

rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622(i) [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Wisconsin, is amended by adding DTV channel 49 and removing DTV channel 11 at Madison.

Federal Communications Commission.

Clay C. Pendarvis

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8-19543 Filed 8-21-08; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08-1897; MB Docket No. 08-163; RM-11482]

Television Broadcasting Services; Yuma, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Pappas Arizona License, LLC ("Pappas"), the permittee of KWST-DT, DTV channel 16, Yuma, Arizona. Pappas requests the substitution of DTV channel 13 for channel 16 at Yuma.

DATES: Comments must be filed on or before September 22, 2008, and reply comments on or before October 6, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Kathleen Victory, Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT:

Adrienne Y. Denysyk,
adrienne.denysyk@fcc.gov, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08-163, adopted August 7, 2008, and released August 13, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1-800-478-3160 or via e-mail <http://www.BCPIWEB.com>. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622(i) [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Arizona, is amended by adding channel 13 and removing channel 16 at Yuma.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8-19542 Filed 8-21-08; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[FWS-R9-MB-2007-0017; 91200-1231-9BPP]

RIN 1018-AV34

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

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose changes in the regulations governing control of introduced migratory birds. The muscovy duck (*Cairina moschata*) occurs naturally only in southern Texas. It has been introduced in other locations, where it is considered an invasive species that sometimes creates problems through competition with native species, damage to property, and transmission of disease. We propose to revise 50 CFR part 21 to prohibit sale of muscovy ducks for hunting, and to allow their removal in locations in which the species does not occur naturally in the contiguous United States, Alaska, and Hawaii, and in U.S. territories and possessions. This will require a revision of § 21.14 (permit exceptions for captive-bred migratory waterfowl other than mallard ducks) and a revision of § 21.25 (waterfowl sale and disposal permits), and the addition of § 21.54, an order to allow control of muscovy ducks, their nests, and eggs. We also have rewritten the affected regulations to make them easier to understand.

DATES: Send comments on this proposal by October 21, 2008.

ADDRESSES: You may submit comments, identified as comments on RIN 1018-AV34, by either of the following methods:

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

• *U.S. Mail or hand delivery:* Public Comments Processing, Attention RIN 1018-AV34; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, Suite 222; Arlington, VA 22203-1610.

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

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

SUPPLEMENTARY INFORMATION:

Background

The Fish and Wildlife Service is the Federal agency delegated the primary responsibility for managing migratory birds. The delegation is authorized by the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia).

We implement the MBTA through Federal regulations found in title 50 of the Code of Federal Regulations (CFR). In 50 CFR 10.13, we list all species of migratory birds protected by the MBTA that are subject to the regulations protecting migratory birds in title 50, subchapter B (Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife and Plants). In 50 CFR part 13 (General Permit Procedures) and part 21 (Migratory Bird Permits), regulations allow us to issue permits for certain activities otherwise prohibited in regard to migratory birds. In part 21, we issue permits for the taking, possession, transportation, sale, purchase, barter, importation, exportation, and banding and marking of migratory birds. In that part, we also provide certain exceptions to permit requirements for public, scientific, or educational institutions and establish depredation and control orders that provide limited exceptions to the MBTA.

Muscovy Duck

The muscovy is a large duck native to South America, Central America, and

Mexico. Due to a recent northward expansion of the range of the species, there is a small natural population in four counties in southern Texas in which natural breeding has been confirmed. For that reason, we included this species in the proposed rule to revise the list of migratory birds found in 50 CFR 10.13 (71 FR 50193, Aug. 24, 2006; 71 FR 75188, Dec. 14, 2006). We anticipate adding the species to the list when we finalize the regulation. However, we will not make a final decision on the § 10.13 list before we make a final decision on this muscovy duck proposed rule.

The muscovy duck normally inhabits forested swamps and mangrove ponds, lakes and streams, and freshwater ponds near wooded areas. The species often roosts in trees at night. The hen usually lays her eggs in a tree hole or hollow. However, muscovy ducks will occasionally nest in abandoned nests of large birds such as ospreys or eagles, between palm tree fronds, and in wooden boxes or other man-made elevated cavities. The species does not form stable pairs.

Muscovy ducks can breed near urban and suburban lakes and on farms, nesting in tree cavities or on the ground, under shrubs in yards, on condominium balconies, or under roof overhangs. Feral populations, particularly in Florida, are said to present problems. Feral muscovy ducks are wary and associate little with other species.

