Smith

cc:
Adm. Bealings
9/18/86
ES.

JUL 3 1986

In Reply Refer To:
FWS/LE REG 20-04-06

Memorandum

To: All Regional Directors

From: Director

Subject: Review of Draft Fact Sheet on Hunting Captive Reared Mallards

Congressman Beryl Anthony (Arkansas) recently requested the Fish and Wildlife Service (Service) to prepare a fact sheet providing information to the public about the regulations governing the hunting of captive reared mallard ducks. Congressman Anthony was particularly interested in the regulations dealing with shooting captive reared birds within the confines of a State licensed shooting preserve and the relationship of this activity to the regulations prohibiting the use of live decoys and baiting. The Service advised Congressman Anthony that we would provide him with a document as close to July 1, 1986, as possible.

The Division of Law Enforcement has prepared the attached draft. However, since the release of any fact sheet establishes de facto Service policy, we are forwarding this draft to you for your review. Because of our commitment to Congressman Anthony, we are requesting that you review this document and provide your comments to the Washington Office, Division of Law Enforcement, Attention: Special Agent in Charge Thomas Striegler, by July 11, 1986. To facilitate your response, comments may be submitted by faxform or the LEMIS message switching system.

Thank you for your cooperation in this matter.

Frank Dunkle

Attachment

FWS
AUG 27 1986
MBM

ATTACHMENT 7

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HUNTING CAPTIVE REARED MALLARD DUCKS

It is common practice in many areas for hunting clubs and others to purchase mallard ducklings and release them to the wild in the early summer. Often these ducks are fed on the premises. Then in the fall hunters have many questions about whether these mallards can be shot and if so, under what conditions and in what number. This Fact Sheet answers these questions.

Shooting Preserves

Mallard ducks. Within the confines of any premises licensed as a shooting preserve under State license, permit or authorization, captive reared mallard ducks marked as indicated below may be shot in any number and at any time without regard to the Federal migratory bird hunting regulations (50 CFR 20) and the duck stamp requirement.

Marking requirement. In order for mallard ducks to qualify for the exceptions to the hunting regulations on licensed shooting preserves they must be marked prior to reaching six weeks of age by: (1) removal of the hind toe from the right foot, (2) banding of one metatarsus with a seamless metal band, or (3) tattooing of a readily discernible number or letter or combination thereof on the web of one foot.

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Other than mallard ducks. The shooting of any other species of captive reared waterfowl or the taking of any wild waterfowl within the confines of a licensed shooting preserve must be in compliance with all the provisions of the Federal migratory bird hunting regulations.

Conflicts. If only properly marked, captive reared mallard ducks are hunted on licensed shooting preserves there is no conflict with Federal regulations. But, if properly marked, captive reared mallard ducks and wild ducks are both hunted, there can be a conflict with Federal regulations concerning baiting and live decoys which are applicable.

NON-SHOOTING PRESERVE AREAS

Mallard ducks. Captive reared mallard ducks properly marked as described above must be taken only in accordance with all Federal migratory bird hunting regulations when taken on areas other than licensed shooting preserves. The fact that the birds have been captive reared, marked and released makes no difference when taken outside a licensed shooting preserve. These birds are treated as wild ducks for purposes of the regulations.

Feeding. Captive reared mallard ducks that are released on non-shooting preserve areas may be fed to keep them on the area. However, care must be exercised so that if taken during the hunting season the baiting and/or live decoy regulations are not violated.

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Live Decoys

Regulation. The Code of Federal Regulations concerning live decoys states "No person shall take migratory game birds by the use or aid of live birds as decoys;..." [50 CFR 20.21(f)].

What is a live decoy? Any live bird (does not have to be waterfowl) used in such a manner or under such circumstances so as to constitute a lure, attraction or enticement of migratory birds to a place or area where hunters are attempting to take them is a live decoy. The live decoy does not have to be pinioned (rendered permanently incapable of free flight), teathered or enclosed in a cage. It can be free flying.

The 10-day rule. Any area where tame or captive live ducks or geese are present and migratory waterfowl hunting is occurring, is considered to be a live decoy area; unless the tame or captive ducks and/or geese are and have been confined in an enclosure which reduces the sound of their calls and conceals them from the sight of wild birds for 10 consecutive days prior to hunting; and they must remain confined throughout the entire period that hunting is occurring in the area. It is illegal to hunt migratory waterfowl in these areas during the first 10 days of confinement or at any time if the birds are released from confinement.

Area of influence. Obviously, if live birds are right in front of the blind or place where hunters are located they are being used as an aid to hunting and this is illegal. However, live birds can also be considered

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live decoys and hunting would be illegal when located some distance from the blind even if out of shotgun range. The size of the "area of influence" where hunting is illegal depends on many variables: for example, actual distance of the birds from the hunters, number of live birds involved, proximity of birds and blinds to buildings, terrain features, and weather conditions. The basic concept is that live birds, whether free flying or held in captivity, may not be used to aid the hunting of wild migratory birds.

Captive reared mallard ducks. When mallard ducks are reared in captivity, released on a hunting club and fed all summer they generally become very tame. While they may fly to different parts of the farm pond or marsh, they often do not leave the area, or if they do, they return looking for the feed they are accustomed to. If this pattern continues into the hunting season and hunters allow these semi-tame mallards to swim on the pond near their blinds while hunting wild ducks they generally have an illegal live decoy situation.

Baiting

Regulation. It is unlawful to take migratory game birds by the aid of baiting, or on or over a baited area. [50 CFR 20.21(i)].

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Baiting. "Baiting" means "the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat or other grain, salt or other feed so as to constitute for such birds a lure, attraction or enticement to, on, or over any areas where hunters are attempting to take them."

Baited area. A "baited area" means "any area where shelled, shucked or unshucked corn, wheat or other grain, salt or other feed whatsoever capable of luring, attracting, or enticing such birds is directly or indirectly placed, exposed, deposited, or scattered."

The 10-day rule. The regulation further states that "...such an area (a baited area) shall remain a baited area for 10 days following complete removal of all such corn, wheat or other grain, salt, or other feed." Thus, an area is considered baited for 10 days after the bait has been removed because waterfowl habitually return to the same area for several days after their food supply no longer exists. Hunting over a baited area is illegal throughout the 10-day period.

Responsibility of Hunter

The migratory bird hunting regulations are a part of the Migratory Bird Treaty Act which is a strict liability statute. This means that guilt may be established without having to prove that the hunter had knowledge or intent to violate the law. The hunter has a responsibility to determine if live decoys or a baiting situation exists.

ATTACHMENT 7

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What can the hunter do to carry out this responsibility? He should first ask if the area is legal. If there is an unusually large concentration of waterfowl present he should always look for live decoys, bait or any other reason which could cause a large concentration of birds.

ATTACHMENT 8



ATLANTIC FLYWAY COUNCIL

Newfoundland-Labrador Quebec Maine Massachusetts New York Delaware West Virginia Georgia
Prince Edward Island Ontario New Hampshire Rhode Island Pennsylvania Maryland North Carolina Florida
New Brunswick Nova Scotia Vermont Connecticut New Jersey Virginia South Carolina Puerto Rico

Atlantic Flyway Council
c/o North Carolina Wildlife
Resources Commission
512 N. Salisbury Street
Raleigh, NC 27604-1188

Director
U.S. Fish and Wildlife Service
Interior Building, Rm. 3256
Washington, DC 20240

Dear Director:

The Atlantic Flyway Council, at its July 1993 meeting, again reviewed the potential serious impacts of releases of captive-reared mallards on wild migratory waterfowl and other bird populations. We were pleased to learn that the Fish and Wildlife Service has announced, through the Federal Register, a Notice of Intent to review 50 CFR 21.13 governing the release of captive-reared mallards. The Council wishes to commend the Service for initiating this long anticipated review.

The Council feels that the above mentioned review will illuminate the need to return to the original intent of 50 CFR 21.13 which was to allow limited releases of mallards on state sanctioned or permitted shooting preserves such as "tower shoot" operations and to ensure precautions are taken to prevent released birds from becoming free ranging in significant numbers. The Council strongly supports this position.

As you are aware, the Atlantic Flyway Council has, in the past, expressed serious concerns about the release of captive-reared mallards. The Council continues to oppose the release of captive-reared mallards which may react with wild waterfowl for the following reasons: problems related to wildlife health, wild population survey data reliability, wild population genetic dilution, population unit management, and harvest regulations development.

The Council continues to be concerned about these issues and will closely follow the progress of the regulations review process. If we can be of any assistance, please let me know.

Sincerely,

Charles R. Fullwood, Jr., Chairman
Atlantic Flyway Council

ATTACHMENT 8

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ATLANTIC WATERFOWL COUNCIL TECHNICAL SECTION
RECOMMENDATION

RECOMMENDATION NUMBER: 23

INITIATED BY: Environmental and Habitat Management Committee

SUBJECT: Review of Regulations Governing the Release and Harvest of Captive-reared Mallards.

RECOMMENDATION: That the Council forward a letter to the Fish and Wildlife Service commending the initiation of a review of regulations governing the the release and harvest of captive-reared mallards and suggesting that the original intent of 50 CFR 21.13 be reflected in strengthened wording in a revised regulation to ensure that captive-reared mallards released on officially sanctioned hunting preserves not be allowed to become free ranging so as to minimize interaction with wild waterfowl.

ARGUMENTS IN SUPPORT:

1. Council approved recognition of the potential problems associated with releases of pen-raised waterfowl in 1991, 1992, and 1993.
2. Council requested in 1992 and 1993 that the Fish and Wildlife Service issue a Notice of Intent to review regulations governing the release of captive-reared mallards.
3. All Flyway Councils have urged the FWS to perform this review.

ARGUMENTS IN OPPOSITION:

1. None.

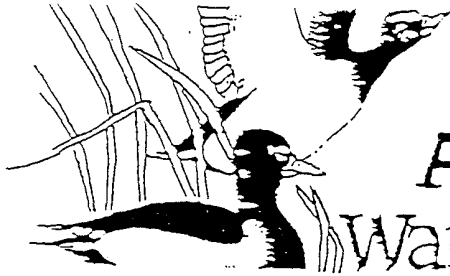
ATTACHMENTS: Letter to FWS Director

ACTION BY TS:

APPROVED BY: *Robert D. Con* *22 July 93*
 Chairman, Technical Section Date

Charles R. Hilliard *7-30-93*
 Chairman, Atlantic Flyway Council Date

ATTACHMENT 8



Atlantic Waterfowl Council

April 1, 1993

Atlantic Flyway Council
N. C. Wildlife Resources Commission
512 N. Salisbury Street
Raleigh, NC 27604-1138

Mr. John F. Turner, Director
U.S. Fish and Wildlife Service
Interior Building 1849 C St. NW
Washington, DC 20240

Dear Mr. Turner:

The Atlantic Flyway Council, at its March 1993 meeting, again reviewed the potential impacts of releases of captive-reared mallards on wild migratory waterfowl and other bird populations. The purpose of the Council's review was to investigate anticipated progress by the Service in developing a new national policy which addresses this issue.

After review, the Council now understands that the Notice of Intent to review the captive-release issue, as proposed by the Service in early 1992, was never released and has now been revised to a proposed "Notice of Involvement" process. Council feels the issue has been reviewed by its Technical Section and by other Flyway Councils and states since 1991 and the proper next step in considering the formulation of a new policy would be the acceptance of public comment.

The Atlantic Flyway Council, therefore, strongly urges the U.S. Fish and Wildlife Service to complete its review of this issue and to promptly commence with the release of a Notice of Intent for public comment for the purpose of developing a new policy on captive-reared mallards on state licensed shooting preserves.

Sincerely,

A handwritten signature in cursive script that reads "Charles R. Fullwood".

Charles R. Fullwood, Chairman
Atlantic Flyway Council

cc: Atlantic Flyway Council Representatives

ATTACHMENT 8

MISSISSIPPI FLYWAY COUNCIL

MISSISSIPPI FLYWAY COUNCIL



Recommendation No. 9

Subject:

Modification of FWS regulations on release and hunting of captive-reared Mallards

Recommendation:

That the MFC reiterates its positions of opposition to the release of pen-reared or wild-strain, captive-reared mallards into the wild and that CFR 21.13 be revised to apply only controlled "tower shoots" through comment to the Fish and Wildlife Service.

Justification:

The FWS has published a Notice of Intent to review regulations pertaining to the release and hunting of captive-reared mallards. The MFC has passed resolutions regarding the release of pen-reared and hand-reared mallards on 19 March 1989, and 30 July 1990. Further, in March 1992 the Council passed a recommendation from the Law Enforcement Committee that CFR 21.13 apply only to restrictive situations such a tower shoots; when mallards are free-flying they would be afforded full protection under the Migratory Bird Treaty Act.

Action:

Approved by Technical Section July 27, 1993 Date

Approved by Council July 29, 1993 Date

ATTACHMENT 8

Recommendation No. 7

Pertaining to:

Release and harvest of captive-reared mallards

Recommendation:

The Central Flyway Council supports the Fish and Wildlife Service review of regulations governing the release and harvest of captive-reared mallards.

Justification:


The June 1, 1993, Federal Register announced the intent of the Fish and Wildlife Service to review all aspects of the regulations pertaining to the release and harvest of captive-reared mallards.

The Council shares the Service's concerns about the effects of captive-reared mallard releases and the harvest of these birds on the Mid-winter Waterfowl Survey, harvest surveys, banding programs, population unit management, regulations development, disease potentials and the genetic diversity of mallards, black ducks and mottled ducks.

The Council supports this review and encourages the Service to implement regulations which will adequately protect wild migratory bird resources and migratory game bird hunting. The Council has no specific recommendations at this point, but looks forward to assisting the Service in any way possible during this review and the subsequent implementation of improved regulations.

Adopted by:

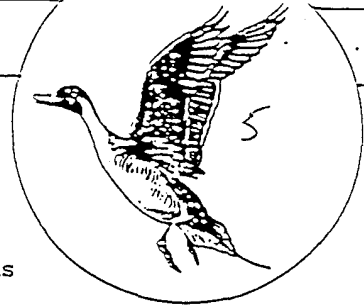
Central Flyway Waterfowl Technical Committee
Great Falls, Montana
July 28, 1993



Central Flyway Council
Great Falls, Montana
July 30, 1993

ATTACHMENT 8

PACIFIC FLYWAY COUNCIL



Recommendation No.: 15

Title: Captive-Reared Mallard Release Programs

Recommendation:

The Pacific Flyway Council recommends that the USFWS ban by rule all free-flying, captive-reared mallard release programs.

Justification:

The USFWS is currently seeking public comment on rules and regulations pertaining to captive-reared mallard release programs.

The Council adopted a moratorium last year against the establishment of new captive-reared programs in the Flyway until the Service addresses policies and rules governing these activities. Issues addressed last year by the Council included:

1. disease threats to wild populations
2. regulation conflicts dealing with baiting and live decoy prohibitions
3. biases in interpreting population data when wild and captive-reared birds mix
4. genetic integrity of wild stocks of mallards

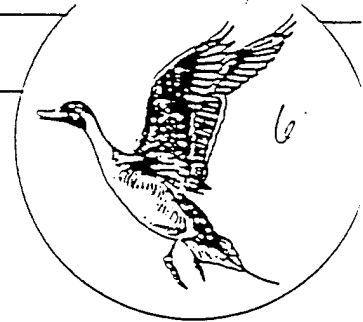
Captive-reared programs, of all kinds, still pose threats to management programs and those programs dealing with the release of free-flying birds that can come into contact with wild populations need to be prohibited.

Adoption: PFS Comm./WMUGB Tech. Comm. 7/27/93 TA

Pacific Flyway Council Approved 7/29/93

ATTACHMENT 8

PACIFIC FLYWAY COUNCIL



July 28, 1993

Mollie Beattie, Director
U.S. Fish and Wildlife Service
Department of the Interior
Room 634-Arlington Square
Washington, DC 20240

Dear Ms. Beattie:

On behalf of the Pacific Flyway Council (Council) I would like to comment on captive-reared mallard release programs. We appreciate that the Service is reviewing rules and regulations governing the release of captive-reared mallards.

