

The Law (Section 711) in the Migratory Bird Treaty Act that allows any person to breed and sale migratory game birds on farms and preserves without a permit was implemented by regulations in 1918.

16 USC Chapter 7 are the laws that the United States Congress wrote that govern migratory birds in the wild, migratory game birds in the wild, and migratory game birds that are bred and sold on farms and preserves.

There are four (4) subchapters (Acts) in 16 U.S.C. Chapter 7.

1. Subchapter I -General Act. 16 U.S.C. §701-702;
2. Subchapter II -Migratory Bird Treaty Act. 16 U.S.C. §703-712;
3. Subchapter III -Migratory Bird Conservation Act. 16 U.S.C. §715j-s;
4. Subchapter IV –Hunting and Conservation Stamp Tax Act. 16 U.S.C. 718-719c.

All the laws in the four subchapters of 16 U.S.C. Chapter 7 except one apply to migratory birds and migratory game birds in the wild. 16 U.S.C. §711, which is included in subchapter II (Migratory Bird Treaty Act) applies only to migratory game birds that are bred and sold on farms and preserves 16 U.S.C. §711 was implemented by regulations 50 C.F.R. §21.13 and §21.14, in 1918.

16 U.S.C. §711 states very clearly that nothing in this subchapter, (which is referring to subchapter II of Chapter 7 which is 16 U.S.C. §703 - 712), shall be construed to prevent the breeding of migratory game birds on farms and preserves and the sale of birds so bred under proper regulation for the purpose of increasing the food supply. (emphasis added) 16 U.S.C. §703-712 cannot prevent the breeding and sale of migratory game birds on farms and preserves under proper regulation. 50 C.F.R. §21.13 is the proper regulation that applies to the breeding and sale of mallard ducks on farms and preserves. 16 U.S.C. §711 is the only law and 50 C.F.R. §21.13 is the only regulation that are allowed by the Migratory Bird Treaty Act to regulate mallard ducks that are bred on farms and preserves. 50 C.F.R. §21.14 applies to all other species of migratory game birds other than mallard ducks that are bred on farms and preserves.

16 U.S.C. §711 not only protects the wild migratory game birds by providing more game birds to shoot and eat, it also grants protection from all Federal and State prosecutions to persons who breed and sale migratory game birds on farms and preserves. 16 U.S.C. §711 prevents 705, 706, 707, and 708 from applying to captive-reared mallards that are bred and sold on farms and preserves. No person can be charged with a violation, cannot be arrested or penalized by the Federal or State government for breeding and selling captive-reared mallards on farms and preserves when they obey 50 C.F.R. §21.13.

16 U.S.C. §703 states that taking, killing, or possessing migratory birds unlawful unless and except as permitted by regulations made as hereinafter provided in this subchapter. 16 U.S.C. §711 was implemented by regulations 50 C.F.R. §21.13 and §21.14, in 1918.

50 C.F.R. §21.13 allows owners of mallard ducks that are bred on farms and preserves and that have been properly marked for identification purposes to be acquired, possessed, sold, traded, donated, transported, disposed, released and shot during the regular wild duck season when a person follows all the applicable regulations (50 C.F.R. §20), released and shot in any number, at anytime within the confines of any shooting preserve, released and shot in any number, at anytime for dog training and trial purposes. (50 CFR 21.13(d))

50 C.F.R. §21.13(b) allows a person to choose one of four options to properly mark mallard ducks that are bred on farms and preserves.

- (1) Removal of the hind toe from the right foot. (most breeders use this method)
- (2) Pinioning of a wing
- (3) Banding of one metatarsus with a seamless metal band.
- (4) Tattooing of a readily discernible number or letter or combination thereof on the web of one foot.

Captive-reared mallards are exempt from all permits in the first paragraph of 50 C.F.R. §21.13 which reads that, “Captive-reared and properly marked mallard ducks, alive or dead, or their eggs may be acquired, possessed, sold, traded, donated, transported and disposed of by any person without a permit.” This would only mean that there is no permit required (that allows States to regulate) shooting captive-reared mallards on shooting preserves or to mark captive-reared mallard carcasses with ink for identification purposes.

There is no permit required (that allows States to regulate) shooting captive-reared mallards in any number, at anytime. 50 C.F.R. §21.13(d) simply states that a person can only shoot captive-reared mallards in any number, at anytime within the confines of a shooting preserve that a person currently has a State shooting preserve permit, license, or authorization to shoot State controlled non-migratory game birds and wildlife such as quail, pheasant, chukar, turkey, or deer.

§21.13(d) allows persons that already have a State shooting preserve permit for quail, pheasant, turkey, or deer the option to hunt or not to hunt captive-reared mallards within the confines of their shooting preserve. There are at least 75 shooting preserves in Arkansas that currently shoot non-migratory game birds and wildlife such as quail, pheasant, chukar, turkey or deer that are eligible to shoot captive-reared mallards in any number, at anytime within the confines of their shooting preserve if they choose to do so with their current State permit.

There is no permit required (that allows States to regulate) to properly mark captive-reared mallard carcasses with ink for identification purposes. 50 C.F.R. §21.13(e) simply states that any person can mark the carcasses with ink if they currently have a State permit to shoot State controlled non-migratory game birds or wildlife such as quail,

pheasant, chukar, turkey, or deer. A person has a choice to leave the marked foot or wing attached if they do not have a State permit.

- 50 C.F.R. §10.12, §10.13, and §20.11 identifies captive-reared mallards as migratory game birds.
- 16 U.S.C. §711 allow captive-reared mallards to be exempt from all prohibitions when a person complies with regulation 50 C.F.R. §21.13. The only exception is a person must follow 50 C.F.R. part 20, when taking captive-reared mallards from the wild, during the regular wild duck season.
- 50 C.F.R. §21.13(c) reads that, “When so marked, such live birds may be disposed of to, or acquired from any person and possessed and transferred in any number at anytime or place.”
- The States cannot require a permit that regulates migratory game birds that are bred and sold on farms and preserves. The States can only require a permit that regulates non-migratory game birds and wildlife such as quail, pheasant, chukar, turkey, or deer.
- The permit requirement in 50 C.F.R. §21.13(d) for shooting captive-reared mallards in any number, at anytime is an option, not mandatory. If a person chooses not to shoot captive-reared mallards on a State shooting preserve, they can still acquire, possess, sale, trade, donate, transport, dispose, shoot them during the regular wild duck season, and for dog training and trial purposes without a permit.
- The ink marking permit requirement in 50 C.F.R. §21.13(e) for captive-reared mallards is an option, not mandatory. A person has a choice to have a State shooting preserve permit or to just leave the marked foot or wing attached without a permit.
- 50 C.F.R. §21.14(d) allows a person to kill by shooting other species of captive-reared migratory game birds only on farms, during the regular wild duck season in accordance with all the applicable regulations governing the taking of like species from the wild (part 20 of this subchapter). A person cannot kill other species of captive-reared game birds on shooting preserves or for dog training and trials.
- 50 C.F.R. §21.13(d) (1) (2) states that a person must purchase a Federal duck stamp and shoot only non-toxic shells on shooting preserves and for dog training and field trial operations.
- 16 U.S.C. §711 does not allow any person to be charged with a violation, arrested or penalized for any reason when they obey 50 C.F.R. §21.13 and §21.14.