Muscovy ducks feed on the roots, stems, leaves, and seeds of aquatic and terrestrial plants, including agricultural crops. They also eat small fishes, reptiles, crustaceans, insects, millipedes, and termites.

Muscovy ducks live alone or in groups of 4 to 12, rarely in large flocks. They are mainly active in the morning and afternoon, feeding on the shores of brackish waters, or in the flood savannah and underbrush. They often sleep at night in permanent roosts in trees along the river bank. Heavy and low-flying, they are silent and timid. Muscovy ducks swim much less than other ducks, and the males fly poorly.

We received comments from States and individuals expressing concern over control of muscovy ducks in response to the 2006 proposal to add the species to the list of those protected under the MBTA (50 CFR 10.13). In general, States expressed concern over feral and free-ranging populations of muscovy ducks present as the result of human activity. For example, one State was concerned that protecting the species under the MBTA “would severely impede our efforts to manage the feral and free-ranging populations of domestic

muscovy ducks.” Individuals expressed concern over property damage and aggressiveness demonstrated by the ducks. The muscovy duck is an introduced species in many locations in the United States. We believe it is prudent to prohibit activities that would allow release of muscovy ducks in areas in which they are not native and may compete with native species.

We expect control of muscovy ducks to be undertaken primarily through the use of walk-in baited traps and through shooting. The use of baited traps will greatly limit the potential impacts to other species, especially passerines, which would be unlikely to enter properly placed traps. Shooting undertaken by State agency or U.S. Department of Agriculture Wildlife Services personnel would be very unlikely to harm other species.

We propose to revise 50 CFR 21.14 to prohibit sale and, in most cases, possession, of muscovy ducks; to revise § 21.25 to prohibit sale or transfer of captive-bred muscovy ducks for hunting; and to add § 21.54 to allow removal of introduced muscovy ducks from any location in the contiguous United States outside Cameron, Hidalgo, Starr, and Zapata Counties in Texas, and in Alaska, Hawaii, and U.S. territories and possessions. This removal is in keeping with the Service’s other actions to reduce the spread of introduced species that compete with native species or harm habitats that they use. It also is in keeping with the intent of the Migratory Bird Treaty Reform Act of 2004 (16 U.S.C. 703(b)).

Public Participation

We seek comments on any aspect of this proposed rule. You may submit your comments by either of the methods listed in the **ADDRESSES** section. We will not accept comments sent by email or by fax, or to an address not listed in the **ADDRESSES** section. We will not accept anonymous comments; your comment must include your first and last names, city, state, country, and postal (zip) code. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you provide personal identifying information in addition to the required items specified in the previous paragraph, such as your street address, phone number, or e-mail address, you may request at the top of your document that we withhold this information from public view. However,

we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documents, will be available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, VA 22203–1610.

When submitting written comments, please include your name and return address in your letter and identify it as comments on proposed rule RIN 1018–AV34. To facilitate compiling the administrative record for this action, you must submit written comments on 8½-inch by 11-inch paper.

Required Determinations

Clarity of This Regulation

Executive Order (E.O.) 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A “section” appears in bold type and is preceded by the symbol § and a numbered heading; for example: “§ 21.54 Control order for muscovy ducks in the United States.”) (5) Does the description of the rule in the “Supplementary Information” section of the preamble help you to understand the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail comments to Exsec@ios.doi.gov.

Regulatory Planning and Review (Executive Order 12866)

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

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an

economic sector, productivity, jobs, the environment, or other units of the government,

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

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

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

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities.

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

There would very minimal costs, if any, associated with this regulations change. Consequently, we certify that because this proposed rule would not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

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

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

b. This proposed rule would not cause a major increase in costs or prices for consumers; individual industries;

Federal, State, or local government agencies; or geographic regions.

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

Unfunded Mandates Reform Act

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

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

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

Takings

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

Federalism

This proposed rule would not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It would not interfere with the States' ability to manage themselves or their funds. No significant economic impacts are expected to result from control of muscovy ducks.

Civil Justice Reform

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

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). There are no new information collection requirements associated with this regulations change.