The Council has been on record for the past year as having concerns with the proliferation of captive-reared mallards programs. We have adopted a moratorium against the establishment of new programs in the Flyway until the Service addresses policies and rules governing these activities.

While the intentions of captive-reared mallard program supporters may be to keep hunters interested in the sport of waterfowling, these programs are jeopardizing a valuable public resource. Once free-flying birds are released they then become a threat to the public's wild stock of birds, especially since many of these captive-reared birds are not killed immediately. We concur with the Service that the main issues involved with these programs are disease threats to wild waterfowl populations, regulation interpretations dealing with baiting and live decoy prohibitions, biases in interpreting population data when wild and captive-reared birds mix, and genetic integrity of wild stocks of mallards and black ducks.

The decline in many waterfowl populations across the continent remains the primary concern to waterfowl managers in the Pacific Flyway but shooting programs dealing with captive-reared mallards is also of great concern. The interest of waterfowl enthusiasts should be focused on maintaining and creating habitats to assist in the recovery and maintenance of wild stocks of birds. The proliferation of captive-reared mallards shifts the focus away from true population management problems.

While not appealing to everyone, the use of "tower shooting" of captive-reared mallards helps to ensure that these birds do not become established in the wild thus minimizing the impacts on wild populations. If tower shoots are allowed to continue, strict

ATTACHMENT 8

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operating and permit criteria must be outlined to protect wild waterfowl populations.

The Council recommends that the Service ban by rule any free-flying, captive-reared mallard release programs and that current programs be stopped. This is the only reasonable way to ensure the protection of wild waterfowl populations and related management activities. A quick decision on this issue would be appreciated.

The Council would also ask the Service to review the issue and develop policies related to all captive-reared waterfowl release programs. For example, the practice of taking eggs from the wild and raising birds from these eggs for release back into the wild carries some of the same disease threats as do captive-reared mallard programs.

Thank you for this opportunity to comment on this important issue.

Sincerely,

Tim Provan
Chairman

LTR Faxed 7/29/93

ATTACHMENT 8

**Proceedings
of the
80th Convention, 1990**

**International Association
of
Fish and Wildlife
Agencies**

(with reports from March and December 1990 meetings)

September 8-12, 1990

**Monteleone Hotel
New Orleans, Louisiana**

Library
U.S. Fish & Wildlife Service
Patuxent Wildlife Research Center
Laurel, Maryland 20708

MAY 01 1996

ATTACHMENT 8

IAFWA Resolution No. 11, September 12, 1990

POSITION ON HAND-REARED WATERFOWL/POPULATION AUGMENTATION

WHEREAS, wild waterfowl populations respond to the presence or absence of good breeding habitat; and

WHEREAS, hand-reared ducks, released into the wild, will be subject to the same limiting factors that are currently depressing duck recruitment; and

WHEREAS, studies have demonstrated inferior survival and reproduction in released hand-reared ducks; and

WHEREAS, costs of a hand-reared duck release program may detract from habitat management programs that benefit many species;

NOW, THEREFORE, BE IT RESOLVED that the International Association of Fish and Wildlife Agencies opposes the release of hand-reared waterfowl into the wild as an intended population augmentation practice.

ATTACHMENT 9

MAR 10 1994



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240



ADDRESS ONLY THE DIRECTOR
FISH AND WILDLIFE SERVICE

In Reply Refer To:
FWS/MBMO 94-00541

MAR 7 1994

Memorandum

To: Director, Office of Regulatory Affairs
From: Deputy Director

Subject: Regulatory Review -- Captive-reared Mallards (1018-AB77)

The Fish and Wildlife Service (Service) announced its intent to review the regulations governing the release and harvest of captive-reared mallards (50 CFR 21.13) on June 1, 1993. That Notice of Intent generated considerable response.

Along with the public comments received, Congress made it very clear that precipitous action on a proposed rule would not be appropriate from their perspective. The language in the FY 1994 Appropriations Bill reflects this:

Senate Report (p. 16): "The Service should terminate any revisions to, or promulgation of additional regulations, related to the release and harvest of captive-bred mallards in regulated shooting areas (RSA's) until the 3 year study of duck release programs, partially funded by the Service, is completed and its results provided to the Committees on Appropriations."

Conference Report (p. H8038): "The managers urge the Fish and Wildlife Service to complete its review of the regulations governing the release and harvest of captive-reared mallards on State licensed regulated shooting areas. The Service should review all data bases on this issue, including its current study on duck release programs as well as other studies in progress, and present its findings to the Committees on Appropriations and other interested parties before considering any changes in regulations."

As a result of the public and Congressional comments, the Service realized that additional data-gathering and analysis were needed prior to the development of any proposed rule. These activities have begun and will continue through the 1993-94 hunting season.

As a consequence, the regulatory schedule established by the Service earlier in the year is no longer valid. We intend to prepare a supplemental notice of intent to announce the findings of our investigations, to summarize public comments received, and announce any further plans for regulatory action and corresponding schedules.

ATTACHMENT 9

-2-

A proposed rule on health certification will be published at the same time. We have listed projected dates below for the supplemental notice of intent:

07/01/94 Regulatory Alert Form
07/15/94 Internal Review
08/01/94 External Review
08/22/94 Director or Assistant Secretary Signature
09/09/94 Office of Regulatory Affairs
09/30/94 Office of Management and Budget
10/28/94 Publication in Federal Register

I hope that the change in plans does not create any inconvenience. This issue will likely continue to be controversial; however, we believe that the approach we are currently following will provide the best foundation for future regulatory decisions.

Bruce Blanchard

For

Richard Smith

cc: MIB/FWS 3012 Directorate Read File
MIB/FWS 3249 ARW
634 ARLSQ/FWS Ops Read File, MBMO SURNAME
Atlantic Flyway Representative
FWS/MBMO:WOVOGEL:trs:358-1838:02/09/94:LETTERS/FORGIVE.CRM
re:PGERTLER:prh:02/25/94

ATTACHMENT 10

IAFWA

Fax: 202-624-7891

Jul 23 '01 13:13

P.02



International Association of Fish and Wildlife Agencies

Representing Fish and Wildlife Agencies since 1902

Hall of the States, 444 North Capitol Street, NW, Suite 544, Washington, DC 20001
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President
Robert L. McDowell
New Jersey

Executive Vice-President
R. Max Peterson

Secretary/Treasurer
C. Thomas Bennett
Kentucky

Vice-President
George E. Meyer
Wisconsin

November 23, 1999

Ms. Jamie Rappaport Clark
U.S. Fish and Wildlife Service
1849 C Street, NW
MailStop 3012 MIB
Washington, DC 20240

Dear Ms. Clark:

At the International Association of Fish and Wildlife Agencies (IAFWA) annual meeting in Killington, Vermont in September, the Migratory Wildlife Committee of the IAFWA, as well as the Waterfowl Subcommittee, were informed that the FWS had not released a report on the possible adverse effects of releasing captive-reared mallards into the wild for hunting purposes. We understand that the report, which was due five years ago, has yet to be completed. We also understand that the Atlantic Flyway Council has repeatedly asked the FWS to complete and release this report.

While this issue has been controversial for a number of years, addressing the release of captive-reared mallards has now become critical. As you know, the National Wildlife Health Center has documented Duck Viral Enteritis virus in captive and released mallards on the eastern shore of Maryland. Should this virus spread to and through wild waterfowl populations, the net result could be devastating. With the large number and high density of waterfowl that winter in the Chesapeake Bay area the potential for the virus to move rapidly in the wild is very high and could affect other populations along the Atlantic Coast.

I would strongly urge you to address this issue immediately by completing and releasing the report before the end of this year.

Sincerely,

David Waller, President
International Association of Fish and Wildlife Agencies

Executive Committee:

John Baughman, Wyoming (Vice-Chair)
Arnold H. Boer, New Brunswick
Allan L. Eybert, Florida (Chair)

G. Brent Manning, Illinois
Edward C. Parker, Connecticut

Ronald J. Regan, Vermont
David J. Waller, Georgia (Past President)
Steven A. Williams, Kansas

ATTACHMENT 11



JOINT FLYWAY COUNCIL MEETING

Memphis, Tennessee

July 23-28, 2000

JON ANDREW
CHIEF DIVISION OF MIGRATORY BIRD MANAGEMENT
US FISH AND WILDLIFE SERVICE
ARLINGTON SQUARE ROOM 634
ARLINGTON VA 22203

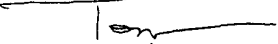
SUBJECT: FLYWAY COUNCILS JOINT
RECOMMENDATION 13

DATE: November 29, 2000

Dear Jon:

Attached is a copy of the Flyway Councils' Joint Recommendation 13 requesting the U.S. Fish and Wildlife Service complete the evaluation of the effects of releasing captive mallards under Federal Regulations 50 CFR 20 and 21 and a copy of the letter to Director Clark that accompanied Recommendation 13. This Recommendation was passed by all four Flyway Councils during the summer 2000 Joint Meeting. The Councils look forward to receiving your analysis as soon as possible.

Sincerely,


Thomas M. Hauge, Chair
National Flyway Council

Enclosures

ATTACHMENT 11



JOINT FLYWAY COUNCIL MEETING

Memphis, Tennessee
July 23-28, 2000

Flyway Councils Joint Recommendation

RECOMMENDATION NUMBER: 13

SUBJECT:

Completion by the U.S. Fish and Wildlife Service of the Evaluation of the Effects of Releasing Captive Mallards under Federal Regulations 50 CFR 20 and 21.

RECOMMENDATION:

That the Flyway Councils send a letter to the Director of the U.S. Fish and Wildlife Service requesting that the Service complete its evaluation of the effects of releasing captive mallards under 50 CFR 20 and 21 as proposed in its notice of intent (FR 1993: 58 (103)). This action has been requested repeatedly by letter from the Atlantic Flyway Council and in November 1999 by the International Association of Fish and Wildlife Agencies.

JUSTIFICATION:

- (1.) Releasing large numbers of captive reared mallards may affect the genetic identity of wild mallard stocks and may increase interbreeding with other species such as the black duck and mottled duck.
- (2.) Release of large numbers of captive reared mallards may introduce or transmit diseases such as duck plague or fowl cholera to wild waterfowl populations. DVE (duck plague) was identified in Maryland in 1998 in captive and released mallard populations.
- (3.) Current interpretation of these regulations may seriously compromise the ability of wildlife professionals to monitor wild mallard populations through aerial surveys, harvest surveys and banding programs.
- (4.) Databases used to establish harvest regulations within each flyway may be biased due to the presence of large numbers of released mallards and management decisions may be compromised to some degree.

ATTACHMENT 11



JOINT FLYWAY COUNCIL MEETING

Memphis, Tennessee

July 23-28, 2000

Recommended by:

Bob Coffer

7/28/00

Atlantic Flyway Council Technical Section

Date

Edward L. Wann

7/28/00

Mississippi Flyway Council Technical Section

Date

Larry Roberts

7/28/00

Central Flyway Council Technical Committee

Date

Thomas H.

7/28/00

Pacific Flyway Council Study Committee

Date

Approved by:

John J. Suet

7/28/00

Atlantic Flyway Council

Date

Coy A. Guinn

7/28/00

Mississippi Flyway Council

Date

Bill Wickers

7/28/00

Central Flyway Council

Date

Don Childress

7/28/00

Pacific Flyway Council

Date

ATTACHMENT 11



JOINT FLYWAY COUNCIL MEETING

Memphis, Tennessee

July 23-28, 2000

Ms. Jamie Rappaport Clark, Director
U.S. Fish and Wildlife Service
Main Interior Bldg., Room 3256
1846 C Street N.W.

Dear Ms. Clark

The Flyway Councils are concerned over potential adverse effects of releasing captive reared mallards into the wild for sport hunting purposes. This activity is increasing and has been a controversial issue for many years. The issue is of special concern at this time due to documentation by the National Wildlife Health Center of duck viral enteritis virus in captive and released mallards on the Eastern Shore of Maryland in 1998.

The U.S. Fish and Wildlife Service published a notice of intent on June 1, 1993 to review Federal Regulation 50CFR: 21 governing the release of captive mallards for hunting. The purpose of the Notice was to solicit public comment and to gather information concerning the possible adverse effects of releasing unlimited numbers of mallards for hunting purposes. Areas of concern included potential for transmission of disease to wild waterfowl, the confounding of waterfowl harvest and population surveys, possible confusion and bias introduced into banding programs, contamination of wild mallard gene pools and competition and hybridization with wild black duck and mottled duck stocks. Questions were also raised regarding the ability of managers to identify discrete populations of wild waterfowl and conduct population management on a flyway basis or to develop regulations for wild waterfowl due to the presence of large numbers of released birds. Concerns were also raised about legal questions regarding live decoys and baiting covered in 50CFR: 20. A report was due in the fall of 1994. Unfortunately, the report has yet to be completed in spite of repeated requests.

The Flyway Councils request that you expedite the effort to complete this report and make it available for review as soon as possible.

Sincerely

ATTACHMENT 12

In Refer Reply To:
FWS/AMBS-DMBM

Frank Montalbano
Division of Wildlife
FL Game & Fresh Water Fish Commission
620 S. Meridian Street
Tallahassee, Florida 323699-1600

Dear Mr. Montalbano:

Recently, all four Flyway Councils and the International Association of Fish and Wildlife Agencies (IAFWA) urged the U.S. Fish and Wildlife Service to resume its review of the potential effects of releasing free-flighted mallards on State-licensed shooting preserves, also known as regulated shooting areas. The Service has agreed to this request and intends to complete its review of the Federal Regulations (50 CFR 21.13) governing the release and harvest of captive-reared mallards on shooting preserves operated under State license or permit, as published in the June 1993 Notice of Intent (58 FR 31247). However, as a first step, we request your assistance in updating our baseline information on captive-reared mallard releases by States in your flyway.

Although the Service initiated its review and solicited input from State wildlife agencies in 1993, this effort was suspended because of provisions attached to the 1994 Congressional Appropriations Bill requesting the Service to withhold any promulgation of new regulations until further studies were completed. Since then, studies conducted by Louisiana State University and the National Wildlife Health Center have been completed and results are available for consideration in this review. Although this review initially was specific to licensed shooting preserves, we now plan to also include data on other captive-reared mallard release programs. A primary focus will be to assess the potential effects of these releases on the status and management of wild-stock migratory waterfowl.

Accordingly, we are requesting that you provide information from the most recent year available to complete the attached questionnaire. In addition, we would appreciate knowing the views of State agencies about, and/or problems associated with, these programs. **Please complete and forward information to: Jerry Serie, Atlantic Flyway Representative, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 12100 Breech Forest Drive, Suite 224, Laurel, MD 20708-4038 or by e-mail to: Jerry_Serie@fws.gov.**

ATTACHMENT 12

Frank Montalbano

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Thank you in advance for this information. We appreciate the Flyways' continued partnership in the management of our nation's waterfowl resources. If you have any questions, please contact the Service's Flyway Representative for your Flyway.

Attachments

Sincerely,

Jon Andrew, Chief
Division of Migratory Bird Management

S:\MBMO\BRSURVEY\COR\covermemo captivemall survey.wpd

ATTACHMENT 13

In Reply Refer To:
FWS/MBMO

Memorandum

To: Office of the Solicitor

From: Director, Fish and Wildlife Service

Subject: Request for Opinion on the Legal Status of Captive-reared and Released Mallards

The purpose of this request is to ask for a legal opinion on the status of captive-reared mallards under the Migratory Bird Treaty Act (MBTA) and our interpretation of regulations in 50 CFR 21.13 controlling their harvest. It would appear that some confusion and/or inconsistencies exist among the various opinions and rulings that have been rendered on this issue. The Fish and Wildlife Service (Service) needs a clear policy, which is consistent with previous rulings regarding the treatment and use of captive-reared mallards under the MBTA. In the following, I have attempted to provide you some bases for my concern.

Attachment #1.

These letters (resulting in what is popularly referred to as the "Breaux Ruling") resulted in released mallards harvested on State licensed shooting areas being exempt from Federal bag limits, even if free-flying. Prior to this correspondence, released mallards were counted for bag limit purposes, the same as wild mallards.

