

from the RMA/NPL Site are proposed in accordance with 40 CFR 300.425(e) and Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List (60 FR 55466 (November 1, 1995)). As described in 40 CFR 300.425(e)(3), portions of a site deleted from the NPL remain eligible for further remedial actions if warranted by future conditions.

EPA will accept comments concerning its intent for the SPA and SDA partial deletions from the RMA/NPL Site until September 25, 2003.

Section II of this action explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for these proposed partial deletions. Section IV explains how the SPA and SDA each meet the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect public health or the environment. In making such a determination pursuant to § 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required; or

Section 300.425(e)(1)(ii). All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities for portions not deleted from the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts. The U.S. Army and Shell Oil Company will be responsible for all future remedial actions required at the areas deleted if future site conditions warrant such actions.

III. Deletion Procedures

Upon determination that at least one of the criteria described in § 300.425(e) of the NCP has been met, EPA may formally begin deletion procedures. The

following procedures were used for the proposed deletion of the SPA and SDA portions of the RMA/NPL Site:

(1) EPA has recommended the partial deletions and prepared the relevant documents.

(2) The State of Colorado, through the CDPHE, concurred with publication of the notices of intent for partial deletion.

(3) Concurrent with the national Notices of Intent for Partial Deletion, a local notice was published in a newspaper of record and distributed to appropriate federal, State, and local officials, and other interested parties. These notices announced a thirty (30) day public comment period for each deletion package, both ending August 26, 2003, based upon publication of the notices in the **Federal Register** and a local newspaper of record.

(4) Concurrent with this national Notice of the Public Comment Extension, a local notice has been published in a newspaper of record and has been distributed to appropriate federal, State, and local officials, and other interested parties. These notices announce a thirty (30) day extension of the public comment periods, which end on September 25, 2003.

(5) EPA has made all relevant documents available at the information repositories listed previously for public inspection and copying.

Upon completion of the thirty (30) calendar day extension of the public comment periods, EPA Region 8 will evaluate each significant comment and any significant new data received before issuing a final decision concerning the proposed partial deletions. EPA will prepare a responsiveness summary for both the SPA and SDA for each significant comment and any significant new data received during the public comment periods and will address concerns presented in such comments and data. The responsiveness summaries will be made available to the public at the EPA Region 8 office and the information repository listed above and will be included in the final deletion packages. Members of the public are encouraged to contact EPA Region 8 to obtain a copy of the responsiveness summaries. If, after review of all such comments and data, EPA determines that either of the partial deletions from the NPL is appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**.

Deletion of the SPA or the SDA from the RMA/NPL Site does not actually occur until a final notice of partial deletion is published in the **Federal Register**. A copy of each final partial deletion package will be placed at the EPA Region 8 office and the information

repository listed above after the final documents have been published in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

This notice announces a thirty (30) day extension of the public comment periods for the proposed partial deletions from the RMA/NPL Site. EPA Region 8 announced its intent to delete the SPA and SDA portions of the RMA/NPL Site from the NPL on July 28, 2003. The original basis for deleting the SPA and SDA from the RMA/NPL Site has not changed. The **Federal Register** notice for the SPA (68 FR 44259) and the SDA (68 FR 44265) provide a thorough discussion of the bases for the intended partial deletions.

Dated: August 18, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 21

RIN 1018-AC57

Revisions to General Permit Procedures

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the U.S. Fish and Wildlife Service's permit application fee schedule for permits issued by the Divisions of Migratory Bird Management, Endangered Species, Law Enforcement, and Management Authority. The rule also clarifies several aspects of Service permit application procedures, and updates permit-related Service addresses. Additionally, the rule extends the tenure of two types of migratory bird permits.

DATES: Send comments on this proposal by October 10, 2003.

ADDRESSES: You may mail or deliver comments to the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, MBSP 4107, Arlington, Virginia 22203-1610. Alternatively, you may submit your comments via the Internet to: permitspart13@fws.gov. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message.

If you submit comments by more than one medium, please note that at the beginning of your document. You may also fax in comments to 703/358-2272. When submitting comments, refer to the file number RIN 1018-AC57.

The complete file for this proposed rule, including public comments, is available, by appointment, during normal business hours at the same address. You may call 703/358-2329 to make an appointment to view the files.

FOR FURTHER INFORMATION CONTACT:

Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703/358-1714.

SUPPLEMENTARY INFORMATION:

Background

In implementing its responsibilities under the Endangered Species Act of 1973, as amended (ESA), Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Migratory Bird Treaty Act (MBTA), and other wildlife laws, the Service issues permits and certificates that authorize the holders to engage in certain wildlife-related activities that are regulated by international treaty or laws of the United States. The Service charges user fees to offset the cost of processing applications for these permits and certificates, as well as the cost of monitoring and maintaining active permit files.

The general statutory authority to charge fees for applications for permits and certificates is found in 31 U.S.C. 9701, which states that services provided by Federal agencies are to be "self-sustaining to the extent possible." The authority to charge fees is also found under various wildlife laws. Specifically, the ESA, 16 U.S.C. Sec. 1540(f), authorizes the Secretary to "charge reasonable fees for expenses to the Government connected with permits or certificates authorized by [the ESA] including processing applications." The Marine Mammal Protection Act (MMPA), 16 U.S.C. Sec. 1374(g), also provides that the "Secretary shall establish and charge a reasonable fee for permits" issued pursuant to the MMPA.

Federal user fee policy, as stated in Office of Management and Budget (OMB) Circular No. A-25, requires Federal agencies to recoup the costs of "special services" that provide benefits to identifiable recipients. Permits are special services, authorizing identifiable recipients to engage in activities not otherwise authorized for the general public. Some of the Service's permit programs receive no designated budget appropriations. Others receive some funding, but not enough to cover costs.