National Environmental Policy Act

We have analyzed this proposed rule in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 432–437(f), and part 516 of the U.S. Department of the Interior Manual (516 DM). The change we propose is to allow people and agencies to remove the muscovy duck species from locations in

the United States and United States territories in which the species may have been introduced. We completed an Environmental Action Statement in which we concluded that the proposed regulations change allowing the removal of an introduced species requires no additional assessment of potential environmental impacts.

Environmental Consequences of the Proposed Action

The primary change we propose is to prohibit release of the muscovy duck in locations in which it does not occur naturally. It has been introduced in other locations, where it is an invasive species that sometimes creates problems through competition with native species, damage to property, and transmission of disease. We propose to amend 50 CFR part 21 to prohibit sale of muscovy ducks for hunting, and to allow their removal in locations in which the species does not occur naturally in the contiguous United States, Alaska, and Hawaii, and in U.S. territories and possessions. This would require revisions to § 21.14 (permit exceptions for captive-bred migratory waterfowl other than mallard ducks) and § 21.25 (waterfowl sale and disposal permits), and addition of § 21.54, an order to allow control of muscovy ducks, their nests, and eggs. The first two regulations are to prevent introduction of the species, and have no environmental impact. Because the muscovy duck occurs only in small numbers at scattered locations outside its natural range in southern Texas, the impacts of control of the species under a new regulation at § 21.54 are minimal.

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

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

Endangered and threatened species. The proposed regulation is for migratory bird species that are not threatened or endangered. It would not affect threatened or endangered species or critical habitats.

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

destruction or adverse modification of [critical] habitat” (16 U.S.C. 1536(a)(2)). We have concluded that the proposed regulations change would not affect listed species, and the Division of Migratory Bird Management has conducted an Endangered Species consultation on this proposed rule to confirm this conclusion.

Government-to-Government Relationship With Tribes

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian Tribes and have determined that there are no potential effects. This proposed rule would not interfere with the Tribes’ ability to manage themselves or their funds or to regulate migratory bird activities on tribal lands.

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

On May 18, 2001, the President issued E.O. 13211 addressing regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this proposed rule would affect only import and export of birds in limited circumstances, it is not a significant regulatory action under E.O. 12866, and would not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 21

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

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

PART 21—MIGRATORY BIRD PERMITS

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

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

2. Revise § 21.14 to read as follows:

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

You may acquire captive-bred and properly marked migratory waterfowl of all species other than mallard ducks (*Anas platyrhynchos*), alive or dead, or their eggs, and possess and transport such birds or eggs and any progeny or eggs for your use without a permit, subject to the following conditions and restrictions. Additional restrictions on the acquisition and transfer of muscovy ducks (*Cairina moschata*) are at paragraph (g) of this section.

(a) You may acquire live waterfowl or their eggs only from a holder of a valid waterfowl sale and disposal permit in the United States. You also may lawfully acquire them outside of the United States with appropriate permits (*see* § 21.21 of subpart C of this part).

(b) All progeny of captive-bred birds or eggs from captive-bred birds must be physically marked as set forth in § 21.13(b).

(c) You may not transfer or dispose of captive-bred birds or their eggs, whether alive or dead, to any other person unless you have a waterfowl sale and disposal permit (*see* § 21.25 of subpart C of this part).

(d) Lawfully possessed and properly marked birds may be killed, in any number, at any time or place, by any means except shooting. 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, you must leave the marked foot or wing attached to each carcass, unless the carcass was marked as provided in § 21.25(b)(6) and the foot or wing was removed prior to your acquisition of the carcass.

(f) If you acquire captive-bred waterfowl or their eggs from a waterfowl sale and disposal permittee, you must retain the FWS Form 3–186, Notice of Waterfowl Sale or Transfer, from the permittee for as long as you have the birds, eggs, or progeny of them.

(g) You may not acquire or possess live muscovy ducks, their carcasses or parts, or their eggs, except to raise them to be sold as food. If you possess captive-bred muscovy ducks, you may not propagate them or sell or transfer them to anyone for any purpose, except to be used as food. You may not release them to the wild, including on private property, sell them to be hunted or released to the wild, or transfer them to

anyone to be hunted or released to the wild.

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

3. Revise § 21.25 to read as follows:

§ 21.25 Waterfowl sale and disposal permits.

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

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

(1) You may not take migratory waterfowl or their eggs from the wild, unless take is provided for elsewhere in this subchapter.

(2) You may not acquire migratory waterfowl or their eggs from any person who does not have a valid waterfowl propagation permit.