It is not clear whether this letter actually constitutes a solicitor's opinion or if a detailed legal review was conducted, which resulted in a Service rendered "ruling." Whatever is the case, the significance of this ruling is that we now allow free-flying captive-reared mallards to be taken in any number above the daily bag limit so long as the taking occurs within the confines of any premise operated as a shooting preserve under State license. This State licensed area does not have to be a commercial entity.

ATTACHMENT 13

50 CFR 10.12 gives clear definition to "migratory birds." "Migratory birds" means any bird, whatever its origin and whether or not raised in captivity, which belongs to a species listed in 10.13, or which is a mutation or a hybrid of any such species, including any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or in part, of any such bird or any part, nest, or egg thereof.

This regulation seems clear and seems to apply to the situation involving captive-reared mallards on State licensed shooting preserves.

Attachment #2

These memoranda in 1974 relate to a request by the Service Director and a response from the Solicitor's Office to clear-up the matter regarding whether captive-reared and released mallards are in fact considered "migratory birds" and, if so, is the use of non-FWS bands prohibited?

Also, there appear to be some conflicting court rulings about whether captive-reared mallards should be treated as migratory birds in the legal sense. The decision in Koop v. U.S. (1961) seems to give credence to the notion that captive-reared released mallards are within the protections of the MBTA; however, the decision in United States v. Conners (1979) categorically states that the MBTA does not apply to captive-reared mallards. I request your opinion on two points: 1) whether captive-reared mallards are considered migratory birds under 50 CFR 10.12 and 2) does the release of captive-reared mallards relinquish any property interest to such mallards, and does such release render such mallards "wild" for purposes of protection under the Migratory Bird Treaty Act? Is such a distinction of any consequence to the legal status of mallards under 50 CFR 10.12?

ATTACHMENT 14



ADDRESS ONLY THE DIRECTOR,
FISH AND WILDLIFE SERVICE

United States Department of the Interior

FISH AND WILDLIFE SERVICE
WASHINGTON, D.C. 20240



In Response Reply To:
FWS/MBMO

MAR 07 1991

Memorandum

To: Chief, Office of Migratory Bird Management
From: Duncan L. Brown, Regulations Technician
Subject: Legal status of "captive-reared" mallards

QUESTIONS:

- 1) Are captive-reared mallards "migratory birds" under 50 CFR 10.12?
- 2) Does the release of captive-reared mallards relinquish any property interest to such mallards, and does such release render such mallards "wild" for purposes of protection under the Migratory Bird Treaty Act? Is such a distinction of any consequence to the legal status of mallards under 50 CFR 10.12?

REGULATIONS CITED:

- 50 CFR 10.12
"Migratory bird" means any bird, whatever its origin and whether or not raised in captivity, which belongs to a species listed in Sec. 10.13..." (mallards)
- 50 CFR 10.13
The following is a list of all species of migratory birds protected by the Migratory Bird Treaty Act (16 U.S.C. 703-711) and subject to the regulations on migratory birds contained in this Subchapter B of Title 50 CFR. The species are those protected by the Convention for the Protection of Migratory Birds, August 16, 1916, United States-Great Britain...; the Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States-Mexico; the Convention for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment, March 4, 1971, United States-Japan...; and the Convention for the Conservation of Migratory Birds and

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Their Environment, United States-U.S.S.R., November 26, 1976... [includes mallards].

- 50 CFR 21.13 (a)
Nothing in this section shall be construed to permit the taking of live mallard ducks or their eggs from the wild.
- 50 CFR 21.13 (d)
When so marked, such live birds may be killed, in any number, at any time or place, by any means except shooting. (emphasis added) ...Provided, ...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...shall not apply to shooting preserve operations, as provided for in this paragraph, or to bona fide dog training or field trial operations.
- 50 CFR 20.21
...No persons shall take migratory game birds:
(f) By the use or aid of live birds as decoys; ...where tame or captive live ducks...are present...
- 50 CFR 20.33
No person shall possess more migratory game birds taken in the United States than the possession limit or the aggregate possession limit, whichever applies.

CONCLUSION OF LAW:

Captive-reared mallards are "migratory birds" as defined in 50 CFR 10.12 and, therefore, are a protected class. They are not, however, the class specifically intended for protection under the Migratory Bird Treaty Act (MBTA) and the treaty agreements with Great Britain, Mexico, and Japan. Case law and annotations to the U.S. Code indicate that the MBTA [16 USCS Sections 703 et seq.] applies only to mallard ducks which are "wild" and not to those which have been "captive-reared".

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Therefore, even though captive-reared mallards can be classified as "migratory birds", they will not be afforded all the protections mandated by the MBTA and the accompanying treaties. The Secretary of the Interior is authorized to issue regulations restrictive to "migratory birds" but only to the extent that the regulations are in accord with all four of the treaties mentioned in 16 USCS Section 712. Therefore, while the MBTA does not apply to captive-reared mallards, the Secretary may promulgate regulations for captive-reared mallards to the extent that they have an effect on migrating mallards---those mallards intended for international protection under the MBTA. Consequently, the Secretary would be within his authority to promulgate regulations for captive-reared mallards to the extent that such regulation would have a direct effect on the "migrating" population of mallards, i.e., issues concerning baiting, live birds as decoys, prevention of diseases, etc. If there is any chance that the migrating population would be effected by the captive-reared population, then the Secretary would be bound to impose necessary regulations, as directed under the MBTA and by treaty, to protect the migrating mallard population and focus on the obligation of the U.S. Fish and Wildlife Service (Service) to increase the population of endangered and/or threatened species.

DISCUSSION:

The two cases most often cited in connection with captive-reared mallards are Koop v. United States, 296 F.2d 53 (1961) and United States v. Connors, 606 F.2d 269 (1979). Another case of

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note with respect to the intention of the MBTA and the meaning of "migratory birds" is U.S. v. Richards, 583 F.2d 491 (1978).

In Koop, the owner (Dr. Koop) of a "ranch" reared mallard ducks upon artificial ponds and the ducks were unconfined from flying anywhere they wished. In the fall the owner would allow hunters to come onto the ranch (for a fee) and shoot as many ducks, at any time, as they pleased. The Government sued for Koop's failure to follow the hunting regulations promulgated in the protection of game birds pursuant to the Migratory Bird Treaty Act. Koop (and other appellants) contended that the birds were simply domesticated ducks (not "wild"), and were the property of the ranch and, as such, could be disposed of as the owner saw appropriate. The court found that 1) because there could not be any certainty that the ducks shot were those domesticated by Koop, there was a chance that some "wild" ducks were harvested without the protection of regulation; and 2) even if Koop could prove that the ducks shot were those he had domesticated on the ranch's artificial pond, once he released the ducks to the wild they were not his property anymore, no longer under his control and, thus, reverted to *ferae naturae*. The Court found that "the mallard ducks here were no more within the possession and control of Dr. Koop than were the pintails, wood ducks and teal that admittedly flew in and out of the ponds on his ranch and which undoubtedly shared in his bounty...even the

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mallards raised by Dr. Koop, if they could have been identified or distinguished from the other ducks, were wild ducks within the meaning of the law and of the regulations." Koop at 296.

The Koop case goes into great length in explaining the distinctions between "wild" and captive-reared. The Court concededly notes that the MBTA was not meant for, nor may it regulate or control the use of...tamed or domesticated ducks. Koop at 59. However, the Court utilized tort law and general game laws (of that time) to conclude that even if the wild birds have been in the control of a person, thus giving him a property right, once this control is relinquished the property right is destroyed. Koop at 59. With no property right, the ducks revert to the "wild" (ferae naturae) and must be protected accordingly under the MBTA.

The Koop case is apparently not dispositive of the issue of the legal status of captive-reared mallards. The case has not been cited for the propositions it makes concerning the "wild" nature of mallards once a property interest has been destroyed. The Connors case, below, has totally ignored such distinctions and reverts to the intent of the MBTA and the corresponding treaties, namely, that captive-reared mallards are not a protected class of species under the MBTA. The question arises, however, as to what would happen today if the same situation in Koop arose again. The government, obviously, is not prosecuting such cases now under 16 USC 703; however, the issue of control is one that is ripe for litigation---when do captive-reared

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mallards, released from captivity, become "wild" for protection under the MBTA? What, indeed, constitutes "release of control"?

In Conners, the Colorado Retriever Club was conducting field trials (a form of dog training) at the Rocky Mountain Arsenal. During the trials, a group of ducks entered the area of one of the field trial throwing stations disrupting the competition. After an unsuccessful attempt to run the ducks away from the field, the ducks were shot and killed. The government brought charges against the "hunter" and he was convicted of violating Title 16 USC Section 703---unlawful killing of migratory mallards. He appealed to the 10th Circuit Court. The Court found that captive-reared ducks were not afforded the protections of the MBTA as "wild ducks" because the intent of the various migratory bird treaties, for which the regulations were promulgated, did not intend there to be restrictions on captive-reared ducks and, indeed, only dealt with those ducks that the countries shared commonly and whose protections were necessary on an international level. The Court found that a strict interpretation of the criminal statutes made no mention of domesticated, captive-reared ducks. Thus, appellants could not be found guilty of violating a statute that applied only to "wild ducks".

The Conners case is apparently the "last word" on the issue of captive-reared mallards as far as their protection (or lack thereof) within the MBTA. The Court went into some detail

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concerning the background of the treaties and the MBTA. The MBTA was enacted to give effect to the "Convention between United States and Great Britain for the Protection of Migratory Birds," 39 Stat. 1702 (1916). Because the Convention referred only to "wild ducks", the Court found that the MBTA was never meant to specifically protect captive-reared mallards. Corresponding failures to delineate between "wild" and "captive-reared" ducks in treaties with Mexico and Japan only served to create an ambiguity as to the status of captive-reared mallards. A review of the legislative history indicates that the purpose of the MBTA and the treaties was to protect and promote the restoration of endangered or threatened species which were within the migrating international population of animals and birds. Since captive-reared members of a species would not be within this population, there seems little reason to protect this group under the MBTA. However, the Court was careful to point out that the Service had the authority to promulgate regulations to distinguish between "wild" and "captive-reared" mallard ducks to effectuate the intent of the treaties. See e.g., 50 CFR 21.13 (1977).

In Richards the defendants took issue with the newly promulgated regulations prohibiting the sale of certain migratory birds with the argument that the Secretary could only regulate those concerns of the MBTA and, consequently, could not regulate against the sale of birds which were captive-reared because they were not in the migrating population. Defendants captive-reared and sold sparrow hawks, a protected species, in defiance of the

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Secretary's regulatory proscription. The Court found that the Secretary was within his powers to promulgate regulations on those birds **whether or not they were "wild" or captive-reared** which were included in the MBTA and the terms and conventions between the United States and any foreign country for the protection of migratory birds.

This case is important if only because it confirms Secretarial authority to speak to the ongoing (and developing) responsibility of the Service to meet the mandates of the MBTA and corresponding treaties, namely, that those species identified as endangered or threatened therein must be protected. Even though the MBTA made no mention of captive-reared sparrow hawks, the Court in Richards found that the Secretary properly included such sparrow hawks within the protection of the MBTA. The Secretary felt their regulation (the prohibition of their sale) was necessary if there was a perceived danger that the birds were otherwise endangered and/or threatened. It could be postulated that the regulation of captive-reared sparrow hawks would have a beneficial effect on all members of the species---a rationale for protecting them under the MBTA. This could easily mean that captive-reared mallards could be regulated because of their close proximity and potential effect on the migrating populations.

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SUMMARY:

Case law under Connors, Koop, and Richards, and the close interpretation of the U.S. Code, the Migratory Bird Treaty Act, and the corresponding treaties all point to the notion that captive-reared mallards are not within the protections afforded those species in the MBTA. However, 50 CFR 10.12 in its reference to 50 CFR 10.13 has included captive-reared mallards as "migratory birds" and, thus, a species which may be regulated by the Secretary and administered through the Service. Even though the MBTA did not contemplate the protection of captive-reared mallards, IF it can be said that these mallards have an effect on the migrating population (the protected class under the MBTA) then these ducks can be regulated in keeping with the mandates of the MBTA in protecting and enhancing the population of those endangered and/or threatened migrating populations of mallard ducks. The Koop case is interesting for its discussion on the aspects of the "wild" population, even if this has nothing to do with the inclusion of captive-reared mallards as "migratory birds" under 50 CFR 10.12. While the arguments of property interest and *ferae naturae* are compelling and could technically be used today in an action against game preserves, they have had little or no impact in case law. The Connors case, as mentioned above, ignored these distinctions in whole. The Richards case stands for the proposition that the Secretary may promulgate, at any time, those regulations he finds necessary for the protection of that class of species endangered and/or threatened under the

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MBTA. The Connors case is evidence that captive-reared mallards are not a protected class under the MBTA and one cannot be successfully prosecuted for violation of 16 USC 703 if captive-reared mallards alone are shot; however, the Courts will give full rein to the Secretary in addressing the distinctions between "wild" and "captive-reared" mallards in his ongoing obligation to address the concerns of the MBTA---the protection of certain endangered and/or threatened species usually found in international migrating populations.

CONCLUSION:

Captive-reared mallards are migratory birds by regulatory definition. They are not, however, a protected class of species under the MBTA because they have no immediate effect on the migrating population of mallard ducks. Whether or not they are "wild" when shot for sport is of no consequence to the Service with respect to its obligation to protect migratory birds under the MBTA. The obligation of the Service is assumed whenever that captive-reared population of "migratory birds" effects the population of birds protected under the MBTA. This effect can be manifested in the difficulty in administering regulation harvests of mallard ducks because of the inability to distinguish between captive-reared ducks and "wild" ducks, the possibility of baiting the "wild" migrating population despite all good intentions of the owners of preserves or ranches, the enforcement problems of using live ducks as decoys for the "wild" migrating duck

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population, and the potential for transmittal of disease from the captive-reared population to the "wild" migrating population. These are simply a few of the problems that could arise without the proper regulation of the captive-reared mallard population. The Secretary has the authority to promulgate regulations to meet these concerns, and it would seem prudent to do so if there is any question that the mallard duck population protected under the MBTA might be effected adversely by the captive-reared mallard duck population.

ATTACHMENT 15



THE UNIVERSITY OF MARYLAND

CENTER FOR ENVIRONMENTAL AND ESTUARINE STUDIES
Appalachian Environmental Laboratory

January 17, 1989

Dr. Rollin T. Sparrow, Chief
Office of Migratory Bird Management
United States Fish and Wildlife Service
Washington, D.C. 20240

Dear Dr. Sparrow:

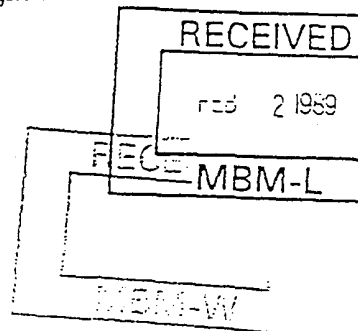
Enclosed is a grant proposal that I hope you will consider for partial funding support. The proposal outlines research designed to thoroughly evaluate the release of captive-reared Mallards. I have subdivided the proposal into three somewhat discrete packages. This was done to make it easier to go to several groups for funding. The Maryland DNR is unable or unwilling to fund the entire research proposal.

I know you are aware of how little we know about the effects of the released birds on wild waterfowl, especially Black Ducks. An evaluation of the Maryland release programs (both state and private) would also be of great interest and importance to groups outside the state. The drought induced acceleration of population declines has lead to a nationwide interest in release programs as a quick fix to the problem. A variety of influential people are calling for releases of captive waterfowl. Expenditure of public or private funds on such programs is certainly a setback for other worthy causes, notably the North American Waterfowl Management Plan.

Please do not hesitate to contact me if you need additional information about any aspect of the proposed research or funding. I would be delighted to discuss this proposal with you or anyone else in Migratory Birds. I would also be happy to provide my C.V. and names of references who could provide a frank assessment of my abilities as a researcher. Finally, I might mention that I sent this same proposal to Dr. Trauger at Patuxent.