Our ability to effectively provide these special services depends in large part on user fees. We are proposing that the standard permit application fee, which has not been revised since 1982, be increased in order to recoup more of the costs associated with providing permitting services.

The current schedule of permit application fees was published in the **Federal Register** on July 15, 1982 (47 FR 30785). The Service set what it calculated to be a reasonable standard fee in 1982 dollars to help defray the costs of processing permit applications, and monitoring and maintaining active permits. However, the standard \$25 fee was not large enough to recover the total cost of administering the Service's permit programs, even when it was set in 1982.

In response to cost of living increases, average Federal Government salaries have increased by 128% since 1982, according to the Bureau of Labor Statistics Employment Cost Index. This means that labor costs, which constitute the major expense incurred in administering permit programs, have more than doubled during the 21 years since the standard fee was established.

Furthermore, during that time, the average permit application has become more complex and time consuming to process. For example, migratory bird depredation permit applications are increasing in both frequency and complexity as greater numbers of people have more frequent interactions with migratory birds, resulting in more extensive, and different types of, property damage. Before issuing these permits, the Service must document that it considered and complied with the requirements of the National Environmental Policy Act (NEPA). As part of NEPA compliance, some of these permit issuances require preparation of environmental assessments. For migratory bird rehabilitation, permit conditions and criteria have had to become more complex to keep pace with an expanding and evolving profession, as larger, better-equipped facilities open, providing greater numbers of birds with more sophisticated treatment. In general, permit administration today requires more coordination between Service programs, other Federal programs, and State governments than it did 2 decades ago, in order to comply with the growing body of wildlife regulations needed to address the increasing impacts of an expanding human society. This increased complexity and workload of permit administration results in larger costs to the Service.

Proposed Revised Fee Schedule

Given the shortfall between program costs and fee collection, the Service is proposing to implement a new permit application fee schedule. The Service proposes to replace the current standard and nonstandard fees with a new table of fees to be designated under title 50 of the Code of Federal Regulations (CFR) at § 13.11(d)(4). This rule does not affect permit application fees for migratory bird banding and marking permits, which are issued by the U.S. Geological Survey, Bird Banding Laboratory.

The proposed fee structure is what the Service deems to be reasonable based on the nature of the activities being permitted, as well as the level of complexity and time required to process applications and maintain active permit files. Greater complexity results in greater workload and costs to the Federal Government for providing these special services. For example, fees for marine mammal public display permits are set at the rate of \$300 since they are among the most burdensome to process. These permit applications are often complex and require Service coordination with the National Marine Fisheries Service and the Marine Mammal Commission, as well as publication of notices in the **Federal Register** on receipt of an application and issuance of the permit. Permits to import marine mammals generally require a greater allocation of Service administrative and professional resources to process than a comparable CITES Appendix-I import permit and are significantly more complex to process than, for example, a simpler CITES Appendix-II permit application.

While cost considerations were important in developing the new fee structure, the Service does not intend this fee schedule to precisely mirror the actual cost of processing and maintaining the various types of permits we issue. For some types of permits, the cost of processing applications and monitoring active permits far exceeds what the Service can reasonably expect the applicant to pay, and thus the proposed permit application fee defrays only a minor portion of the actual cost to the Service. The proposed fee structure is a compromise between charging permit applicants the entire cost of providing these special services and the need to establish a uniform, straightforward fee schedule that reflects a reasonable cost for processing applications and maintaining active files.

In addition to cost, the Service considered several other factors in developing the new permit application

fee schedule in accordance with 31 U.S.C. 9701, which states that charges for services provided by the Government shall be based on (1) the costs to the Government; (2) the value of the service or thing to the recipient; (3) public policy or interest served; and (4) other relevant facts. Thus, the Service took into consideration such factors as whether the permit serves the public interest, and whether the type of permit to be issued typically provides a commercial benefit, either directly or indirectly, to the recipient.

While the Service's proposed new fee schedule will more closely conform to the Federal user fee policy by recovering a greater portion of the direct and indirect costs of providing special services than is currently being recovered, the proposed fee increases are not great enough to recover the full cost of administering the Service's permit programs. Administrative costs include research and analysis, policy development, consultation, outreach, publication of notices in the **Federal Register**, and overall management of the permit programs. Remaining costs, not captured through permit application fees, must be met with money appropriated for base funding of Service programs.

The Service will review permit application fees on a regular basis, using the cost of living index, as reported by the Bureau of Labor Statistics, as well as other factors that impact the cost to the Government of providing these services, to determine when it is appropriate and necessary to adjust fees.

Native American Cultural and Religious Possession Permits

Native American applicants for permits to possess or travel with eagle and other migratory bird carcasses, parts, and feathers for cultural and religious use will not be required to pay a permit processing fee. We do not consider this type of permit to be a special service like the other permits the Service issues. The Service issues Native American cultural and religious possession permits as part of the Federal Government's trust responsibility toward Federally recognized Native American tribes, and in order to fulfill Native Americans' First Amendment Constitutional rights, and in accordance with the American Indian Religious Freedom Act of 1978. To require Native Americans to pay a fee in order to carry out traditional cultural and religious ceremonies could unduly burden their religious freedom. Thus, we have not proposed a processing fee for applications for permits to take, possess, or transport (including CITES

applications) eagle or other migratory bird carcasses, parts, and feathers for Native American cultural and religious use.

Migratory Bird Rehabilitation Permit Application Fees

For many years, applicants for migratory bird rehabilitation permits have paid no application fee. Although part 13 has never provided a formal exemption for rehabilitators, as a matter of practice, application fees for those permits have been waived. On December 6, 2001, the Service proposed a regulation to establish a specific permit category under which migratory bird rehabilitators will be permitted (66 FR 63349). Under that proposed rulemaking, migratory bird rehabilitation permit applicants are required to pay the fee listed in part 13, which is currently \$25. As part of that same rulemaking, migratory bird rehabilitation permits are proposed to be extended from a 3-year to a 5-year tenure. The net result of those changes is that migratory bird rehabilitation permit holders would pay \$5 per year in permit processing costs.

