



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 91

[Docket No. FWS-HQ-MB-2021-0048; FXMB 12330900000//212//FF09M13000]

RIN 1018-BF62

Federal Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are revising the regulations governing the annual Federal Migratory Bird Hunting and Conservation Stamp Contest (also known as the Federal Duck Stamp Contest (Contest)). We are removing the previously specified permanent theme and the mandatory inclusion of an appropriate hunting element within all Contest entries and revising the qualifications of the judging panel to reflect this change beginning with the 2022 Contest.

DATES: This rule is effective [Insert date 30 days after date of *Federal Register* publication].

ADDRESSES: You can view the 2022 Contest Artist Brochure after October 1, 2021, by one of the following methods:

- Accessing the Duck Stamp Contest & Event Information page at:

<https://www.fws.gov/birds/get-involved/duck-stamp/duck-stamp-contest-and-event-information.php>.

- Requesting a copy by contacting the person listed under **FOR FURTHER**

INFORMATION CONTACT.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, U.S. Fish and Wildlife Service, Department of the Interior, (202) 208–1050.

SUPPLEMENTARY INFORMATION:

Background

History of the Federal Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Program

On March 16, 1934, Congress passed and President Franklin D. Roosevelt signed the Migratory Bird Hunting Stamp Act, which was later amended to become the Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718–718j, 48 Stat. 452). Popularly known as the Duck Stamp Act, the law requires all waterfowl hunters who have attained the age of 16 to buy an annual stamp. Funds generated from Duck Stamp sales are used to protect waterfowl and wetland habitat that is incorporated into the National Wildlife Refuge System from willing sellers and those interested in obtaining conservation easements.

Over 1.5 million stamps are sold each year, and, as of 2021, Federal Duck Stamps have generated more than \$1.1 billion for the conservation of more than 6 million acres of waterfowl habitat in the United States. In addition to waterfowl, numerous other birds, mammals, fish, reptiles, and amphibians benefit from habitat protected by the Duck Stamp revenues, including an estimated one-third of the nation’s endangered and threatened species. The healthy wetlands protected by Duck Stamp funding sequester carbon and contribute to addressing the impacts of climate change, including absorbing flood waters and storm surge. These wetlands purify water supplies and provide economic support to local communities as they attract outdoor recreationists from many different backgrounds.

History of the Duck Stamp Contest

The first Federal Duck Stamp was designed at President Roosevelt’s request by Jay N. “Ding” Darling, a nationally known political cartoonist for the *Des Moines Register* and a hunter and wildlife conservationist. In subsequent years, noted wildlife

artists were asked to submit designs for the stamp. The first Contest was opened in 1949 to any U.S. artist who wished to enter. Since then, the Contest has attracted large numbers of entrants, and it remains the only art competition of its kind sponsored by the U.S. Government. The Secretary of the Interior appoints a panel of judges who have expertise in the area of art, waterfowl, or philately to select each year's winning design. Winners receive no compensation for the work, except a pane of Duck Stamps, based on their winning design, signed by the Secretary of the Interior. However, winners maintain the copyright to their artwork and may sell prints of their designs, which are sought by hunters, conservationists, and art collectors.

Waterfowl hunters have been the greatest contributors to the program, as they are required to purchase Duck Stamps in order to hunt waterfowl. Many individuals not engaged in hunting also purchase Duck Stamps to contribute to conservation or for the stamp's artistic value.

The 2020 Final Rule and 2021 Contest

On May 8, 2020, the Service published a final rule (85 FR 27313) revising the regulations in title 50 of the Code of Federal Regulations (CFR) at part 91 (50 CFR part 91) governing the annual Federal Duck Stamp Contest. The Contest regulations made permanent the theme "celebrating our waterfowl hunting heritage" for all future Contests. The regulations required the inclusion of a waterfowl hunting-related scene or accessory in every entry but did not specify what accessories to include. Requirements for the judging panel specified that all judges would have one or more prerequisite qualifications, which could include the ability to recognize waterfowl hunting accessories. An image of a drake lesser scaup with a lanyard and duck calls was chosen as the winner of the 2020 Contest, and this image appears on the 2021–2022 Federal Duck Stamp.

The 2021 Contest species and regulations, with the permanent theme and

mandatory inclusion of waterfowl hunting-related accessories or scenes in all entries, were widely publicized and in effect for the 2021 Contest. The entry period for artwork closed on August 15, 2021. The Service reminded artists that their entries for the 2021 Contest must adhere to the theme, entry qualifications, and judging requirements published in the regulations. Regardless of the effective date of this rule (see **DATES**, above), the 2021 Contest species and regulations apply to the 2021 Contest.