Sincerely,

Dr. Frank C. Rohwer
Avian Ecologist



ATTACHMENT 15

Title: Evaluation of State and private releases of captive-reared Mallards. Stage II. Reproductive performance of released Mallards


Submitted to: Department of the Interior
U.S. Fish and Wildlife Service

Submitted by: Appalachian Environmental Laboratory
Center for Environmental and Estuarine Studies
University of Maryland
Frostburg, MD 21532

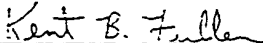
Principle Investigator: Dr. Frank C. Rohwer

Amount Requested: \$33,405

Proposed Duration: August 1989 - August 1992



Frank C. Rohwer, Assistant Professor
Appalachian Environmental Laboratory



Kent/B. Fuller, Professor and Head
Appalachian Environmental Laboratory

ATTACHMENT 15

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ATTACHMENT 15

Abstract

This proposal outlines research designed to evaluate the effects of Mallard release programs conducted by the Maryland Forest, Parks and Wildlife Service and private individuals, primarily on registered shooting areas (RSAs) in Maryland. This proposal is divided into subproposals that address three stages in the annual cycle of the released birds. The first stage focuses on the period from release of young birds until early fall and the influx of wild migrants. Research during this phase (proposal stage I) will determine estimates of survival rates, movements, and habitat use of released birds. These data will depend on an intensive monitoring of large numbers of radio-telemetered Mallards. During the second period in the annual cycle (proposal stage II) research will focus on the fall and winter ecology of released birds and wild waterfowl, which may interact with the released Mallards. Again, much research effort will be placed on tracking the movements and habitat use of both State released and private released Mallards. In addition, the use of RSAs by wild ducks and their susceptibility to hunting on RSAs will also be assessed. These data will require observation of RSAs and surveys of harvests of captive-reared and wild birds. To assess the threat of transmission of infectious diseases I will periodically search RSAs for dead birds. These carcasses and those recovered from the telemetry work will be submitted to the Animal Health Laboratory for disease testing, especially for duck virus enteritis and avian cholera. The stage III subproposal deals with the reproductive period of the annual cycle. Because of early pairing of Mallards and Black Ducks the research begins in November, but intensive monitoring of the surviving captive-reared Mallards will begin in late January. Through radio-tracking I will determine what fraction of birds pair and who they pair with, whether survivors leave the area, and the reproductive success of the released Mallards that breed in the region.

ATTACHMENT 16

SURVIVAL, BEHAVIOR, AND MOVEMENTS OF CAPTIVE-REARED
MALLARDS RELEASED IN DORCHESTER COUNTY, MARYLAND

A Dissertation

Submitted to the Graduate Faculty of the
Louisiana State University and
Agricultural and Mechanical College
In partial fulfillment of the
requirements for the degree of
Doctor of Philosophy

in

Wildlife and Fisheries Science

By
David Benjamin Smith
B. S., Auburn University, 1985
M. S., University of Miami, 1991
December, 1999

ATTACHMENT 16

ABSTRACT

Private landowners with regulated shooting areas (RSA) and the Maryland Department of Natural Resources (DNR) have released up to 120,000 hand-reared mallards (Anas platyrhynchos) a year. Duck harvest on Wildlife Management Areas (WMAs) included 30, 18, and 6 percent state mallards and 6, 10, and 4 percent RSA mallards in 1991, 1992, and 1993, respectively. Kaplan-Meier survival estimates for radio-marked mallards released on RSAs were 81-85% for mid-August to mid-October, but declined to $32.5\% \pm 13.7$ (95% C.I.) by the end of the hunting season in 1992 and $54.3\% \pm 22.8\%$ in 1993. Hunting accounted for 71% of all mortalities of RSA mallards in 1992 and 45% in 1993. Survival of DNR mallards at 7 weeks post-release was $23.0 \pm 10.6\%$ and $28.4\% \pm 17.8\%$ for 1992 and 1993. Supplemental feeding of mallards released by DNR appeared to increase ($P < 0.001$) their survival to 7 weeks post-release (survival = 0.915 ± 0.10). This result suggests that the low survival of mallards released by DNR was the result of energetic and/or nutritional deficiency. RSA mallards preferentially use the habitat on the RSA where they were released ($P < 0.01$). Characteristics of the source RSA affected the choice of property types used, although the source RSA was always among the most preferred types. Home range sizes and maximum distances moved from the release site were positively related to the size of the source RSA ($P < 0.05$). Mallards released on RSAs composed primarily of marsh habitats moved farther and had larger home ranges than those released on upland properties ($P < 0.05$). I recorded pair status and origin of 772 American black ducks (Anas rubripes) and 4,960 mallards in 1992

ATTACHMENT 16

and 1993. Black ducks paired earlier than mallards, and wild mallards paired earlier than released captive-reared mallards. Pairing was highly assortative, only 3 of 229 female black ducks (1.3%) were paired with drake mallards. Three of 492 paired female mallards were paired with hybrid black duck x mallard males. In contrast, there were 8.4% hybrids among the black duck population based on hunter bag checks at WMAs. There was also assortative mating between wild and captive-reared mallards.

ATTACHMENT 17

Perceptions of Releases of Captive-reared Mallards, with Emphasis on an Intensive Program in Maryland

David B. Smith and Frank C. Rohwer

*School of Forestry, Wildlife, and Fisheries
Louisiana Agricultural Experiment Station
Louisiana State University Agricultural Center
Baton Rouge*

The release of captive-reared mallards historically has been a popular response to declining waterfowl populations. In the early 1990s, Maryland was the only state to have a legislatively mandated mallard release program and a large private release program in state licensed Regulated Shooting Areas (RSAs) (Maryland annotated Code 10-906). At their peak in the late 1980s, the Maryland Department of Natural Resources (MDNR) and private groups released about 40,000 and 100,000 mallards per year, respectively. Dorchester County had the highest number of mallard releases on RSAs (82,000) (L. Johnson personal communication: 19??) and on public wetlands (7,400) (L. Hindman personal communication: 19??) in Maryland.

Maryland Department of Natural Resources

The MDNR began operational releases of mallards in 1974 under a legislative mandate that authorized Maryland's duck stamp. Fifty percent of the proceeds from the sale of state duck stamps was earmarked for the MDNR mallard release program, with the goals of improving local hunting and, secondarily, increasing local production (Hindman et al. 1992). MDNR released up to 40,000 birds annually between 1974 and 1993, when the program was ended. MDNR purchased five- to seven-week-old ducklings that were nonstop trucked to Maryland (24 hours), unloaded, given access to water and distributed to releases sites within 24 hours. Birds were released in groups of up to 400 per site in late July to mid-August on estuarine marshes. They received no supplemental food or care after release (Hindman et al. 1992).

Regulated Shooting Areas are private properties where captive-reared birds are banded, released and harvested by RSA owners and their guests (Maryland DNR Title 08, Subtitle 03, Chapter 09). The U.S. Fish and Wildlife Service (USFWS) allows such regulated releases under Federal Regulation 50 CFR 21.13. Releases on RSAs may be of flighted or free-flying mallards. The flighted mallards are typically released from a tower and shot immediately; whereas the free-flying mallards are released weeks to months before shooting takes place. Released mallards must be toe clipped before four weeks of age and banded or marked in some other approved manner. Prior to issuance of an RSA permit, the MDNR is responsible for determining that the operation of an RSA will not conflict with any reasonable prior public interest. RSAs must be at least 50 acres (20.2 ha) to have flighted mallard releases and at least 200 acres (80.9 ha) to release and harvest free-flying mallards or upland game.

ATTACHMENT 18

Please provide the following information regarding captive-reared mallard releases in your State:

This survey pertains only to mallard release programs intended to supplement hunting or shooting (not dog trials). Please provide information from the most recent year available for your State. If this information is not available, you may wish to contact the shooting preserves or private organizations directly. These results will be used to update the survey conducted by the Service in 1993. Also, please indicate your State's view regarding mallard release programs and/or any problems associated with these activities.

Flyway:

State:

Contact Person:

I. Questions relating to State-licensed shooting preserves/regulated shooting areas:

- A. Number of licensed shooting preserves in your State: _____
- B. Number of preserves shooting captive-reared mallards: _____
- C. Mallard release method (# of preserves using method):
 - C.1 tower-type (release and recapture) method _____
 - C.2 free-flighted (free-ranging) method _____
 - C.3 other methods (specify) _____
- D. Number of mallards released annually (approx.)
 - D.1 tower-type _____
 - D.2 free-flighted _____
 - D.3 other _____
- E. Number of captive-reared mallards harvested annually (approx.)
 - E.1 tower-type _____
 - E.2 free-flighted _____
 - E.3 other _____
- F. Do you permit shooting preserves to harvest captive-reared mallards in any number, at any time, including outside the regular duck season for wild ducks? (Yes/No) _____
- G. Do you limit the locations of shooting preserves releasing captive-reared mallards relative to the distribution of wild ducks? (Yes/No) _____

ATTACHMENT 18

II. Questions relating to other mallard releases

- A. Number of other organizations, private clubs, or individuals in your State (e.g. waterfowl associations, FFA) releasing captive-reared mallards _____
- B. Number of mallards released annually (approx.) _____
- C. Are non-FWS bands put on released birds? (Yes/No) _____
- D. What is the harvest rate (if known)? _____
- E. Are captive-reared mallards allowed to be released on State lands? (Yes/No) _____

III. Questions about captive-reared mallard programs

- A. Does your State agency view captive-reared mallard releases as positive, negative, or neutral? Give specifics in comment section. _____
- B. Have there been any documented cases of disease problems associated with captive-reared mallards released in your State? (Yes/No) Provide any specifics in comment section. _____
- C. Do you have any information pertaining to enforcement problems associated with captive-reared mallard releases? (Yes/No) Give specifics in comment section. _____
- D. Does your agency favor more restrictive Federal regulations controlling the release of captive-reared mallards into the wild for shooting? (Yes/No) _____

General Comments (attach additional sheets if needed):

ATTACHMENT 19

CRM Refuge Questions:

Please provide answers to the following questions based on the most recent information available on your specific National Wildlife Refuge.

1. Are you aware of any captive-reared mallard releases occurring in the vicinity or close proximity (10 miles) surrounding a particular National Wildlife Refuge (list group or organization)?
2. If so, what evidence do you have that captive-reared mallards actually occur or otherwise make usage of the refuge on a seasonal or continuing basis (give relative numbers)?
3. Are you aware of any adverse impacts that occurs as a direct result of captive-reared mallards frequenting the refuge (i.e. habitat, pairing with black ducks or mottled ducks, nuisance)?
4. Do you have any evidence of disease interactions between captive-reared mallards and wild-stock migratory waterfowl (duck plaque, cholera, etc.)?
5. Do captive-reared mallards interfere with existing population monitoring and banding activities directed toward management of wild-stock migratory waterfowl (breeding and midwinter surveys, banding operations)?

ATTACHMENT 20



Environment
Canada

Environnement
Canada

Ottawa, Ontario
Canada
K1A 0H3

Dr. Bob Blohm
Acting Chief, Division of Migratory Birds Management
U.S. Fish & Wildlife Service
Arlington Square, Room 634
4401 N. Fairfax Drive
Arlington, VA
USA 22203

August 26, 2002

Dear Dr. Blohm:

Thank you for the opportunity to comment on the USFWS's "Review of Captive-Reared Mallard Regulations On Shooting Preserves". CWS views the release into the wild of captive-reared mallards as a serious conservation issue.

Let me first describe the regulations and policy in Canada which prohibit the raising and release of waterfowl for the purpose of shooting. The Migratory Birds Convention Act (which implements our joint Migratory Birds Convention) allows for holding and breeding of migratory birds in captivity. However, an Avicultural Permit, issued by CWS on behalf of the Minister of the Environment, is always required, for all species. There are a number of conditions to be fulfilled prior to, and following, the receipt of an Avicultural Permit (see Section 20 of the *Migratory Birds Regulations* [MBRs] in Attachment A).

The MBRs make it clear that no birds held under an Avicultural Permit may be shot, nor may they be released from captivity. It is specified that "*the holder of an avicultural permit may kill migratory birds held by him ... in any manner except shooting, ...*", and that "*no person shall release into the wild a migratory bird held under authority of an avicultural permit unless authorized by the Minister*" (Subsection 4). The conditions under which releases to the wild would be permitted are described in the CWS Permit Policy (see Attachment B) which states that "*A written application from an aviculturalist, to take migratory birds from or release them to the wild, must show that he has the qualifications, experience and suitable facilities to propagate wild-captured stock, as part of a research or management project approved by the CWS*". Release for the purpose of shooting would not be approved by CWS. Further, "*all birds held under authority of an Avicultural Permit must be wing-clipped, pinioned or kept in an enclosure to prevent their escape to the wild*", and "*The applicant must demonstrate that his activities will not significantly affect wild stocks of birds*" (Attachment B).

Environment Canada / Environnement Canada



1..2

Canada

www.ec.gc.ca

ATTACHMENT 20

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The purpose of stringent restrictions on the possession and release of captive-reared birds is to address our primary concern, that is, the effect on wild birds of the integration of captive-reared birds into wild populations. The Review by the USFWS provides evidence for many of these potential effects, including; dissemination of avian diseases, reduction or loss of genetic integrity of wild stocks through hybridization, and competition for resources. Additional issues include increasing nuisance problems, and effects on natural migration movements. While there is evidence that each of these effects may be occurring, we believe that even the simple probability of their occurrence is enough to warrant control measures because of the seriousness of the effects.

We are particularly concerned about the effect that releases of mallards in the eastern U.S. could have on wild populations of black ducks breeding in eastern Canada. Competition and/or hybridization with mallards is felt to be one of the factors leading to the decline of black ducks. We are also very concerned about the effect of these large scale releases on monitoring programs. Surveys to estimate population sizes and trends, estimates of harvest and studies of survival and recovery rates based on banding are all confounded by the presence of captive-reared mallards in wild populations. Captive-reared waterfowl, released into the wild either accidentally or purposefully for shooting or other reasons do become integrated into wild migratory populations. Although we do not keep comprehensive records, bands from captive-reared birds have been reported from at least 5 Canadian provinces.

The Review is restricted to the subject of releases in a free-flighted or free-ranging condition on licensed shooting preserves, and recommends that tower-type releases be required. The reason for this is that fewer birds survive and escape tower shoots. Nevertheless, birds do survive and become integrated into wild populations (the Review indicates that only about 44% of free-flighted birds are harvested, while about 70% are harvested in the tower shoot situation). While the number of survivors of tower shoots may be fewer, the potential seriousness of their effects is the same.

In Canada, tower shooting is also prohibited under the MBRs described above, as well as by the Criminal Code of Canada. Specifically, Section 446 subsections (f) and (g) contribute to our shared conservation goals by preventing the release of captive birds:

446. (1) *Everyone commits an offence who ...*
- (f) *promotes, arranges, conducts, assists in, receives money for or takes part in any meeting, competition, exhibition, pastime, practice, display or event at or in the course of which captive birds are liberated by hand, trap, contrivance or any other means for the purpose of being shot when they are liberated; or*
 - (g) *being the owner, occupier, or person in charge of any premises, permits the premises or any part thereof to be used for a purpose mentioned in paragraph (f).*

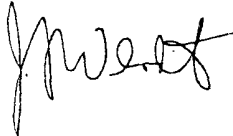
Canada and the United States are obligated to protect shared wild migratory populations under the *Migratory Birds Convention*. We note that the recommendations of this Review relate only

ATTACHMENT 20

-3-

to the release of captive-reared mallards in a free-flying state on licensed shooting preserves. Nevertheless, the conclusions are relevant to releases of any kind. While we agree with the recommendations of the Review, CWS encourages the USFWS to broaden its view and implement policy and regulations that will prevent the release or escape of captive-reared waterfowl of any species into wild populations. While some organizations and individuals wish to increase hunting opportunity artificially, a sustainable long-term visionary approach is to improve the quality and distribution of waterfowl habitat in North America.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Wendt". The signature is fluid and cursive, with a large initial "S" and a distinct "W".

Dr. Steve Wendt
Chief, Migratory Birds Conservation
Canadian Wildlife Service

ATTACHMENT 20

ATTACHMENT A - Excerpted from the Migratory Birds Regulations

AVICULTURAL PERMIT

20. (1) No person shall

(a) buy, sell, possess or transport live migratory birds or their eggs for avicultural purposes except under an avicultural permit issued by the Minister;

(b) take migratory birds or their eggs for avicultural purposes, from the wild, except under authority of a permit issued by the Minister; and

(c) subject to subsection (2), kill migratory birds that are bought, sold, taken, possessed or transported pursuant to an avicultural permit.