Under the present rulemaking proposed herein, the rehabilitation permit application fee would increase to \$50, resulting in a net increase to rehabilitation permit holders of another \$5 per year. While we recognize that migratory bird rehabilitators provide benefits to injured wildlife, the Service nevertheless incurs substantial costs when processing these permits. For the same reasons we are obliged to increase permit application fees Servicewide, we need to recoup the costs of issuing migratory bird rehabilitation permits, and we do not consider a fee equivalent to \$10 per year to be a significant economic burden for permit applicants.

Native Endangered and Threatened Species Permit Application Fees

Under the present rulemaking proposed herein, the application fee for native endangered and threatened species permits under the ESA will increase from \$25 to: \$100 for recovery and interstate commerce; \$50 for enhancement of survival permits with Safe Harbor Agreements; \$50 for enhancement of survival permits with Candidate Conservation Agreement with Assurances; and \$100 for incidental take permits with Habitat Conservation Plans. While we recognize that many of the activities authorized under these permits provide conservation benefits for endangered and threatened species, and the habitats upon which they depend, ESA permit applications for native species have risen significantly in

both number and complexity since the application fees were set in 1982. For the same reasons we are obliged to increase permit application fees Servicewide, we need to recoup costs of issuing native endangered and threatened species permits, and we do not consider this modest increase in permit application fees to be a significant economic burden for permit applicants.

Recent Changes in CITES Permits and the Corresponding Fee Changes

With the implementation of new CITES Resolutions and in an effort to improve the efficiency of the permitting process in the Division of Management Authority, changes to the permit procedures have been implemented. The implementation of new Resolutions has been addressed in a previous **Federal Register** notice (65 FR 26664; May 8, 2000). Other procedural changes are outlined below. In some cases, these new Resolutions and charges require that new fees be adopted to offset some new administrative costs.

(1) *Security Paper*. The Service has recently started to issue certain CITES permits and certificates on security paper, rather than using plain paper with a CITES security stamp. Security paper is specially produced paper that contains a variety of security features to prevent fraudulent use of the document. One aspect is a feature that does not allow the document to be clearly reproduced by photocopying. Since these documents cannot be photocopied, the Service needs to alter how we issue certain CITES documents.

(2) *Discontinuation of Multiple-Use Permits*. In the past, we have issued multiple-use permits that allowed multiple exports of specific items. These items have included artificially propagated plants, biological samples, circus animals, ginseng, and personally owned pets. With the exception of personally owned pets and circus animals, we have not issued multiple-use permits to export live animals. In appropriate situations, the applicant would submit a single application and, if approved, would receive a single document that could be used multiple times. Each time the document was used, a photocopied version would be submitted for clearance and would accompany the shipment. However, with the shift to security paper and because fewer countries are willing to accept photocopied documents, the Service has decided to discontinue the issuance of multiple-use permits.

(3) *Multiple Single-Use Permits*. As an alternative to multiple-use permits, we will begin issuing multiple single-use

permits. The permittee will receive a number of single-use permits, valid for 6 months from the issuance date. Each shipment exported must be accompanied by an original document. This new procedure would require that an individual or business submit an application that, if approved, would allow the Service to set up a "Master File." All information regarding the applicant and activities being requested would be maintained in this file. The Service would then be able to issue single-use permits based on the Master File. Since the permits would be valid only for 6 months, the permittee would need to evaluate how many permits would be required during this time period and request that number of permits. The original application for the Master File would require an application fee of \$200, and the file would be valid for 3 years. As long as no changes are made to the file, no additional application fee would be required for the 3 years. If, however, changes or amendments are made to the file, an additional application fee of \$100 (one half of the original fee) would be charged. After 3 years, the Master File would need to be updated if the permittee wishes to continue receiving single-use permits. This will require that the permittee submit a renewal application and an application fee of \$100. A \$5 fee charge will be assessed for each single-use permit issued from the Master File. Any permit not used within the 6-month period will expire, and no refund or exchange will be made. Please note that we consider permittees who currently receive multiple-use permits to already have a Master File established and, therefore, they will not need to apply to the Division of Management Authority to establish a new one. They will need to update these files every 3 years and pay the \$100 renewal fee.

(4) *Passport Documents.* In addition to switching to security paper, the Service will also begin issuing "passport" documents for personally owned pets and traveling exhibition live animals. Under CITES, a passport can be issued for personal pets and traveling exhibition animals in lieu of a typical CITES permit. The passport is valid for 3 years and is issued for a single animal. The animal must travel with the original passport, which must be presented to the appropriate agents at the ports of exit and entry. The passport is only valid for the single animal listed on the document. If the animal is lost, sold, or dies, the passport must be returned to the Division of Management Authority. The application fee for a CITES passport

for a personal pet or traveling exhibition animal is \$75 and is valid for 3 years. The fee for a passport for an animal listed under both CITES and the ESA is \$100 and is also valid for 3 years. Since the passport is issued for a specific specimen and must be returned to the Division of Management Authority if any changes occur to the status of the specimen, we cannot amend the passport once it has been issued.