(3) Before they are 6 weeks of age, all live captive migratory waterfowl possessed under authority of a valid waterfowl sale and disposal permit must be physically marked as defined in § 21.13(b).

(4) All offspring of birds hatched, reared, and retained in captivity also must be marked before they are 6 weeks of age in accordance with § 21.13(b), unless they are held in captivity at a public zoological park, or a public scientific or educational institution.

(5) Properly marked captive-bred birds may be killed, in any number, at any time or place, by any means except shooting. They may be killed by shooting only in accordance with all the applicable hunting regulations governing the taking of like species from the wild.

(6) 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. However, if you have a State license, permit, or authorization that allows you to sell game, you may remove the marked foot or wing from the raw carcasses if the number of your State license, permit, or authorization has been legibly stamped in ink on the

back of each carcass and on the wrapping or container in which each carcass is maintained, or if each carcass is identified by a State band on a leg or wing pursuant to requirements of your State license, permit, or authorization.

(7) You may dispose of properly marked live or dead birds or their eggs (except muscovy ducks and their eggs) in any number at any time or place, or transfer them to any person, if the birds are physically marked prior to sale or disposal, regardless of whether or not they have attained 6 weeks of age.

(8) You may propagate muscovy ducks (*Cairina moschata*) only for sale for food.

(i) You may not release muscovy ducks to the wild or transfer them for release to the wild.

(ii) You may not sell or transfer muscovy ducks to be killed by shooting.

(9) If you transfer captive-bred birds or their eggs to another person, you must complete FWS Form 3-186, Notice of Waterfowl Sale or Transfer, and provide all information required on the form, plus the method or methods by which individual birds are marked as required by § 21.13(b).

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

(ii) Retain one copy in your files.

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

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

(c) *Reporting requirements.* You must submit an annual report by January 10th of each year to the Fish and Wildlife Service Regional Office that issued your permit. You must report the number of waterfowl of each species you possess on that date, and the method or methods by which each is marked.

(d) *Applying for a waterfowl propagation permit.* Submit your application for a waterfowl sale and disposal permit to the appropriate Regional Director (Attention: Migratory Bird Permit Office). You can find addresses for the Regional Directors in 50 CFR 2.2. Your application must contain the general information and certification required in § 13.12(a) of subchapter A of this chapter, and the following additional information:

(1) A description of the area where you will keep waterfowl in your possession;

(2) The species and numbers of waterfowl you possess and a statement showing from whom the birds were obtained;

(3) A statement indicating the method by which birds you hold will be marked as required by the provisions of this part 21; and

(4) The number and expiration of your State permit if you are required to have one.

(e) *Term of permit.* A waterfowl sale and disposal permit issued or renewed under this part expires on the date designated on the face of the permit unless amended or revoked, but the term of the permit will not exceed five (5) years from the date of issuance or renewal.

4. Add new § 21.54 to read as follows:

§ 21.54 Control order for muscovy ducks in the United States.

(a) *Control of muscovy ducks.* Anywhere in the contiguous United States except in Cameron, Hidalgo, Starr, and Zapata Counties in Texas, and in Alaska, Hawaii, and U.S. territories and possessions; landowners and Federal, State, and local wildlife management agencies, and their tenants, employees, or agents may, without a Federal permit, remove or destroy muscovy ducks (*Cairina moschata*) or their nests or eggs at any time when found. Any authorized person may temporarily possess, transport, and dispose of muscovy ducks taken under this order.

(b) *Disposal of muscovy ducks.* You may donate muscovy ducks taken under this order to public museums or public institutions for scientific or educational purposes, or you may dispose of them by burying or incinerating them. You may not retain for personal use or consumption, offer for sale, or sell a muscovy duck removed under authority of this section, nor may you release it in any other location.

(c) *Other provisions.* (1) You may not remove or destroy muscovy ducks or their nests or eggs if doing so is contrary to any State, territorial, or tribal laws or regulations.

(2) You may not remove or destroy muscovy ducks or their nests or eggs if doing so will adversely affect other migratory birds or species designated as endangered or threatened under the authority of the Endangered Species Act.

(3) Persons operating under this order must immediately report the take of any species protected under the Endangered Species Act or any other species protected under the Migratory Bird Treaty Act to the Fish and Wildlife Service Ecological Services Office for the State or location in which the take occurred.