(2) The holder of an avicultural permit may kill migratory birds held by him pursuant to his avicultural permit, in any manner except shooting, for consumption by himself or other persons but not for sale or any other purpose.

(3) Every person to whom a permit referred to in subsection (1) is issued shall

(a) keep books and records that correctly show at all times the following, namely:

(i) the number and species of migratory birds in his possession,

(ii) the number and species of eggs of migratory birds in his possession, and

(iii) full details of all dealings in migratory birds or parts thereof, or their eggs, whether by sale, barter, loan or gift, including the full name and address and the permit number of every person who receives such migratory birds or parts thereof, or their eggs; and

(b) on or before January 31st next following the end of each calendar year in which he held a permit referred to in subsection (1), make a report in writing to the Minister in respect of the calendar year for which the permit was issued, stating

(i) the number of birds of each species reared by him during that calendar year,

(ii) the number of migratory birds of each species killed by him during that calendar year,

(iii) the number of live migratory birds of each species and the number of eggs of each species sold by him during that calendar year together with the full name and

ATTACHMENT 20

address and the permit number of each person to whom such birds or eggs were sold,

(iv) the number of live migratory birds of each species and the number of eggs of each species purchased by him during that calendar year together with the full name and address and the permit number of each person from whom such birds or eggs were purchased,

(v) the number of live migratory birds of each species and the number of eggs of each species given away by him gratuitously during that calendar year together with the full name and address and the permit number of each person to whom such birds or eggs were given,

(vi) the number of live migratory birds of each species and the number of eggs of each species in his possession at the end of that calendar year, and

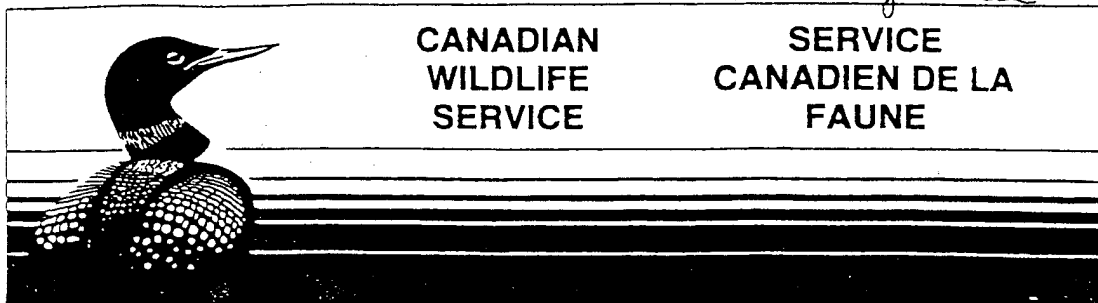
(vii) such other information as the Minister may require.

(4) No person shall release into the wild a migratory bird held under the authority of an avicultural permit unless authorized by the Minister. SOR/79-544, s. 9; SOR/79-800, s. 1(F); SOR/81-641, s. 4.

ATTACHMENT 20

ATTACHMENT B

Kathy Wilson



**PERMIT
POLICY**

**POLITIQUE EN
MATIÈRE DE
PERMIS**

Replace: New

Remplace: Nouvelle

Forecasted revision: 1993

Révision prévue: 1993

Approval: Approved by the CWS
Executive Committee.
October 30, 1990.

Approbation: Approuvé par
Le comité exécutif du SCF
30 octobre 1990.

J. A. K. Smith

Director General, CWS

Directeur général, SCF



CONTACT:
LEGISLATION, REGULATION
AND LAW ENFORCEMENT
DIVISION

CONTACT:
DIVISION DE LEGISLATION,
REGLEMENTATION ET
APPLICATION DE LA LOI

ATTACHMENT 20

SCOPE

This policy applies to all officers issuing permits listed in schedule II of the Migratory Birds Regulations.

PURPOSE

To establish a uniform policy through which the Canadian Wildlife Service and agencies acting on its behalf shall issue permits listed under Schedule II of the Migratory Birds Regulations.

To define the responsibilities of staff involved in permit issuance.

REFERENCES AND RELATED AUTHORITIES

References

Migratory Birds Convention Act R.S., 1985, c. M-7 and amendments.

Migratory Birds Regulations C.R.C., c. 1035 and amendments.

Migratory Bird Sanctuary Regulations C.R.C., c. 1036 and amendments.

COSEWIC - Definitions - April 1990.

COSEWIC - List of species with designated status - April 1989.

Policy for the Issuance of Scientific Collecting Permits - Canadian Museum of Nature - December 17, 1987.

DEFINITIONS

Definitions

Association: Any organized group of persons with a common goal. (Association)

Aviculture: The raising of birds and especially wild birds in captivity. (Aviculture)

Auxiliary marker: Any device or marker other than the regular metal band supplied by CWS or a colored leg band. (Marqueur auxiliaire)

PORTÉE

La présente politique s'applique à tous les agents qui délivrent les permis énumérés à l'annexe II du Règlement sur les oiseaux migrateurs.

OBJET

Établir une politique uniforme en vertu de laquelle le Service canadien de la faune et les organismes qui oeuvrent en son nom délivreront les permis énumérés à l'annexe II du Règlement sur les oiseaux migrateurs.

Préciser les responsabilités des employés qui s'occupent de délivrer les permis.

RÉFÉRENCES ET RÈGLEMENTS

Loi sur la Convention concernant les oiseaux migrateurs, S.R. (1985), ch. M-7, et ses modifications.

Règlement sur les oiseaux migrateurs, C.R.C., ch. 1035, et ses modifications.

Règlement sur les refuges d'oiseaux migrateurs, C.R.C., ch. 1036, et ses modifications.

CSEMDC - Définitions - avril 1990.

CSEMDC - Liste des espèces avec leur statut désigné - avril 1989.

Politique concernant la délivrance des permis autorisant les prises à des fins scientifiques - Musée canadien de la nature - 17 décembre 1987.

DÉFINITIONS

Références

Définitions

Agents émetteurs: Personnes autorisées par le ministre, en vertu d'une délégation de pouvoir ou des règlements applicables, à délivrer des permis, y compris les personnes qui délivrent des permis conformément à une entente conclue entre le gouvernement canadien et une autre partie. (Issuing officer)

Association: Groupe organisé dont les membres ont un but commun. (Association)

ATTACHMENT 20

Capture: Taking possession of a living bird, and retaining it for any period of time. (Capturer)

Club: See Association. (Club)

Damage: Loss of value in relation to an objective. (Dommmage)

Educational purpose: Any use by a recognized organisation where the individuals of specimens are actively used for systematic instruction or training and to promote conservation of migratory birds. (Fins éducatives)

Enclosure: An area surrounded by a fence in such a manner as to prevent birds from escaping from it and protecting them from predators. (Enclos)

Endangered species: Any indigenous species of migratory bird that is threatened with imminent extinction or extirpation throughout all or a significant portion of its Canadian range. (Espèce en danger)

Extinct species: Any species of migratory bird formerly indigenous to Canada but no longer known to exist anywhere. (Espèce disparue)

Extirpated species: Any indigenous species of migratory bird no longer known to exist in the wild in Canada but occurring elsewhere. (Espèce disparue au Canada)

Exceptional circumstances: An unexpected and unusual situation requiring temporary and urgent action. (Circonstances exceptionnelles)

Issuing officer: A person authorized by the Minister by way of delegation of authority or by the Regulations to issue a permit including those persons who issue permits in accordance with an agreement between the Government of Canada and another party. (Agents émetteurs)

Migratory bird: All migratory birds as defined in the Migratory Birds Regulations, their eggs, nest or parts thereof. (Oiseaux migrateurs)

Permit Review Committee: Any formal committee designated by the Director General CWS, or a delegate or, a Regional Director,

Aviculture: Élevage en captivité des oiseaux, particulièrement les oiseaux sauvages. (Aviculture)

Capturer: S'emparer d'un oiseau vivant et le garder en captivité pendant un certain temps. (Capture)

Circonstances exceptionnelles: Situation imprévue et inhabituelle qui réclame des mesures d'urgence temporaires. (Exceptional circumstances)

Club: Voir "Association". (Club)

Comité de révision des permis: Tout comité officiel créé par le directeur général du SCF, un de ses mandataires ou un directeur régional du SCF, dans le but de réviser les modalités d'octroi des permis. (Permit Review Committee)

Directeur régional: Un des directeurs régionaux du SCF. (Regional director)

Dommmage: Perte de valeur par rapport à un objectif donné. (Damage)

Enclos: Espace clôturé de manière à empêcher les oiseaux de s'en échapper et à les protéger contre les prédateurs. (Enclosure)

Espèce disparue au Canada: Toute espèce indigène d'oiseaux migrateurs qui n'existe plus à l'état sauvage au Canada, mais qui subsiste encore ailleurs. (Extirpated Species)

Espèce en danger: Toute espèce indigène d'oiseaux migrateurs qui est menacée d'extinction imminente ou qui risque de disparaître dans l'ensemble ou une partie importante de son habitat canadien. (Endangered species)

Espèce disparue: Toute espèce d'oiseaux migrateurs que l'on trouvait autrefois au Canada, mais qui semble ne plus exister nulle part dans le monde. (Extinct species)

Espèce menacée: Toute espèce indigène d'oiseaux migrateurs dont la survie au Canada risque d'être en danger. (Threatened species)

Espèce rare: Toute espèce indigène d'oiseaux qui est peu nombreuse dans l'ensemble ou une

ATTACHMENT 20

CWS, to review permit issuance. (Comité de révision des permis)

Permittee (Permit holder): A person to whom a permit is issued and those working on his behalf mentioned on the permit and those assisting under direct supervision. (Permissionnaire)

Rare species: Any indigenous species of bird not common throughout all or a significant portion of its Canadian range. (Espèce rare)

Regional Director: A Regional Director of the CWS. (Directeur régional)

Take: Seizing, taking possession or killing with any part of the body or with any instrument or weapon. (Prendre)

Taxidermist: Any person who engages in the business (for a remuneration) of the preservation or mounting of migratory birds or their eggs. (Taxidermiste)

Threatened species: Any indigenous species of migratory bird that could possibly become endangered in Canada. (Espèce menacée)

Vulnerable species: Any indigenous species of migratory bird that is particularly at risk because of low or declining numbers, occurrence at the fringe of its range or in restricted areas, or some other reason, but is not at present a threatened species. (Espèce vulnérable)

TYPE OF PERMIT

Types of Permits Migratory Game Bird Hunting Permit.

Scientific Permits, including:

- (a) take;
- (b) capture and band;
- (c) salvage;

partie importante de son habitat canadien. (Rare species)

Espèce vulnérable: Toute espèce indigène d'oiseaux migrateurs qui risque éventuellement de disparaître à cause d'une population faible ou en diminution, parce qu'elle se retrouve à la limite de son habitat ou dans des zones restreintes, ou pour quelque autre raison, mais qui ne représente pas pour l'instant une espèce menacée. (Vulnerable species)

Fins éducatives: Toute forme d'utilisation par un organisme accrédité, consistant à se servir de spécimens dans un but de formation ou d'enseignement systématique, ou afin de promouvoir la conservation des oiseaux migrateurs. (Educational purpose)

Marqueur auxiliaire: Dispositif ou marqueur autre que la bande métallique ordinaire fournie par le SCF ou qu'une bande de couleur se posant autour de la patte. (Auxiliary marker)

Oiseaux migrateurs: Cette appellation désigne tous les oiseaux migrateurs tels que définis par le Règlement sur les oiseaux migrateurs, incluant leurs oeufs et leurs nids, en tout ou en partie. (Migratory bird)

Permissionnaires (titulaires d'un permis): Personnes à qui on a délivré un permis, de même que les employés qui travaillent en leur nom indiqués sur le permis et ceux qui les aident, sous une surveillance directe. (Permittee)

Prendre: Saisir, capturer ou tuer un spécimen avec une partie du corps, un instrument ou une arme quelconque. (Take)

Taxidermiste: Toute personne dont l'occupation (rémunérée) consiste à empailler ou monter, aux fins de préservation, les oiseaux migrateurs ou leurs oeufs. (Taxidermist)

TYPES DE PERMIS

Permis de chasse aux oiseaux migrateurs.

Types de permis

Permis scientifique, notamment aux fins suivantes:

- (a) prise
- (b) capture et baguage
- (c) sauvetage

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- (d) educational;
- (e) rehabilitation.

Avicultural Permits including:

- (a) possession;
- (b) capture;
- (c) release.

Migratory Bird Damage Permit.

Airport-Kill Permit.

Taxidermist Permit.

Eiderdown Permit.

Special Permit.

BACKGROUND

The Migratory Birds Convention between Great Britain on behalf of Canada and the United States was signed in 1916. The Convention established the mechanism for the protection of migratory birds shared by Canada and the United States. In 1917, the Migratory Birds Convention Act was passed in Canada to implement the Convention.

This Act authorizes the Governor in Council to make such regulations as are deemed expedient to protect the migratory birds that inhabit Canada during the whole or any part of the year. Subsection 4(1) of the Migratory Birds Regulations authorizes the issuance of permits referred to in these Regulations.

ISSUANCE POLICY

Hunting Permit The Canadian Wildlife Service will ensure that the Migratory Game Bird Hunting Permit is available for sale to any person not prohibited from applying for and holding such a permit. Indian and Inuit people are exempted from this regulation.

Other Permits The Canadian Wildlife Service may issue permits, other than hunting permits, to an individual or representative of an organization who satisfies the criteria for a specific type of permit.

- (d) éducation
- (e) réhabilitation

Permis d'aviculture, incluant:

- (a) possession
- (b) capture
- (c) remise en liberté

Permis pour cause de dommages par les oiseaux migrateurs.

Aéroports - permis de tuer.

Permis de taxidermiste.

Permis de cueillette de duvet.

Permis spécial.

CONTEXTE

La Convention sur les oiseaux migrateurs, conclue entre les États-Unis et la Grande-Bretagne, au nom du Canada, a été ratifiée en 1916. Cette convention établissait un mécanisme visant à protéger les oiseaux migrateurs communs au Canada et aux États-Unis. En 1917, le Parlement canadien a adopté la Loi sur la Convention concernant les oiseaux migrateurs dans le but de mettre en oeuvre la Convention.

Cette loi autorisait le gouverneur en conseil à promulguer les règlements qu'il jugerait pertinents afin de protéger les oiseaux migrateurs qui passent une partie ou l'ensemble de l'année au Canada. Le paragraphe 4(1) du Règlement sur les oiseaux migrateurs autorise la délivrance des permis mentionnés dans ce Règlement.

POLITIQUE RÉGISSANT L'ÉMISSION DE PERMIS

Permis de chasse Le Service canadien de la faune veillera à ce que quiconque ayant le droit de demander et de détenir un permis de chasse aux oiseaux migrateurs gibier puisse acheter un tel permis. Les Amérindiens et les Inuits sont exemptés de ce règlement.

Autres perm Le Service canadien de la faune peut délivrer des permis autres que pour la chasse à des particuliers ou aux représentants d'organismes qui répondent aux critères d'admissibilité s'appliquant à un type de permis en particulier.

Restrictions

The Canadian Wildlife Service will not issue permits for the following purposes:

- to serve migratory game birds for fund raising dinners or campaigns;
- to sell or auction off mounted migratory birds for fund raising dinners or campaigns;
- for personal use of a migratory nongame bird or a migratory insectivorous bird.

MIGRATORY GAME BIRD HUNTING PERMIT

Sale of Hunting Permits

Approximately 320,000 Migratory Game Bird Hunting Permits are issued throughout Canada annually. These permits provide a sampling frame which allows assessment of the species composition of the total harvest of migratory game birds. A Wildlife Habitat Conservation Stamp is affixed to the Hunting Permit to make it valid. The purchase of the stamp is a condition of the permit.

Possession of a Migratory Game Bird Hunting Permit is required to hunt migratory game birds during the periods established by the Migratory Birds Regulations. Indian and Inuit people are the only persons exempted from purchasing a permit. The hunter must have it on his or her person while hunting or while in possession of migratory game birds.