(5) *Native Appendix III Species.* Under CITES, any Party can unilaterally list a native species in Appendix III. The country that lists a species in Appendix III must issue export permits for any specimens that are exported from that country. Specimens from another country would normally require a Certificate of Origin to be exported or reexported, indicating that they did not originate in the listing country. Currently, the United States has not listed any native species in Appendix III. However, in anticipation of this possibility, we propose an alternative fee schedule to address unique aspects of such a listing. One such aspect could be the need to permit the export of specimens from captive-breeding operations that produce large numbers of specimens intended for a limited number of exportations under very restricted conditions. Permitting for the export of specimens from such an operation could be conducted under a permitting procedure similar to a Master File (described above). We are proposing that a fee schedule be established that would allow an applicant to set up an Annual Program for a \$50 processing fee. If approved, the Annual Program permittee would be issued a number of single-use permits, valid for 6 months, that would allow for specimens produced by that permittee to be exported by that permittee. As with permits issued under a Master File, each permit would cost \$5 to cover processing. Annual Programs could also be established for Appendix-III species that are harvested from the wild which, due to perishability, must be exported within a few days of harvest. Finally, Annual Programs could be established for breeding operations of native Appendix-II species that are being produced in a closed production system. As with personally owned pet passports, Annual Programs will be established for very specific situations. If the permitted program changes, the Division of Management Authority would need to re-evaluate the complete program. As such, any amendments or changes to the program would void the currently permitted program, and a new application would need to be submitted.

(6) *Wild Bird Conservation Act Cooperative Breeding Programs.* Under the WBCA, cooperative breeding programs can be established to import and breed specifically authorized avian species. These programs are made up of individuals or zoological institutions with specialized skills in the propagation of a particular species. If the program is approved, authorization can be given to import birds under the WBCA. Currently, no fee has been charged to apply for the approval of a cooperative breeding program or to amend and renew currently authorized programs. However, given the length of time and expertise required to review applications for cooperative breeding programs, we will now require an application fee to cover a small portion of the costs involved. We will charge a fee of \$200 to process an application to establish a new cooperative breeding program, and a fee of \$100 to amend a current program. Amendments would consist of adding a species to or removing a species from the program. We will charge \$50 to renew a current breeding program. If an amendment is requested at the time of renewal, the application fee would be only \$100.

Combining Permit Authorizations

Sometimes applicants need more than one type of permit to cover their proposed activities, for example, for the export of a bird covered by both CITES and the MBTA, or the take from the wild of a bird covered by both the ESA and MBTA. In such cases, where the applicant requires two or more permit authorizations simultaneously for the same activity, or for more than one activity involving the same wildlife, and the authorizations can be made by the same permit issuance office, the Service can issue a consolidated permit combining the multiple authorizations (see 65 FR 26664, May 8, 2000, Revisions of Regulations for the Convention on International Trade in Endangered Species of Wild Fauna and Flora). In such cases, the applicant would pay a single fee for the more costly permit.

Renewals and Amendments

To ensure consistency, the Service is clarifying its policy on permit renewals and amendments. Applications to renew a permit when the tenure of a permit is expiring or has expired are effectively new permit applications. Therefore, all applicable fees will be applied.

The Service will assess a fee for amendments to a valid permit where the amendment reflects a substantive change within the scope of the permit. We will not charge permittees for

administrative changes to valid permits, such as address and telephone number changes. The amount of the amendment fee will typically be half of the application fee for the type of permit (see fee schedule at the end of this document). Examples of substantive amendments include changing the species covered under a scientific collecting permit, requesting authorization to import wildlife through an additional nondesignated port, and relocating a wildlife operation to new facilities at a different site. With some exceptions, most migratory bird permits will not require fees for amendment because amendments to migratory bird permits typically do not require significant additional staff time on the part of the Service to process. Amending a valid permit will not extend the tenure of the permit beyond the original expiration date. Amendments to Master Files, Annual Programs, and WBCA cooperative breeding programs will be treated differently (see above). Some permits cannot be amended; the fee schedule therefore does not reflect any amendment cost for these types of permits (see fee schedule at the end of this document).

Waivers

Currently, § 13.11(d)(3) provides for a waiver of permit fees for governmental entities. This section provides that a fee will not be charged to any Federal, State, or local government agency, nor to any individual or institution under contract to such agency for the proposed activity. In the past, the Service has extended fee waivers to other public institutions provided that proof of their status as a "public institution" accompanied the permit application. We are now proposing to limit the fee waiver provided for public institutions to only Federal and State governmental agencies, and to individuals or institutions under contract to such agencies for the activities being permitted. We find it necessary to limit exemptions given the substantial time and effort the Service dedicates to processing permit applications and monitoring and maintaining permits of public institutions. In addition, many of the affected institutions receive benefits from Service permits beyond those that accrue to the general public or to Federal or State governments.

This rule further provides that a Regional Director or Assistant Director may waive or reduce any fee on a case-by-case basis for extraordinary extenuating circumstances. We envision this provision will be used rarely, if ever.

Additional Revisions

We have proposed several administrative changes to § 13.3, entitled "Scope of regulations." Specifically, the titles of several parts of the CFR in Title 50, that are referenced within this section, have been brought up to date. The rule further proposes to revise the term "permit" to include documents issued by authorized foreign government agencies for purposes of CITES.

The proposed rule makes revisions to § 13.11(b) to provide updated Service addresses for requesting and submitting permit applications.

We are proposing to revise § 13.11(c) to advise applicants that the time required for the processing of endangered and threatened species incidental take permits will vary according to the project scope and significance of effects, and may require more than 90 calendar days. Permit applicants are also now informed that the time required for processing some permits may be increased by the procedural requirements of NEPA, the requirement to publish a notice in the **Federal Register** for a 30-day public comment period upon receipt of a permit application, as well as the need to obtain review of the permit application by Service Regional and Field Offices. The Service will work to complete all steps of the permitting process as expeditiously as possible.

Finally, the proposed rule amends § 13.42, to clarify that, in addition to any conditions set forth in the regulations for a given permit type, individual permits may be further conditioned at the time of issuance, at the discretion of the Director, as noted on the face of the permit.