(4) We reserve the right to suspend or revoke the authority of any agency or

individual to undertake muscovy duck control if we find that agency or individual has undertaken actions that may harm federally listed threatened or endangered species or are contrary to the provisions of this part.

Dated: August 8, 2008.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8-19550 Filed 8-21-08; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[FWS-R9-MB-2007-0018; 91200-1231-9BPP]

RIN 1018-AV33

Migratory Bird Permits; Control of Purple Swamphens

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose changes in the regulations governing control of depredating or introduced migratory birds. The purple swamphen (*Porphyrio porphyrio*) is not native to any State, and competes with native species. However, we have proposed to add it to the list of species protected under our Migratory Bird Treaty Act obligations because it does occur naturally in American Samoa. We propose to amend 50 CFR part 21 to allow removal of purple swamphens in the contiguous United States, Hawaii, Alaska, Puerto Rico, and the U.S. Virgin Islands.

DATES: We must receive all comments on this proposal by October 21, 2008.

ADDRESSES: You may submit comments, identified as comments on RIN 1018-AV33, by either of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *U.S. Mail or hand delivery:* Public comments Processing, Attention RIN 1018-AV33; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, Suite 222; Arlington, VA 22203-1610.

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

Public Comments section below for more information.

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

SUPPLEMENTARY INFORMATION:

Background

The Fish and Wildlife Service is the Federal agency delegated the primary responsibility for managing migratory birds. This delegation is authorized by the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia).

We implement the MBTA through regulations found in title 50 of the Code of Federal Regulations (CFR). In 50 CFR 10.13, we list all species of migratory birds protected by the MBTA that are subject to the regulations protecting migratory birds in title 50, subchapter B (Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife and Plants). In 50 CFR part 13 (General Permit Procedures) and part 21 (Migratory Bird Permits), regulations allow us to issue permits for certain activities otherwise prohibited in regard to migratory birds. In part 21, we issue permits for the taking, possession, transportation, sale, purchase, barter, importation, exportation, and banding and marking of migratory birds. We also provide certain exceptions to permit requirements for public, scientific, or educational institutions, and establish depredation and control orders that provide limited exceptions to the MBTA.

Purple Swamphen

The purple swamphen, a chicken-sized bird in the family Rallidae, is native to the Old World, and in the United States and its territories is native only in American Samoa. Because of the species' occurrence in American Samoa, it is protected under the Migratory Bird Treaty Act. We included this species in the proposed rule (71 FR 50194, August 24, 2006) to revise the list of migratory birds found in 50 CFR 10.13. In the United States, the purple swamphen occurs naturally only in the Pacific Island territories of American Samoa, Baker and Howland Islands, Guam, and the Northern Marianas Islands (Pratt et al. 1987). We proposed to add the species to the list because it is in a group of species that belong to families protected under treaties with Canada and Mexico. We anticipate that we will add the species to the list when we

finalize the regulation. However, we will not make a final decision on the proposed § 10.13 list before we make a final decision on this purple swamphen proposed rule.

The purple swamphen was introduced in southern Florida through escapes from aviculturalists and from the Miami Metro Zoo in the early 1990s. In Florida, the purple swamphen competes with native species and may impact the plant life of wetlands. The purple swamphen has an international reputation for eating eggs and chicks, including ducklings, of other ground or near-ground nesting species. As far as we know, counties in the southern half of Florida are the only place in the contiguous United States, Hawaii, Alaska, Puerto Rico, or the U.S. Virgin Islands where the purple swamphen occurs.

We propose to allow removal of introduced purple swamphens in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands from any location where they are found. This removal is in keeping with our other actions to reduce the spread of introduced species that compete with native species or harm habitats that they use. It also is in keeping with the intent of the Migratory Bird Treaty Reform Act of 2004 (16 U.S.C. 703(b)).

Public Participation

We seek comments on any aspect of this proposed rule. You may submit your comments by either of the methods listed in the **ADDRESSES** section. We will not accept comments sent by email or by fax, or to an address not listed in the **ADDRESSES** section. We will not accept anonymous comments; your comment must include your first and last names, city, state, country, and postal (zip) code. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you provide personal identifying information in addition to the required items specified in the previous paragraph, such as your street address, phone number, or e-mail address, you may request at the top of your document that we withhold this information from public view. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documents will be available for public inspection, by appointment, during normal business