Since 1966, Post Offices sell hunting permits from August 1 until the close of the hunting season in each area.

Permits may also be sold by hunting lodges and outfitters or provincial government outlets as defined in a federal-provincial agreement. Detailed procedures are revised annually.

Le Service canadien de la faune ne délivrera pas de permis aux fins suivantes:

- servir des oiseaux migrateurs en guise de gibier lors de repas ou de campagnes visant à recueillir des fonds;
- vendre ou offrir aux enchères des oiseaux migrateurs empaillés pour des repas ou des campagnes visant à recueillir des fonds;
- utilisation personnelle d'un oiseau migrateur non-gibier ou d'un oiseau migrateur insectivore.

PERMIS DE CHASSE AUX OISEAUX MIGRATEURS GIBIER

À chaque année, quelque 320 000 permis de chasse aux oiseaux migrateurs gibier sont délivrés dans l'ensemble du Canada. Ces permis fournissent un cadre d'échantillonnage qui permet d'évaluer la composition par espèces de l'ensemble des oiseaux migrateurs gibier qui sont chassés. Un timbre de conservation de l'habitat naturel est apposé sur le permis de chasse pour le valider. L'achat de ce timbre est une condition indispensable à l'obtention d'un permis.

Pour avoir le droit de chasser les oiseaux migrateurs gibier durant les périodes fixées par le Règlement sur les oiseaux migrateurs, il faut posséder un permis de chasse aux oiseaux migrateurs gibier. Seuls les Amérindiens et les Inuits n'ont pas à acheter un tel permis. Les chasseurs doivent avoir ce permis sur eux lorsqu'ils chassent ou qu'ils sont en possession d'oiseaux migrateurs gibier.

Depuis 1966, les bureaux de poste de toutes les régions vendent des permis de chasse à partir du 1er août jusqu'à la clôture de la saison de chasse.

Les camps de chasse et les pourvoyeurs, de même que les services des gouvernements provinciaux, selon les termes d'une entente fédérale-provinciale, peuvent également vendre des permis. Les détails de la procédure font l'objet d'une révision annuelle.

Restrictions

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	<u>OTHER PERMITS</u>	<u>AUTRES PERMIS</u>	
Issuance of Other Permits	All other permits will be issued only to individuals or representatives of an organization upon a request which satisfies the requirements for the permit he is requesting.	Tous les autres permis ne pourront être délivrés qu'à des particuliers ou à des représentants d'organismes dont la demande satisfait aux exigences du permis en question.	Délivrance autres permis
	<u>GENERAL CRITERIA</u>	<u>CRITÈRES GÉNÉRAUX</u>	
Application	In other than exceptional circumstances, permits will only be issued upon the receipt of a complete written application. The applicant must meet the general criteria and the specific ones associated with the type of permit he is demanding. The following criteria apply to all permits (except MGBHP):	Sauf dans des cas exceptionnels, pour obtenir un permis, il faut soumettre une demande écrite en bonne et due forme. Le demandeur doit répondre aux critères généraux et aux conditions spécifiques pour le type de permis sollicité. Les critères ci-dessous s'appliquent à tous les permis (sauf le permis de chasse aux oiseaux migrateurs gibier).	Demande
Project Description	<p>The applicant must demonstrate the value of his project and the necessity for taking, scaring, capturing or possessing migratory birds to meet the project's objectives.</p> <p>For taking or capturing migratory birds the applicant must demonstrate that there are no other practical methods to do the project.</p> <p>The applicant must demonstrate he has the knowledge, skills and facilities needed to ensure adequate care and utilisation of the birds.</p>	<p>Le demandeur doit démontrer la validité de son projet, et la nécessité de prendre, effrayer, capturer ou posséder des oiseaux migrateurs pour atteindre les objectifs du projet.</p> <p>Pour obtenir le droit de prendre ou capturer des oiseaux migrateurs, le demandeur doit prouver qu'il n'y a aucune autre possibilité pratique de réaliser le projet.</p> <p>Le demandeur doit prouver qu'il dispose des connaissances, des compétences et des installations nécessaires pour bien s'occuper et se servir des oiseaux.</p>	Description du projet
Activities	The applicant must indicate in the application what species of birds, number of each species, location of relevant type of facilities where they will be kept and method of release or disposal of the specimens at the end of the project.	Le demandeur doit préciser dans sa demande les espèces d'oiseaux concernées, le nombre de spécimens de chaque espèce, l'emplacement des installations où ils seront gardés, de même que la façon dont les oiseaux seront libérés ou la manière dont on en disposera une fois le projet terminé.	Activités
Impact of the Activities	<p>The applicant must demonstrate that his activities comply with the Environmental Assessment Review Process (EARP) and will not significantly affect wild stocks of birds or any other natural component.</p> <p>When a provincial permit is not required, the applicant must demonstrate that the species is not identified as rare, threatened or endangered by the provincial authorities.</p>	<p>Le demandeur doit prouver que ses activités n'affecteront pas de manière significative la population d'oiseaux sauvages ni aucun autre élément naturel. Il doit de plus se conformer au Processus d'examen des évaluations environnementales.</p> <p>Si aucun permis provincial n'est exigé, le demandeur doit démontrer que les espèces en cause ne sont pas considérées comme rares, menacées ou en danger par les autorités provinciales.</p>	Impact des activités

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SPECIFIC CRITERIA

In addition to the general criteria, the issuance of each type of permit is subject to specific criteria.

Scientific Permits

The applicant for any scientific permit must submit a testimonial letter from two individuals who are qualified to confirm the validity of the project and the ability and integrity of the individual requesting the permit. This requirement may be waived if the applicant can demonstrate he has previously held a scientific permit in Canada or USA.

Capture and Band Permits

Individuals proposing to band birds and use auxiliary markers must have prior approval from an Animal Care Committee, and those using radio transmitters must have approval from the federal Department of Communications before conducting field work.

Salvage Permits

Salvage permits may be issued to possess migratory birds not taken under an MGBH permit for scientific or educational purposes, provided these have come into possession legally and are not bought or sold.

Avicultural Permits

A written application from an aviculturist, to take migratory birds from or release them to the wild, must show that he has the qualifications, experience and suitable facilities to propagate wild-captured stock, as part of a research or management project approved by CWS.

Damage Permits

The applicant for a damage permit must demonstrate that the conditions are extraordinary and that these events are temporary and occur on land he owns or manages.

CRITÈRES SPÉCIFIQUES

Outre les critères généraux, la délivrance de chaque type de permis obéit à des critères spécifiques.

Le demandeur d'un permis scientifique quelconque doit soumettre une lettre d'attestation rédigée par deux personnes ayant les qualifications nécessaires pour confirmer la validité du projet, de même que la compétence et l'intégrité de la personne qui sollicite le permis. Cette exigence pourra être levée si le demandeur peut prouver qu'il a déjà eu un permis scientifique au Canada ou aux États-Unis.

Les particuliers qui envisagent de bague des oiseaux et d'utiliser des marqueurs auxiliaires doivent d'abord obtenir l'autorisation d'un comité de protection des animaux; ceux qui recourent à des radio-émetteurs doivent obtenir l'autorisation du ministère fédéral des Communications avant d'effectuer des travaux sur le terrain.

On peut accorder un permis de sauvetage permettant de garder, à des fins scientifiques ou éducatives, des oiseaux migrateurs qui ne sont pas pris grâce à un permis de chasse aux oiseaux migrateurs gibier, pourvu que les intéressés en obtiennent possession par voie légale, et que les spécimens ne soient pas achetés ni vendus.

Dans sa demande écrite, un aviculteur qui souhaite prendre ou remettre en liberté des oiseaux migrateurs à l'état sauvage doit prouver qu'il dispose des compétences et de l'expérience nécessaires ainsi que de l'installations convenables pour la reproduction en captivité d'oiseaux sauvages, dans le cadre d'un projet de recherche ou de gestion des ressources approuvé par le SCF.

Le demandeur d'un permis pour cause de dommages par les oiseaux migrateurs doit prouver qu'il s'agit d'incidents exceptionnels et de nature temporaire, qui se produisent sur une terre dont il est propriétaire ou administrateur.

Permis scientifiques

Permis de capture et de huchage

Permis de sauvetage

Permis d'aviculture

Permis pour cause de dommages

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Eiderdown Permits	<p>The applicant for an eiderdown permit must show that he owns or has written permission to enter the property where the down collecting will be done.</p>	<p>Le demandeur d'un permis de cueillette de duvet d'eider doit prouver qu'il est propriétaire des terrains où se fera la récolte de duvet d'eider ou qu'il possède une autorisation écrite lui donnant accès aux lieux.</p>	Permis de cueillette de duvet
<u>CONDITIONS</u>		<u>CONDITIONS</u>	
Conditions	<p><u>The conditions of the permit must not replace regulations.</u> All conditions of the permit must be related to the administration of the Regulations or the protection and management of the migratory birds. In some cases they could be related to public safety (e.g.: use of cannon net).</p>	<p><u>Les conditions afférentes aux permis ne remplacent en aucun cas les règlements.</u> Toutes les conditions d'un permis sont soumises à l'application des règlements touchant la protection et la gestion de la ressource que représentent les oiseaux migrateurs. Dans certains cas, elles pourraient avoir trait à la sécurité du public (ex.: filet lancé par canon).</p>	Conditions
General Conditions	<p>The general conditions listed in Appendix III must be included on all permits issued (except the MGBHP), in addition to the specific conditions of each permit.</p>	<p>Les conditions générales énumérées à l'annexe III doivent figurer sur tous les permis délivrés (sauf le permis de chasse aux oiseaux migrateurs gibier), en plus des conditions propres à chaque permis.</p>	Conditions générales
Capture and Band Permits	<p>Species of birds protected under provincial or territorial legislation can be banded only if the bander possesses an authorization from the appropriate province or territory.</p>	<p>Avant de bague des oiseaux d'une espèce protégée par une loi provinciale ou territoriale, le détenteur de permis doit obtenir une autorisation du gouvernement provincial ou territorial concerné.</p>	Permis de capture et de haguage
Avicultural Permits	<p>All birds held under the authority of an Avicultural Permit must be wing-clipped, pinioned or kept in an enclosure to prevent their escape to the wild. Free-flying birds are not considered captive stock and therefore are not the property of the permittee.</p>	<p>Tous les oiseaux gardés en captivité en vertu d'un permis d'aviculture doivent avoir les ailes taillées, rognées ou demeurer dans un enclos pour ne pas qu'ils puissent s'enfuir dans la nature. Les oiseaux libres de voler ne sont pas considérés comme captifs; ils n'appartiennent donc pas au permissionnaire.</p>	Permis d'aviculture
Taxidermy Permits	<p>All specimens in the possession of a taxidermist must be tagged and accompanied by a written statement signed by the owner indicating the authority under which the bird was taken or possessed and any other information the Regulations may require.</p>	<p>Tous les taxidermistes qui possèdent des spécimens doivent être étiquetés et s'accompagner d'une attestation écrite indiquant le type d'autorisation grâce à laquelle les oiseaux ont été pris ou acquis, de même que tout autre renseignement exigé par les règlements.</p>	Permis de taxidermie
	<p>Mounted migratory birds, their parts or eggs may not be bought, sold, traded or bartered.</p>	<p>Il est interdit de vendre, acheter, négocier ou troquer des oiseaux migrateurs empaillés, leurs parties ou leurs oeufs.</p>	
Airport Kill Permits	<p>Airport managers must consult with CWS before killing vulnerable, threatened or endangered birds. Accidental kills of these species must be immediately reported to CWS. Other birds should be killed only as a last resort when other techniques have failed.</p>	<p>Les gérants d'aéroport doivent consulter le SCF avant de tuer des oiseaux d'une espèce vulnérable, menacée ou en danger. Il faut prévenir immédiatement le SCF lorsqu'un tel spécimen est tué accidentellement. On peut tuer les oiseaux d'autres espèces uniquement en dernier recours, quand les autres moyens ont échoué.</p>	Aéroports - permis de tuer

ATTACHMENT 20

Other
Conditions

Additional conditions will be added only where necessary for public safety or the protection and management of the birds.

Des conditions supplémentaires ne pourront s'ajouter que si la sécurité du public ou la protection et la conservation des oiseaux migrateurs l'exigent.

Conditions
supplémentaires

ADMINISTRATION/RESPONSIBILITIES

Chief
Legislation and
Enforcement

The Chief, Legislation and Law Enforcement is responsible for organizing, functionally supervising, assessing and reporting, to the Executive Committee, on the national implementation of this policy. He is also responsible for analysing problems, preparing and issuing bulletins or notes to help issuing officers.

ADMINISTRATION/ATTRIBUTIONS

Le chef de la Législation et de l'Application de la loi s'occupe d'organiser, de contrôler et d'évaluer la mise en oeuvre à l'échelle nationale de la présente politique, pour laquelle il fait rapport au comité exécutif. Il est également chargé d'analyser les problèmes, de rédiger et de diffuser des bulletins ou des notes de service pour aider les agents émetteurs.

Chief de la
Législation et de
l'Application
de la loi

Regional Director

Each CWS Regional Director will designate a regional coordinator to adapt, organize and functionally supervise the regional implementation of this policy.

Chaque directeur régional du SCF doit désigner un coordonnateur régional pour adapter, organiser et surveiller la mise en oeuvre de cette politique au niveau régional.

Directeur
régional

Minister

The Minister delegates the issuance of a permit to issuing officers recommended by the Director General, CWS Regional Directors or other persons identified by an agreement signed by the Government of Canada.

Le Ministre délègue le pouvoir de délivrer des permis aux agents émetteurs recommandés par le directeur général, les directeurs régionaux du SCF ou les autres personnes désignées dans le cadre d'une entente conclue avec le gouvernement fédéral.

Ministre

Issuing Officer

The issuing officer is responsible for evaluating requests, consulting with experts, other governments and other regions, issuing permit, monitoring and following up on permit conditions.

L'agent émetteur a pour tâche d'évaluer les demandes, de consulter des experts, d'autres gouvernements et régions, de délivrer les permis, de contrôler le respect des conditions afférentes et d'exercer un suivi.

Agent émetteur

When an issuing officer is aware that a request will be covering more than one region, he is responsible for coordinating with other regions. He may ask HQ to coordinate the issuance and monitoring of the permit.

Quand un agent émetteur sait qu'une demande porte sur plusieurs régions, il doit alors assurer la coordination avec les autres régions. Il peut en l'occurrence demander à l'administration centrale de coordonner la délivrance et le contrôle du permis.

The issuing officer is also responsible to ensure that requirements of the EARP are met.

L'agent émetteur veille également au respect des exigences imposées en vertu du Processus d'examen des évaluations environnementales.

The issuing officer may choose to issue a permit for a period exceeding one year if:

L'agent émetteur peut délivrer un permis couvrant une période qui dépasse un an, à condition que:

- it is possible to collect any annual fee; and
- the impact on bird populations will be minimal.

- l'on puisse percevoir une redevance annuelle;
- cela ait un impact minime sur la population d'oiseaux.