Extension of Permit Tenure for Two Migratory Bird Permits

We are revising § 21.24, taxidermist permits, and § 21.25, waterfowl sale and disposal permits, to extend the tenure of these permits from 3 years to 5 years. These migratory bird permits authorize a service or activities that occur on an ongoing basis. They do not authorize take from the wild, and as such necessitate less Service oversight and monitoring. Taxidermy permits are the most numerous migratory bird permit, representing over 8,000 active permits at any given time. Reducing the frequency of renewal of these permits would reduce Service costs associated with administering these permits.

Endangered Species Act Consideration

Section 7 of the ESA (16 U.S.C. 1531 *et seq.*), provides that, "[t]he Secretary

[of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act." Furthermore, section 7(a)(2) of the Act requires all Federal agencies to "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." Our review of this proposed rule pursuant to section 7 of the ESA concluded that this action will not affect listed or proposed species.

Required Determinations

Responsibilities of Federal Agencies To Protect Migratory Birds (E.O. 13186)

This rule has been evaluated for impacts to migratory birds, with emphasis on species of management concern, and is in accordance with the guidance in Executive Order 13186.

Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB has made this determination of significance under Executive Order 12866.

a. This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The purpose of this rule is to more closely align the fee structure with the Federal cost of permit processing for permits issued by the Divisions of Migratory Bird Management, Law Enforcement, and Management Authority. Fees charged for permits issued by the Fish and Wildlife Service have not increased since 1982. During that time period, Federal salaries have increased by 128 percent and since permit reviews are a labor-intensive activity, Service programs have had to absorb the additional cost of permit processing.

In total, the Service processes approximately 25,000 permits annually. About half of these permits are issued to small entities, many of whom can pass the economic effect of the fee increase (an average of \$50 per year per permit) to consumers, depending on the elasticity of demand. The maximum loss in consumer surplus, if all costs were passed along to consumers, would be \$1.25 million annually. However, for commercial permittees, the average \$50 cost increase of the permits will be spread over many products and result in negligible price increases to consumers.

The Service believes that the permit fee for working with regulated plants and wildlife is a very small part of the cost of these activities and will result in a negligible economic impact to consumers and businesses.

The benefit of better aligning the permit application fees schedule to the cost of Federal processing is that this will shift the burden of payment for these services from taxpayers as a whole to those persons who are receiving the government services. User fee increases reflect a related shift in appropriations of taxes to government programs, allowing those tax dollars to be applied to other programs that benefit the general public.

The administrative costs involved in implementing this proposed rule are minimal, since the Service permit programs are already established, and the mechanisms for collecting the permit application fees are already in place. Therefore the net gain of reducing the costs on taxpayers greatly outweighs the costs of introducing the user fee increases.

b. This rule will not create serious inconsistencies or otherwise interfere with other agencies' actions. This rule pertains to a Federal permit application process that already exists, and the only purpose of this rule is to update the fee structure to recover Federal costs of processing the permit applications. Non-Federal agencies are not affected by this rule, except that some local agencies previously exempt will now be subject to permit application fees.

c. This rule will not negatively impact or affect entitlements, other grants, user fees, loan programs, or the rights and obligations of their recipients. This rule affects user fees charged for plant and wildlife permits by updating and better aligning the fees with the Federal cost of processing the permits. The average fee increase will be \$50 per year with a range of annual fee increases running from \$10 for a migratory bird rehabilitation permit to \$275 dollars for a marine mammal public display permit. Multiplying the expected 25,000 permits issued annually by the average fee increase of \$50 yields a maximum of \$1.25 million, which is well below the threshold for a significant regulatory action.

d. This rule does not raise novel legal or policy issues. The current fee schedule for plant and wildlife related permits has been in place since July 15, 1982. No new permits are included in this rulemaking.

The only purpose of this rulemaking is to update and better align the permit fee schedule with the actual Federal cost for processing the applications.

Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Service has performed the threshold analysis required under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA) and the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 *et seq.* (SBREFA), and has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

a. The proposed increase in user fees for Federal permits will affect approximately 12,737 small entities, including importers and exporters of plants, wildlife, and animal products, wildlife propagators, museums, airports, animal exhibitors, migratory bird taxidermists, and migratory bird rehabilitators. The average user fee under this proposal will increase approximately \$50 per year. This average includes annual increases ranging from \$10 for a migratory bird rehabilitation permit to \$275 for a marine mammal public display permit. The total cost increase for small entities applying for permits will be approximately \$642,244 for the approximately 12,737 permits that are issued annually to small entities.

The economic effect on small entities of this proposed rulemaking will be an increased cost of doing business. Depending on the elasticity of demand for the goods and services authorized by the permits, much of the cost increase will be passed on to consumers. Thus, the Service does not anticipate that this proposed rule will result in a significant economic burden to small businesses.

b. This proposed rule does not introduce any new reporting, record keeping, or other compliance requirements, and does not introduce any new legal requirements that duplicate other Federal regulations. The average cost increase will be borne by all entities doing business involving wildlife.

c. This proposed rule will not cause major increases in prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or have significant adverse impacts on competition, employment, investment, innovation, or the ability of U.S.-based enterprises to compete with foreign enterprises. A small cost increase to better reflect the cost of review of the permit application will not adversely affect competition in this industry since all entities will be required to pay the increased fees. Since the increase of the cost of the permits

will be spread over many products, it will result in negligible price increases to consumers, and will not have a significant effect on the number of permit applications and the corresponding total number of permitted wildlife-related activities conducted.

Unfunded Mandates Reform Act

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

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The Service has determined and certified pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State government or private entities. The proposed rulemaking only affects the Federal review and issuance of permits under Federal laws. This proposed rule does not apply to State regulations.

b. This rule will 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. The process of wildlife permit application review and issuance is already in place, and this proposed rulemaking is only updating the fee schedule to better align it with the actual cost of processing permits.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. A takings implication assessment is not required.