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	<p>The issuing officer is responsible for maintaining files on all requests for permits (including those not approved) and for ensuring compliance with financial procedures.</p>	<p>L'agent émetteur doit tenir à jour un dossier sur toutes les demandes de permis (y compris celles qui sont rejetées) et veiller à l'application des procédures financières.</p>	
Content of the Permit	<p>The issuing officer must ensure that all permits issued specify:</p> <ul style="list-style-type: none"> - method and time of disposition/release of the birds; - period and location of validity; - activities authorized; - type and date of report (if required); - type of registry (if required). 	<p>L'agent émetteur doit s'assurer que tous les permis délivrés précisent:</p> <ul style="list-style-type: none"> - le mode et le moment de remise en liberté/abandon des oiseaux; - la période de validité et l'endroit où s'applique le permis; - les activités autorisées; - la nature et la date du rapport (s'il y a lieu); - le type d'enregistrement (s'il y a lieu). 	Renseignements sur le permis
Refusal and Restrictions	<p>The issuing officer can refuse a permit application or give a restricted approval. When a permit is denied or restricted the applicant shall be informed in writing of the reasons for denial or restriction.</p> <p>If it becomes necessary to cancel, amend or suspend any permit, written notice must be given to the permit holder, giving the reasons therefore.</p> <p>When the conditions which led to the cancellation, amendment or suspension have been rectified, the permit shall be reissued or revalidated and returned forthwith to the permittee.</p>	<p>L'agent émetteur peut rejeter une demande de permis ou accorder une autorisation restreinte. Dans un tel cas, il doit informer par écrit le demandeur des raisons qui motivent ce refus ou ces restrictions.</p> <p>S'il s'avère nécessaire d'annuler, de modifier ou de suspendre un permis quelconque, il faut alors en aviser par écrit le titulaire du permis, en précisant les raisons qui motivent une telle mesure.</p> <p>Si l'intéressé remédie aux facteurs ayant entraîné l'annulation, la modification ou la suspension de son permis, il faut immédiatement lui délivrer un nouveau permis ou le revalider et lui renvoyer aussitôt.</p>	Refus et restrictions
Appeal	<p>A person who has been denied a permit or had their permit cancelled, amended or suspended, may request a review by the Director General CWS, or his delegate.</p>	<p>Une personne à qui on a refusé la demande ou dont on a annulé, modifié ou suspendu le permis peut solliciter une révision de la part du directeur général du SCF ou de son délégué.</p>	Droit d'appel
Special permits	<p>All requests for special permits (Section 36 a, b) will be reviewed by the issuing officer and sent with his recommendations to the Director General or his delegate for approval.</p>	<p>L'agent émetteur examinera toutes les demandes de permis spéciaux (articles 36 a et b) et les transmettra, avec ses recommandations, au directeur général ou à son délégué aux fins d'approbation.</p>	Permis spéciaux



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Office of Law Enforcement
4401 N. Fairfax Drive, Room 520
Arlington, VA 22203



AUG 20 2001

In Reply Refer To:
FWS/LE REG 21-04

To: Assistant Director for Migratory Birds and State Programs *Paul Schmidt*

From: Assistant Director for Law Enforcement *K Odum*

Subject: MBTA Enforcement and Regulated Shooting Areas (RSA)

The Atlantic Flyway representative for the Service, Mr. Jerry Serie, recently asked for the Division of Law Enforcement's opinion regarding the release of free-flighted captive-bred mallards and their influence on enforcement of the Migratory Bird Treaty Act (MBTA). Mr. Serie's questions are listed below, followed by a response that collectively addresses his concerns.

1. How does the practice of releasing free-flighted mallards on RSAs complicate the enforcement of regulations established to protect wild stock migrants under MBTA, i.e., live-decoys, over-bagging, and baiting, etc.? [captive-reared mallards are classified as migratory birds under MBTA but are exempted by regulations contained in 50 CFR 21.13]
2. How does the practice of releasing free-flighted mallards on RSAs affect, and/or compromise (put at risk), hunters shooting on adjacent properties? [are these hunters at higher risk of violating the laws designed to protect wild mallards?]
3. What other LE problems are created by the practices of releasing free-flighted mallards on RSAs?
4. Can the LE problems associated with free-flighted release practices be reduced by requiring releases on RSAs to be "Tower-type" releases?

The release of captive-bred free-flight mallards generally causes law enforcement issues in areas where waterfowl hunting occurs and captive-reared mallards and wild ducks intermix or influence each other. The unlawful waterfowl hunting practices associated with these releases usually stem from the take of wild ducks in close proximity to captive reared mallards. These unlawful practices may include:

Take by the aid of live birds as decoys (50 CFR 20.21(f));
Take by the aid of bait (50 CFR 20.21(i));
Take or possession of migratory game birds during the closed season (50 CFR 20.22, 20.32);

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Take in excess of daily bag limit (50 CFR 20.24);
Take by the aid of motor driven land or water vehicle used for rallying (50 CFR 20.21(h)); and
Take with an unplugged shotgun (50 CFR 20.21(b)).

With the exception of "take by the aid of bait," these prohibitions are strict liability offenses that do not require the element of "knowledge" on the part of the violator. Federal regulations listed in 50 CFR 21.13 exempt the shooting of captive-reared mallards on any area operated as a State licensed shooting preserve (or RSA) from all of the prohibitions listed above. If a hunter happens to take a wild duck on an RSA, all of the waterfowl hunting prohibitions will apply to that "take."

RSAs typically conduct waterfowl hunting during the fall, the historic season for hunting wild ducks. In areas where wild ducks migrate, the RSA hunter may often be confronted with both wild ducks and captive-reared mallards. To compound the problem, distinguishing a wild mallard from a captive mallard on the wing may be impossible in many situations. Low light or inclement weather conditions also make it difficult for the inexperienced or unwary hunter to differentiate captive mallards from black ducks or other species on the wing.

Waterfowl hunters who hunt near RSAs may also experience increased liability due to the release of free-flight captive-reared mallards. These ducks often "trade-up" between different RSAs and surrounding areas. Although the variables for each hunting situation are unique, some degree of potential usually exists for non-RSA hunters to shoot both captive-reared mallards and wild ducks off the RSA. The possibility of hunting by the aid of live decoys may also exist if all the elements of the violation are present.

In short, the potential for violations of the Federal waterfowl hunting regulations is greatly increased when waterfowl hunting in areas where captive-reared and wild ducks intermix, especially in State licensed shooting preserves or RSAs. It should be noted that State regulations may or may not further restrict waterfowl hunting practices on RSAs. Any further restrictions by the State may decrease the potential for violations of Federal regulations on RSAs. If "tower releases" help hunters identify their targets and confine the flight of the ducks to a specific area, they may alleviate much of the liability currently associated with waterfowl hunting on and near RSAs.

We hope this information proves useful. Please contact Senior Special Agent Steve Oberholtzer of my staff for any clarification that may be needed.

ATTACHMENT 21

July 16, 2002

Mr. Frank Montalbano, III
Division of Wildlife
Florida Fish and Wildlife Conservation Commission
620 S. Median Street
Tallahassee, Florida 32399-1600

Dear Mr. Montalbano:

Enclosed is a preliminary draft of the Service's review of captive-reared mallard regulations on shooting preserves for consideration by the Atlantic Flyway Council. This report is in fulfillment of requests made by the Flyway Councils and the International Association of Fish and Wildlife Agencies, and is pursuant to the Service's Notice of Intent on August 28, 2001 (66 FR 45274), and previous Notice on June 1, 1993 (58 FR 31247).

We would appreciate a thorough review of this report by the Council at the upcoming Summer Flyway meeting and any comments and recommendations regarding its contents. The report is a review of regulations, published and unpublished research findings, legal interpretations, and anecdotal information. We have attempted to draw conclusions and to make recommendations; however, this document does not represent any rule-making by the Service nor does it promulgate new or alter existing regulations.

We appreciate your encouragement and assistance in the completion of this review. As you know, this is a complicated and controversial issue but has important implications regarding our obligations to safeguard migratory waterfowl.

Thank you for your continued support during the course of this review. If you have any questions, please contact Dr. Robert Blohm, Acting Chief, Division of Migratory Bird Management, at (703) 358-1714.

Sincerely,

/s/ Thomas O. Melius

Assistant Director - Migratory Birds
and State Programs

Enclosure

ATTACHMENT 22

ATLANTIC FLYWAY COUNCIL TECHNICAL SECTION

RECOMMENDATION NUMBER: 3

INITIATED BY: Environmental Issues Committee

SUBJECT: FWS review of Captive-Reared Mallard Regulations pertaining to the release of mallards on licensed shooting areas in a free ranging condition.

RECOMMENDATION: That the Chair of the AFC send a letter to the Director of the USFWS endorsing the conclusions and recommendations in the captive-reared mallard report regarding licensed shooting preserves and urging the Service to finalize the document and implement the recommendations.

ARGUMENTS IN SUPPORT:

1. The Atlantic Flyway Council has repeatedly urged the Service to complete this evaluation.
2. The document identifies numerous adverse consequences of allowing captive-reared mallards to be released to the wild in a free ranging condition.
3. The document contains recommendations which if enacted will correct or lessen the adverse effects of releases identified in the document.
4. Delaying finalization of this document and implementing it's recommendations will adversely effect wild waterfowl populations and their management.

ARGUMENTS IN OPPOSITION:

This evaluation only addresses releases of mallards on licensed shooting areas and does not address the larger issue of all releases of free ranging mallards as requested by the AFC.

ATTACHMENTS: draft letter

ACTION BY TS: Passed 7/24/02
Date

APPROVED BY: Lump S. Childers 7/24/02
Chairman, Technical Section Date

Frank J. Monte-Dano 7/26/02
Chairman, Atlantic Flyway Council Date

ATTACHMENT 22

July 24, 2002

Chief-U. S. Fish and Wildlife Service
Main Interior Bldg., Room 3256
Washington DC 20240

Dear Sir:

The Atlantic Flyway Council is pleased to receive the long awaited draft of the Service's review of regulations pertaining to the release of captive-reared mallards on licensed shooting preserves. The Council agrees with the Service's findings concerning the adverse effects of releasing free flying mallards on wild waterfowl and their management, and endorses the two recommendations presented. We urge the Service to finalize this review as soon as possible and implement the two recommendations.

Sincerely,

Frank Montalbano, Chair
Atlantic Flyway Council

ATTACHMENT 22

ATLANTIC FLYWAY COUNCIL TECHNICAL SECTION

RECOMMENDATION NUMBER: 4

INITIATED BY: Environmental Issues Committee

SUBJECT: FWS Review of Captive-Mallard Regulations concerning effects of releases on areas other than licensed shooting areas.

RECOMMENDATION: That the Chair of the AFC send a letter to the Director of the FWS requesting that the Service complete a review of the effects of releasing mallard or other duck species, other than on licensed shooting preserves on the management of wild waterfowl, by July 1, 2003.

ARGUMENTS IN SUPPORT:

1. The AFC has requested the Service to include both licensed and unlicensed releases of captive-reared mallards in its evaluation of the effects of 50CFR 21.13 regulations on wild waterfowl and their management. This has not been done.
2. The adverse effects of releasing free-ranging mallards appear to be identical on both licensed and unlicensed shooting areas.
3. The incidence of release of mallards on unlicensed areas is increasing each year.
4. Interest has been expressed by the public in substituting other duck species for mallards in release programs.
5. Canada currently prohibits the release of waterfowl with limited exceptions. The Canadian Wildlife Service has expressed concern about the impact of waterfowl releases in the U.S. on Canadian waterfowl populations.
6. The longer this problem is not addressed and corrected, the greater the potential harm to the waterfowl resource.

ARGUMENTS IN OPPOSITION:

None

ATTACHMENTS: Draft letter

ACTION BY TS: Passed 7/24/02
Date

APPROVED BY: Wynn L. Childers 7/24/02
Chairman, Technical Section Date

Frank J. Montalbano 7/24/02
Chairman, Atlantic Flyway Council Date

ATTACHMENT 22

July 24, 2002

Chief, U. S. Fish and Wildlife Service
Main Interior Bldg., Room 3256
Washington, DC 20240

Dear Sir:

The Atlantic Flyway Council is pleased that the Service has completed a draft review of the effects of releasing captive-reared mallards for shooting purposes. The Council has reviewed that draft and the two recommendations included and has sent a letter to the Service endorsing the findings and recommendations in the draft. Unfortunately, the review of the regulations (50CFR 21:13) concerning mallard releases was limited to licensed shooting preserves. 50CFR 21:13 also covers shooting released mallards as part of the normal daily bag and for purposes of dog training and field trials.

In recent years the practice of releasing large numbers of captive mallards to augment wild ducks in the daily bag has become increasingly common. As many as 50,000 birds may be released each year in South Carolina alone for this purpose; and interest is growing in North Carolina, Georgia, and other states. It is also likely that if licensed shooting preserves are limited to tower shoots as recommended in the review they will revert to unlicensed condition. The release of large numbers of game farm mallards to the wild as free ranging populations whether on licensed or unlicensed facilities will pose the same risks to wild waterfowl and their management as identified in the Service's review. The Council asked the Service by letter in March 2001 to include all releases of captive mallards whether on licensed or unlicensed hunting areas in its review of the regulations. However, the review was limited to licensed areas.

In addition to the mallard issue, interest has been expressed by the public in substituting other species of ducks for mallards in release programs. Canada currently prohibits waterfowl releases, with limited exceptions. The Canadian Wildlife Service has expressed concern about the effects of waterfowl releases in the U.S. on the Canadian waterfowl resource.

The Council requests that the Service begin a review concerning the effects of releasing mallards (50CFR 21:13) or other duck species (50CFR 21:14) on areas other than shooting preserves on the management of wild waterfowl.

Sincerely,

Frank Montalbano, Chair
Atlantic Flyway Council

ATTACHMENT 22

IDENTICAL LETTER SENT TO:

Ms. Rebecca Humphries, Mississippi Flyway Council

Mr. Kirk Nelson, Central Flyway Council

Mr. Jay Lawson, Pacific Flyway Council

cc: Atlantic Flyway Council and Technical representatives
Directorate Reading File (3012-MIB)
CCU (3012-MIB)
MBM Reading File (634-ARLSQ)
MBM - Ron Kokel (634-ARLSQ)
MBM/JSerie:jal 7/11/01

ATTACHMENT 22



ATLANTIC FLYWAY COUNCIL

Newfoundland Quebec Maine Massachusetts New York Delaware West Virginia Georgia
Prince Edward Island Ontario New Hampshire Rhode Island Pennsylvania Maryland North Carolina Florida
New Brunswick Nova Scotia Vermont Connecticut New Jersey Virginia South Carolina Puerto Rico

April 13, 2001

Mr. Marshall Jones, Acting Director
U.S. Fish and Wildlife Service
Post Office Box 3247
Arlington, VA 22203-3247

Dear Mr. Jones:

The Atlantic Flyway Council (AFC) is pleased to learn that the U.S. Fish and Wildlife Service (Service) intends to complete the review of the effects on wild waterfowl of releasing captive-reared mallards. Our previously expressed concern has grown as the practice of releasing these birds has become more widespread in recent years. The completion of the Duck Virus Enteritis (DVE) study in Maryland in 1999 by the National Wildlife Health Center (NWHC) has also increased our concern.

The AFC would like to clarify that the review should include all captive-reared mallard releases, not just birds released on Regulated Shooting Areas (RSAs). Mallards released on RSAs represent only a portion of the captive-reared birds being released into the wild in the Atlantic Flyway. We also suggest that the Service include the results of the NWHC study in Maryland in the review and evaluation.

Thank you again for moving forward on this important issue. We look forward to the completion of this important work and request a copy of the evaluation as soon as available.

Sincerely,

A handwritten signature in cursive script, reading "Frank Montalbano".

Frank Montalbano, Chair
Atlantic Flyway Council

FM/pam

ATTACHMENT 23

Alabama Illinois Iowa Louisiana Michigan Mississippi Ohio Saskatchewan
Arkansas Indiana Kentucky Manitoba Minnesota Missouri Ontario Tennessee Wisconsin

MISSISSIPPI FLYWAY COUNCIL

MISSISSIPPI FLYWAY COUNCIL



1952

September 17, 2002

Mr. Thomas O. Melius, Assistant Director
Migratory Birds and State Programs
U.S. Department of the Interior
Fish and Wildlife Service
Washington, DC 20240

Dear Mr. Melius:

Thank you for your letter of July 16, 2002, regarding the preliminary draft of the U.S. Fish and Wildlife Service's review of captive-reared mallard regulations on shooting preserves.

The Mississippi Flyway Council (MFC) considered this issue at its July meeting, and its recommendation is enclosed. Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rebecca A. Humphries', is written over a horizontal line.

Rebecca A. Humphries, Chair
Mississippi Flyway Council

RAH:mb
Enclosure

cc: Mr. Kenneth Gamble, USFWS
Mississippi Flyway Council
Mississippi Flyway Council, Technical Section

ATTACHMENT 23

Alabama Illinois Iowa Louisiana Michigan Mississippi Ohio Saskatchewan
Arkansas Indiana Kentucky Manitoba Minnesota Missouri Ontario Tennessee Wisconsin

MISSISSIPPI FLYWAY COUNCIL

MISSISSIPPI FLYWAY COUNCIL



COUNCIL ITEM NUMBER: 04
ORIGIN: Technical Section Item 04 - July 2002
DIRECTED TO: U.S. Fish and Wildlife Service
SUBJECT: Captive-reared Mallard Regulations

RECOMMENDATION:

The Mississippi Flyway Council endorses the recommendations made in the FWS draft report on Captive-Reared Mallard Regulations on Shooting Preserves, and urges the Service to complete this report and adopt/enforce regulations prohibiting releases of any captive-reared species of waterfowl in a free-flying situation, including releases made outside licensed shooting preserves.

JUSTIFICATION:

The Service is recommending prohibition of private shooting club release of captive-reared mallards in a free-flighted or free-ranging condition unless managed in a tower-type operation to maintain control and restrict movements of captive-reared mallards to on-site premises. The Report also recommended that the Service enforce banding regulations requiring shooting preserves that mark captive-reared mallards with bands other than seamless bands to possess a banding permit or comply with marking provisions under 21.13 (b) (3) allowing use of seamless bands only. Concerns about free-flighted releases include potential for migratory bird regulations violations (live-decoys, baiting, etc.) genetic impacts, disease introduction, and impacts on population and harvest monitoring of wild mallards. The current use of non-seamless bands have the potential of adversely influencing band reporting rates, thus reducing the ability of agencies to manage ducks, especially the setting of hunting season frameworks and the management of harvest.

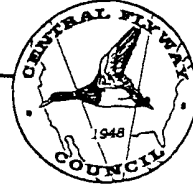
ACTION: Approved

DATE: 07/29/02

ATTACHMENT 24

Central Flyway Council

Northwest Territories Alberta Saskatchewan Montana North Dakota Wyoming
South Dakota Nebraska Colorado Kansas Oklahoma New Mexico Texas



July 26, 2002

Mr. Thomas O. Melius, Assistant Director
U.S. Fish and Wildlife Service
Main Interior Bldg Rm 3250
1849 C St NW
Washington, D.C. 20240

Dear Mr. Melius:

The Central Flyway Council (Council) acknowledges receipt of the U.S. Fish and Wildlife Service's (Service) preliminary report entitled "Review of Captive-reared Mallard Regulations on Shooting Preserves". Your letter and request for the Council's review of the report dated July 16, 2002, arrived too late for a thorough review by the time of our Summer Flyway Meeting; however, we wanted to give you our initial reaction to the report.

The Council greatly appreciates the Service's efforts in compiling this comprehensive review of regulations, published and unpublished research findings, legal interpretations, and other information contained in the report. We believe a final report will address our concerns as expressed in previous Council recommendations (CFC Recommendation #7 dated July 10, 1993 and as a signatory to Joint Flyway Recommendation #13 dated July 28, 2000). In this regard, we encourage the Service to proceed with completion of the administrative process of finalizing this document in a timely manner.

Upon completion of the report, we encourage the Service to make necessary changes in 50 CFR 21.13 to prohibit the practice of releasing captive-reared mallards in a free-ranging condition for purposes of shooting on State-licensed shooting preserves. As we previously stated, we believe implementation of improved regulations are necessary to adequately protect our wild migratory bird resources and migratory bird hunting.

Although the Council does not have specific comments about the preliminary recommendations contained within the report at this time, we will complete a more thorough review and transmit them to you at a later date.

Sincerely yours,

A handwritten signature in cursive script that reads "Kirk Nelson".

Kirk Nelson, Chairman
Central Flyway Council

ATTACHMENT 24

Recommendation No. 7

Pertaining to:

Release and harvest of captive-reared mallards

Recommendation:

The Central Flyway Council supports the Fish and Wildlife Service review of regulations governing the release and harvest of captive-reared mallards.

Justification:

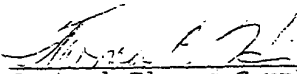
The June 1, 1993, Federal Register announced the intent of the Fish and Wildlife Service to review all aspects of the regulations pertaining to the release and harvest of captive-reared mallards.

The Council shares the Service's concerns about the effects of captive-reared mallard releases and the harvest of these birds on the Mid-winter Waterfowl Survey, harvest surveys, banding programs, population unit management, regulations development, disease potentials and the genetic diversity of mallards, black ducks and mottled ducks.

The Council supports this review and encourages the Service to implement regulations which will adequately protect wild migratory bird resources and migratory game bird hunting. The Council has no specific recommendations at this point, but looks forward to assisting the Service in any way possible during this review and the subsequent implementation of improved regulations.

Adopted by:

Central Flyway Waterfowl Technical Committee
Great Falls, Montana
July 28, 1993



Central Flyway Council
Great Falls, Montana
July 30, 1993

ATTACHMENT 24



JOINT FLYWAY COUNCIL MEETING

Memphis, Tennessee
July 23-28, 2000

Ms. Jamie Rappaport Clark, Director
U.S. Fish and Wildlife Service
Main Interior Bldg., Room 3256
1846 C Street N.W.

Dear Ms. Clark

The Flyway Councils are concerned over potential adverse effects of releasing captive reared mallards into the wild for sport hunting purposes. This activity is increasing and has been a controversial issue for many years. The issue is of special concern at this time due to documentation by the National Wildlife Health Center of duck viral enteritis virus in captive and released mallards on the Eastern Shore of Maryland in 1998.

The U.S. Fish and Wildlife Service published a notice of intent on June 1, 1993 to review Federal Regulation 50CFR: 21 governing the release of captive mallards for hunting. The purpose of the Notice was to solicit public comment and to gather information concerning the possible adverse effects of releasing unlimited numbers of mallards for hunting purposes. Areas of concern included potential for transmission of disease to wild waterfowl, the confounding of waterfowl harvest and population surveys, possible confusion and bias introduced into banding programs, contamination of wild mallard gene pools and competition and hybridization with wild black duck and mottled duck stocks. Questions were also raised regarding the ability of managers to identify discrete populations of wild waterfowl and conduct population management on a flyway basis or to develop regulations for wild waterfowl due to the presence of large numbers of released birds. Concerns were also raised about legal questions regarding live decoys and baiting covered in 50CFR: 20. A report was due in the fall of 1994. Unfortunately, the report has yet to be completed in spite of repeated requests.

The Flyway Councils request that you expedite the effort to complete this report and make it available for review as soon as possible.

Sincerely

ATTACHMENT 24



JOINT FLYWAY COUNCIL MEETING

Memphis, Tennessee

July 23-29, 2000

Flyway Councils Joint Recommendation

RECOMMENDATION NUMBER: 13

SUBJECT:

Completion by the U.S. Fish and Wildlife Service of the Evaluation of the Effects of Releasing Captive Mallards under Federal Regulations 50 CFR 20 and 21.

RECOMMENDATION:

That the Flyway Councils send a letter to the Director of the U.S. Fish and Wildlife Service requesting that the Service complete its evaluation of the effects of releasing captive mallards under 50 CFR 20 and 21 as proposed in its notice of intent (FR 1993: 58 (103)). This action has been requested repeatedly by letter from the Atlantic Flyway Council and in November 1999 by the International Association of Fish and Wildlife Agencies.

JUSTIFICATION:

- (1.) Releasing large numbers of captive reared mallards may affect the genetic identity of wild mallard stocks and may increase interbreeding with other species such as the black duck and mottled duck.
- (2.) Release of large numbers of captive reared mallards may introduce or transmit diseases such as duck plague or fowl cholera to wild waterfowl populations. DVE (duck plague) was identified in Maryland in 1998 in captive and released mallard populations.
- (3.) Current interpretation of these regulations may seriously compromise the ability of wildlife professionals to monitor wild mallard populations through aerial surveys, harvest surveys and banding programs.
- (4.) Databases used to establish harvest regulations within each flyway may be biased due to the presence of large numbers of released mallards and management decisions may be compromised to some degree.

ATTACHMENT 24



JOINT FLYWAY COUNCIL MEETING

Memphis, Tennessee

July 23-28, 2000

Recommended by:

Paul Caffri

7/28/00

Atlantic Flyway Council Technical Section

Date

Edward L. Wann

7/28/00

Mississippi Flyway Council Technical Section

Date

Larry Roberts

7/28/00

Central Flyway Council Technical Committee

Date

Thomas C. Hix

7/28/00

Pacific Flyway Council Study Committee

Date

Approved by:

Josh J. Selt

7/28/00

Atlantic Flyway Council

Date

Loyd A. Gimes

7/28/00

Mississippi Flyway Council

Date

Bill Withers

7/28/00

Central Flyway Council

Date

Don Childress

7/28/00

Pacific Flyway Council

Date

ATTACHMENT 25

Alaska
Arizona

California
Colorado

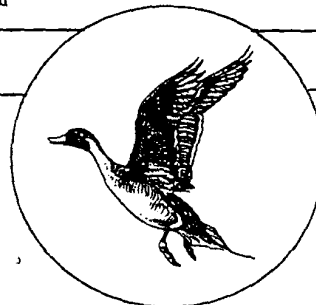
Idaho
Montana

Nevada
Oregon

Utah
Washington

Wyoming

PACIFIC FLYWAY COUNCIL



26 July, 2002

Mr. Thomas O. Melius, Assistant Director
Migratory Birds and State Programs
U. S. Fish and Wildlife Service
Interior Building, Room 3250
1849 C Street NW
Washington, D.C. 20240

Dear Mr. Melius:

In response to the request you conveyed in your letter dated 16 July, 2002, the Pacific Flyway Council has undertaken a thorough review of the draft, captive reared mallard regulations on "shooting preserves." We remain deeply concerned about many biological, social, and ethical issues associated with this questionable practice. We can find no grounds to modify our past position, originally conveyed to the Service in a letter dated 28 July, 1993. Recommendation No. 16, passed at the July, 2002 meeting of the Pacific Flyway Council, and the original letter we sent to the Service in 1993, are attached for your use. Please accept these documents as the Pacific Flyway Council's continuing position with respect to the practice of releasing captive-reared mallards for shooting. Thank you for the opportunity to comment on these proposed regulations.

Sincerely,

Jay Lawson,
Chairman
Pacific Flyway Council

COPIES: Brian Millsap
Bob Blohm
PFC
PFSC
Bob Trost

ATTACHMENT 25

Alaska
Arizona

California
Colorado

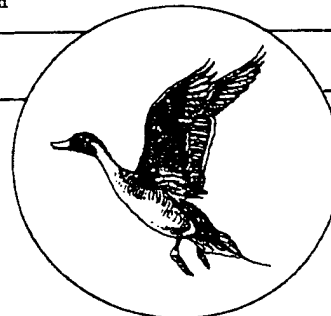
Idaho
Montana

Nevada
Oregon

Utah
Washington

Wyoming

PACIFIC FLYWAY COUNCIL



Recommendation No.: 16

Title: Captive-Reared Mallard Release Programs

Recommendation: The Pacific Flyway Council reaffirms its recommendation of July 27, 1993, that the USFWS ban by rule all free-flying, captive-reared mallard release programs. The Council further resubmits the letter to the USFWS, dated July 28, 1993 (attached), expressing numerous concerns regarding the adverse effects of captive mallard release programs.

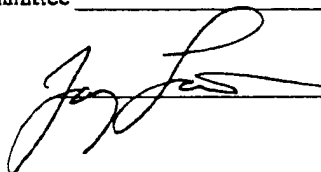
Justification: The USFWS is currently seeking review by the flyways, of captive-reared mallard regulations on shooting preserves. The Pacific Flyway Council undertook a review of this proposition at its July, 1993 meeting. The Council's position remains unchanged. Specifically, we are concerned about:

1. disease threats to wild populations;
2. regulation conflicts dealing with baiting and live decoy prohibitions;
3. biases in interpreting population data when wild and captive-reared birds mix; and
4. genetic integrity of wild stocks of mallards.

In addition, Council does not believe it is possible to differentiate between released captive and wild stocks of mallards when shooting is permitted outside the approved duck season dates. Captive release programs of all kinds, still pose threats to management programs. Those programs dealing with the release of free-flying birds that can come into contact with wild populations need to be banned.

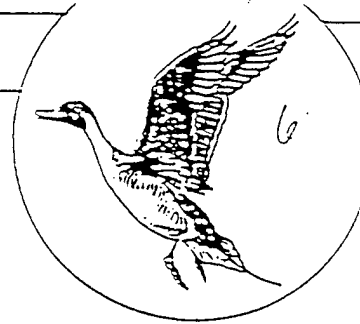
Adoption: Pacific Flyway Study Committee _____

Pacific Flyway Council

 7/26/02

ATTACHMENT 25

PACIFIC FLYWAY COUNCIL



July 28, 1993

Mollie Beattie, Director
U.S. Fish and Wildlife Service
Department of the Interior
Room 634-Arlington Square
Washington, DC 20240

Dear Ms. Beattie:

On behalf of the Pacific Flyway Council (Council) I would like to comment on captive-reared mallard release programs. We appreciate that the Service is reviewing rules and regulations governing the release of captive-reared mallards.

The Council has been on record for the past year as having concerns with the proliferation of captive-reared mallards programs. We have adopted a moratorium against the establishment of new programs in the Flyway until the Service addresses policies and rules governing these activities.

While the intentions of captive-reared mallard program supporters may be to keep hunters interested in the sport of waterfowling, these programs are jeopardizing a valuable public resource. Once free-flying birds are released they then become a threat to the public's wild stock of birds, especially since many of these captive-reared birds are not killed immediately. We concur with the Service that the main issues involved with these programs are disease threats to wild waterfowl populations, regulation interpretations dealing with baiting and live decoy prohibitions, biases in interpreting population data when wild and captive-reared birds mix, and genetic integrity of wild stocks of mallards and black ducks.

The decline in many waterfowl populations across the continent remains the primary concern to waterfowl managers in the Pacific Flyway but shooting programs dealing with captive-reared mallards is also of great concern. The interest of waterfowl enthusiasts should be focused on maintaining and creating habitats to assist in the recovery and maintenance of wild stocks of birds. The proliferation of captive-reared mallards shifts the focus away from true population management problems.

While not appealing to everyone, the use of "tower shooting" of captive-reared mallards helps to ensure that these birds do not become established in the wild thus minimizing the impacts on wild populations. If tower shoots are allowed to continue, strict

ATTACHMENT 25

7.
operating and permit criteria must be outlined to protect wild waterfowl populations.

The Council recommends that the Service ban by rule any free-flying, captive-reared mallard release programs and that current programs be stopped. This is the only reasonable way to ensure the protection of wild waterfowl populations and related management activities. A quick decision on this issue would be appreciated.

The Council would also ask the Service to review the issue and develop policies related to all captive-reared waterfowl release programs. For example, the practice of taking eggs from the wild and raising birds from these eggs for release back into the wild carries some of the same disease threats as do captive-reared mallard programs.

Thank you for this opportunity to comment on this important issue.

Sincerely,

Tim Provan
Chairman

LTR Faxed 7/29/93

ATTACHMENT 26

August 6, 2002

Mr. Robert McDowell
President, International Association of Fish and Wildlife Agencies
New Jersey Division of Fish and Wildlife
CN 400
Trenton, NJ 08625-0400

Dear Mr. McDowell:

Enclosed is a preliminary draft of the Service's review of captive-reared mallard regulations on shooting preserves for consideration by the International Association of Fish and Wildlife Agencies (IAFWA). This report is pursuant to the Service's Notice of Intent on August 28, 2001 (66 FR 45274) and previous Notice on June 1, 1993 (58 FR 31247), and to requests made by the Flyway Councils and IAFWA for an examination of this issue.

We would appreciate a thorough review of this report by IAFWA at the upcoming September meeting and welcome any comments and recommendations regarding its contents. The report provides information on regulations, published and unpublished research findings, legal interpretations, and anecdotal information. We have attempted to draw conclusions and to make recommendations; however, this document does not represent any rule-making by the Service nor does it promulgate new or alter existing regulations.

We appreciate your encouragement and assistance in the completion of this review. As you know, this is a complicated and controversial issue, but it has important implications regarding our obligations to safeguard migratory waterfowl.

Thank you for your continued support during the course of this review. If you have any questions, please contact Dr. Robert Blohm, Acting Chief, Division of Migratory Bird Management, at (703) 358-1714.

Sincerely,

Assistant Director - Migratory Birds
and State Programs

Enclosure