Federalism

In accordance with Executive Order 13132, and based on the discussions in Regulatory Planning and Review above, this rule does not have significant Federalism effects. A Federalism assessment is not required. This rule does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration.

Civil Justice Reform

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

Paperwork Reduction Act

This proposed rule does not contain new or revised information collection for which OMB approval is required under the Paperwork Reduction Act. Information collection associated with this proposed rule is covered by existing OMB approval Nos. 1018-0022 (expires 4/30/2004), 1018-0094 (expires 7/31/2004), 1018-0093 (expires 3/31/2004), and 1018-0092 (expires 7/31/2004). The Service may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that this rule is categorically excluded under the Department's NEPA procedures in 516 DM 2, Appendix 1.10.

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), Executive Order 13175, and 512 DM 2, this rule will have no effect on federally recognized Indian tribes.

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

On May 18, 2001, the President issued an Executive Order addressing regulations that affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is only updating the fee schedule for permit application review and issuance, it is not a significant regulatory action under Executive Order 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Clarity of Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this 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? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments about how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. You may call 703/358-2329 to make an appointment to view the files. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. Under limited circumstances, as allowable by law, we can withhold from the rulemaking record a respondent's identity. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representing an organization or business, available for public inspection in their entirety.

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 21

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

For the reasons set forth in the preamble, title 50, chapter I, subchapter B of the Code of Federal Regulations is proposed to be amended as follows:

PART 13—[AMENDED]

1. The authority citation for part 13 is revised to read as follows:

Authority: 16 U.S.C. 668a, 704, 712, 742j-1, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901-4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

2. Section 13.3 is revised to read as follows:

§ 13.3 Scope of regulations.

The provisions in this part are in addition to, and are not in lieu of, other permit regulations of this subchapter

and apply to all permits issued thereunder, including "Importation, Exportation and Transportation of Wildlife" (part 14), "Wild Bird Conservation Act" (part 15), "Injurious Wildlife" (part 16), "Endangered and Threatened Wildlife and Plants" (part 17), "Marine Mammals" (part 18), "Migratory Bird Permits" (part 21), "Eagle Permits" (part 22), and "Endangered Species Convention" (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) (part 23). As used in this part 13, the term "permit" will refer to a license, permit, certificate, letter of authorization, or other document as the context may require, and to all such documents issued by the Service or other authorized United States or foreign government agencies.

3. Revise § 13.11 to read as follows:

§ 13.11 Application procedures.

The Service may not issue a permit for any activity authorized by this subchapter B unless you have filed an application in accordance with the following procedures:

(a) *Forms.* Applications must be submitted in writing on a Federal Fish and Wildlife License/Permit Application (Form 3-200) or as otherwise specifically directed by the Service.

(b) *Forwarding instructions.* Applications for permits in the following categories should be forwarded to the issuing office indicated below.

(1) You may obtain applications for migratory bird banding permits (50 CFR 21.22) by writing to: Bird Banding Laboratory, USGS Patuxent Wildlife Research Center, 12100 Beech Forest Road, Laurel, Maryland 20708-4037.

(2) You may obtain applications for designated port exception permits and import/export licenses (50 CFR 14) by writing to the Assistant Regional Director for Law Enforcement of the Region in which you reside (see 50 CFR 2.2 for addresses and boundaries of the Regions).

(3) You may obtain applications for Wild Bird Conservation Act permits (50 CFR 15); injurious wildlife permits (50 CFR 16); captive-bred wildlife registrations (50 CFR 17); permits authorizing import, export, or foreign commerce of endangered and threatened species, and interstate commerce of non-native endangered or threatened species (50 CFR 17); marine mammal permits (50 CFR 18); and permits and certificates for import, export, and reexport of species listed under the Convention on International Trade in Endangered Species of Wild Fauna and

Flora (CITES) (50 CFR 23) from: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203-1610. Submit completed permit applications to the same address.

(4) You may obtain Endangered Species Act permit applications (50 CFR 17) for native species, including incidental take, scientific purposes, enhancement of propagation or survival (*i.e.*, recovery), and enhancement of survival by writing to the Regional Director (Attention: Endangered Species Permits) of the Region where the activity is to take place (see 50 CFR 2.2 for addresses and boundaries of the Regions). Submit completed applications to the same address (the Regional office covering the area where the activity will take place). Permit applications for interstate commerce for native listed species should be obtained by writing to the Regional Director (Attention: Endangered Species Permits) of the Region that has the lead for the particular species, rather than the Region where the activity will take place. You can obtain that information on the Internet at <http://endangered.fws.gov/wildlife.html>, by entering the common or scientific name of the listed species in the Regulatory Profile query box. Send interstate commerce permit applications for native listed species to the same Regional Office that has the lead for that species.

(5) You may obtain applications for bald and golden eagle permits (50 CFR 22) and migratory bird permits (50 CFR 21), except for banding and marking permits, by writing to the Migratory Bird Permit Program Office in the Region in which you reside (see 50 CFR

2.2 for addresses and boundaries of the Regions). Send completed applications to the same address (the Regional office covering the State where you reside).

(c) *Time notice.* The Service will process all applications as quickly as possible. However, we cannot guarantee final action within the time limit you request. You should ensure that applications for permits for marine mammals and/or endangered and threatened species are postmarked at least 90 calendar days prior to the requested effective date. The time we require for processing of endangered and threatened species incidental take permits will vary according to the project scope and significance of effects. Submit applications for all other permits to the issuing/reviewing office and ensure they are postmarked at least 60 calendar days prior to the requested effective date. Our processing time may be increased by the procedural requirements of the National Environmental Policy Act (NEPA), the requirement to publish a notice in the **Federal Register** for a 30-day public comment period upon receipt of certain types of permit applications, and/or the time required for extensive consultation within the Service, with other Federal agencies, and/or State or foreign governments. When applicable, we may require permit applicants to provide additional information on the proposal and on its environmental effects as may be necessary to satisfy the procedural requirements of NEPA.

(d) *Fees.* (1) You must pay the required permit processing fee at the time that you apply for issuance or renewal of a permit. You must pay by check or money order made payable to

the "U.S. Fish and Wildlife Service." The Service will not refund any application fee under any circumstances if we have processed the application. However, we may return the application fee if you withdraw the application before we have significantly processed it.

(2) If regulations in this subchapter require more than one type of permit for an activity and the permits are issued by the same office, the issuing office may issue one consolidated permit authorizing the activity pursuant to § 13.1. You may submit a single application in such cases, provided that the single application contains all the information required by the separate applications for each permitted activity. Where more than one permitted activity is consolidated into one permit, the issuing office will charge the highest single fee for the activity permitted.

(3) We will not charge a fee to any Federal or State government agency or to any individual or institution under contract to such agency for the proposed activities. Proof of status as a Federal or State government agency, or contractor to such agency, must accompany your application. Except as otherwise authorized or waived, if you fail to submit evidence of such status with your application, we will require the submission of all processing fees prior to the acceptance of the application for processing. We may waive the fee on a case-by-case basis for extraordinary extenuating circumstances provided that the issuing permit office and a Regional or Assistant Director approve the waiver.

(4) User fees.

Type of permit	Citation	Fee	Amendment fee
Migratory Bird Treaty Act			
Migratory Bird Import/Export	50 CFR 21	\$75	.....
Migratory Bird Banding or Marking	50 CFR 21	.....	.....
Migratory Bird Scientific Collecting	50 CFR 21	100	50
Migratory Bird Taxidermy	50 CFR 21	100	.....
Waterfowl Sale and Disposal	50 CFR 21	75	.....
Special Canada Goose	50 CFR 21	.....	.....
Migratory Bird Special Purpose/Education	50 CFR 21	75	.....
Migratory Bird Special Purpose/Salvage	50 CFR 21	75	.....
Migratory Bird Special Purpose/Game Bird Propagation	50 CFR 21	75	.....
Migratory Bird Special Purpose/Miscellaneous	50 CFR 21	100	.....
Falconry	50 CFR 21	100	.....
Raptor Propagation	50 CFR 21	100	.....
Migratory Bird Rehabilitation	50 CFR 21	50	.....
Migratory Bird Depredation	50 CFR 21	100	50
Migratory Bird Depredation/Homeowner	50 CFR 21	50	.....
Bald and Golden Eagle Protection Act			
Eagle Scientific Collecting	50 CFR 22	100	50
Eagle Exhibition	50 CFR 22	75	.....
Eagle Falconry	50 CFR 22	100	.....

Type of permit	Citation	Fee	Amendment fee
Eagle—Native American Religion	50 CFR 22	.....	.....
Eagle Depredation	50 CFR 22	100	50
Golden Eagle Nest Take	50 CFR 22	100	50
Eagle Transport—Scientific or Exhibition	50 CFR 22	75	.....
Eagle Transport—Native American Religious Purposes	50 CFR 22	.....	.....
Endangered Species Act/CITES/Lacey Act			
ESA Recovery	50 CFR 17	100	50
ESA Interstate Commerce	50 CFR 17	100	50
ESA Enhancement of Survival (Safe Harbor Agreement)	50 CFR 17	50	25
ESA Enhancement of Survival (Candidate Conservation Agreement with Assurances)	50 CFR 17	50	25
ESA Incidental Take (Habitat Conservation Plan)	50 CFR 17	100	50
ESA and CITES Import/Export and Foreign Commerce	50 CFR 17	100	50
ESA and CITES Museum Exchange	50 CFR 17	100	50
ESA Captive-bred Wildlife Registration	50 CFR 17	200	100
—Captive-bred wildlife registration renewal	50 CFR 17	100	.....
CITES Import (including Trophies under ESA and MMPA)	50 CFR	100	50
	17, 18, 23		
CITES Export	50 CFR 23	100	50
CITES Pre-Convention	50 CFR 23	75	40
CITES Certificate of Origin	50 CFR 23	75	40
CITES Re-Export	50 CFR 23	75	40
CITES Personal Effects and Pet Export/Re-Export	50 CFR 23	50	.....
CITES Appendix II Export (native furbearers and alligators—excluding live)	50 CFR 23	100	50
CITES Master File (includes files for artificial propagation, biomedical, etc. and covers import, export, and reexport documents).	50 CFR 23	200	100
—Renewal of CITES Master File	50 CFR 23	100	.....
—Single-use permits issued on Master File	50 CFR 23	15	.....
CITES Annual Program File	50 CFR 23	50	.....
—Single-use permits issued under Annual Program	50 CFR 23	15	.....
CITES replacement documents (lost, stolen, or damaged documents)	50 CFR 23	50	50
CITES Passport for Traveling Exhibitions and Pets	50 CFR 23	² 75	.....
CITES/ESA Passport for Traveling Exhibitions	50 CFR 23	² 100	.....
Import/Export License	50 CFR 14	100	50
Designated Port Exception	50 CFR 14	100	50
Injurious Wildlife Permit	50 CFR 16	100	50
—Transport Authorization for Injurious Wildlife	50 CFR 16	25	.....
Wild Bird Conservation Act			
Personal Pet Import	50 CFR 15	50	.....
WBCA Scientific Research, Zoological Breeding or Display, Cooperative Breeding	50 CFR 15	100	50
WBCA Approval of Cooperative Breeding Programs	50 CFR 15	200	100
—Renewal of a WBCA Cooperative Breeding Program	50 CFR 15	50	.....
WBCA Approval of a Foreign Breeding Facility	50 CFR 15	³ 250	.....
Marine Mammal Protection Act			
Marine Mammal Public Display	50 CFR 18	300	150
Marine Mammal Scientific Research/Enhancement/Registered Agent or Tannery	50 CFR 18	150	75
—Renewal of Marine Mammal Scientific Research/Enhancement/Registered Agent or Tannery	50 CFR 18	75	.....

¹ Each.² Per animal.³ Per species.

(5) We will charge a fee for substantive amendments made to permits within the time period that the permit is still valid. The fee will be half the original fee assessed at the time that the permit is processed. Substantive amendments are those that pertain to the purpose and conditions of the permit and are not purely administrative. Administrative changes, such as updating name and address information, are required under § 13.23(c), and we will not charge a fee for such amendments.

(6) Except where specifically addressed above, a permit renewal is an issuance of a new permit, and applicants for permit renewal must pay the appropriate fee listed in paragraph (d)(4) of this section.

(e) *Abandoned or incomplete applications.* Upon receipt of an incomplete or improperly executed application, or if you do not submit the proper fees, the issuing office will notify you of the deficiency. If you fail to supply the correct information to complete the application or to pay the

required fees within 45 calendar days of the date of notification, we will consider the application abandoned. We will not refund any fees for an abandoned application.

4. Amend § 13.12 by adding a new paragraph (c) to read as follows:

§ 13.12 General information requirements on applications for permits.

* * * * *

(c) When applicable, the Service may require permit applicants to provide additional information about the

activity for which permit authorization is being requested and on its environmental effects as may be necessary to satisfy the Service's requirements to comply with the National Environmental Policy Act, other Federal laws, and Executive orders, consistent with 40 CFR 1506.5 and Departmental procedures in 516 DM 6, Appendix 1.3A.

5. Revise § 13.42 to read as follows:

§ 13.42 Permits are specific.

A permit is subject to the conditions of this subpart D, as well as the conditions within the regulations in this subchapter under which the permit is issued, and any other conditions deemed appropriate and included on the face of the permit at the discretion of the Director. The authorizations on the face of a permit that set forth specific times, dates, places, methods of taking or carrying out the permitted activities, numbers and kinds of wildlife or plants, location of activity, and associated activities that must be carried out; authorize certain circumscribed transactions; or otherwise permit a specifically limited matter, are to be strictly construed and will not be interpreted to permit similar or related matters outside the scope of strict construction.

PART 21—[AMENDED]

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

Authority: Pub. L. 95–616; 92 Stat. 3112 (16 U.S.C. 712(2)); Pub L. 106–108.

7. Amend § 21.24 by revising paragraph (e) to read as follows:

§ 21.24 Taxidermist permits.

* * * * *

(e) *Term of permit.* A taxidermist 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.

8. Amend § 21.25 by revising paragraph (d) to read as follows:

§ 21.25 Waterfowl sale and disposal permits.

* * * * *

(d) *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.

Dated: July 30, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–21489 Filed 8–25–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AI05

Review of Captive-Reared Mallard Regulations on Shooting Preserves

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that a Final Draft of a review of regulations pertaining to the release and take of captive-reared mallards on licensed shooting preserves is available for public review. Comments and suggestions are requested.

DATES: You must submit comments pertaining to the review of regulations governing the release of captive-reared mallards by December 20, 2003.

ADDRESSES: Send your comments to: Jerome R. Serie, Atlantic Flyway Representative, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 12100 Beech Forest Drive, Room 224, Laurel, Maryland 20708–4038. Copies of the Final Draft “Review of Captive-reared Mallard Regulations on Shooting Preserves” can be obtained by writing to the above address. The Final Draft may also be viewed via the U.S. Fish and Wildlife Service’s Home Page at <http://migratorybirds.fws.gov>. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jerome R. Serie, Atlantic Flyway Representative, (301) 497–5851.

SUPPLEMENTARY INFORMATION: On June 1, 1993, we published in the **Federal Register** (58 FR 31247) a notice of intent to review all aspects of regulations pertaining to the release and harvest of captive-reared mallards. This review was subsequently suspended until all the appropriate field studies were completed and results reviewed. On August 28, 2001, we reinitiated our review by publishing in the **Federal Register** (66 FR 45274) an updated notice of intent to review all aspects of regulations pertaining to the release and

harvest of captive-reared mallards and provided the public with background information. These regulations, stated in § 21.13 of title 50 of the Code of Federal Regulations (CFR), allow captive-reared mallards, provided they are properly marked prior to 6 weeks of age by removal of the right 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, this regulation stipulates that such birds may be killed by shooting only in accordance with all applicable hunting regulations governing the take 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. Because captive-reared mallards are classified as a “migratory bird” by definition in 50 CFR 10.12, and simply excepted by regulations in § 21.13 allowing their take, they remain protected under the Migratory Bird Treaty Act.

We do not oppose the shooting of captive-reared mallards on shooting preserves to supplement hunting opportunities for the public when precautions are taken to control the distribution of these birds. However, since 1985, this regulation has become more broadly interpreted and some shooting preserves actively release captive-reared mallards in large numbers in free-ranging situations on their premises. Often these properties are in areas frequented by wild ducks. Because both classes of mallards (captive-reared and wild) are indistinguishable until in the hand, regulatory conflicts can arise from allowing free-ranging, captive-reared birds to be taken without bag limits during closed seasons for wild ducks. Similarly, regulations involving live decoys and baiting (50 CFR 20.21) come into effect, which necessitate a discretionary interpretation by enforcement personnel in the field. Also, releases of thousands of uncontrolled, free-flighted captive-reared mallards into areas inhabited by wild ducks pose potential threats of disease transmission and genetic introgression or hybridization, and potentially render data-gathering activities by Federal, State, and Flyway waterfowl management programs less effective. Information pertaining to these potential conflicts is discussed, and recommendations to modify these regulations are considered. The primary focus is to assess the potential effects of