Proposed Rule to Amend the Duck Stamp Regulations

On June 23, 2021, we published a proposed rule (86 FR 32878) to remove the permanent “celebrating our waterfowl hunting heritage” theme, which required the mandatory inclusion of an appropriate hunting-related element in all Contest entries, and accordingly to revise the qualifications for selection as a judge and the scoring criteria for the Contest, beginning with the 2022 Contest. The Service proposed the changes to the regulations to allow artists more freedom of expression when designing their Contest entries.

Summary of Public Comments and Responses

We accepted public comments on our June 23, 2021, proposed rule for 30 days, ending July 23, 2021, and we invited comments on the proposed changes from artists, stamp collectors, hunters, and other user groups. We received more than 200 unique responses, including those from 15 organizations, specifically addressing the proposed rule. Commenters included self-identified members representing artists, waterfowl hunters, Duck Stamp and art print collectors, National Wildlife Refuge users, bird watchers, photographers, former Duck Stamp Contest judges, and several others who identified as conservationists or outdoor recreationists. The 15 organizations responding included all four Flyway Councils, bird watching organizations, bird conservation and advocacy organizations, avian ornithological organizations, and National Wildlife Refuge System support groups.

Overall, more than 80 percent of respondents were in favor of the proposed rule. All organizations expressed their support of removing the mandatory inclusion of hunting accessories. The majority of comments in favor of removing the theme expressed their opinion that a broader appeal for the stamp will allow for marketing to all audiences interested in conserving habitat. A focus on the common desire for habitat conservation, without alienating and dividing different user groups was recommended as the best way to increase sales and program support.

All of the self-identified Duck Stamp artists indicated they were in favor of removing the permanent theme and mandatory inclusion of a waterfowl hunting accessory or theme. Artists reported that the permanent theme stifled their creativity, that the mandatory inclusion of a hunting accessory was difficult from a design and composition perspective, that the requirement limited the choice of eligible subjects to hunted waterfowl species, that the mandatory accessory inclusion detracts from the natural beauty of the waterfowl species itself, and that the requirement put new, young, and nonhunting artists at a severe disadvantage for successfully competing in the Contest. Artists and others commenting on the artwork itself pointed to the decrease in number of entries and a decrease in quality of the 2018 and 2020 entries, as indicators that artists were not happy with the mandatory inclusion.

Twenty-seven percent of those wishing to see the permanent theme removed pointed out that traditionally, the Duck Stamp Contest has not had a mandate for the inclusion of a mandatory hunting theme or accessory. It was also pointed out that only three entries prior to 2018 successfully included a hunting accessory due to the artist's choice.

Of the respondents against the removal of the theme, many seemed to misunderstand the intent of the rule change or how it related to previous Contest regulations. Two-thirds of those wanting the theme to remain expressed the mistaken

impression that the theme and a hunting accessory were traditional elements in the Contest regulations. The permanent theme and the mandatory hunting accessory inclusion were only instituted in the 2020 Contest after a temporary inclusion in the 2018 Contest. The majority of comments that expressed disapproval in removing the mandatory hunting element expressed that the Service was trying to change the tradition of the artwork or rewrite 88 years of history and support for the Duck Stamp program by the waterfowl hunting community. The Service does not intend to change the formal name of the Duck Stamp or otherwise diminish the contributions to conservation by the waterfowl hunting community. Instead, we prefer to find other ways to celebrate our waterfowl hunting community.

Thirty-six percent of self-identified waterfowl hunters were also in favor of removing the permanent theme. Only one person who indicated they were in favor of keeping the permanent theme self-identified as a nonhunter.

Several commenters simply expressed disapproval or support for the proposed revised Contest rules. However, the majority had specific comments, which are presented below under headings that identify similar subjects. Several commentators offered suggestions that were outside the scope of this rule; these are not addressed at this time but may be further investigated.

Permanent Theme Recognizes Waterfowl Hunters

(1) *Comment:* Of the commenters opposed to removing the permanent theme of “celebrating our waterfowl hunting heritage,” many stated that hunters provided all or most of the funding for wildlife conservation and only waterfowl hunters purchased Duck Stamps. Some self-identified waterfowl hunters stated they purchased more than one annual stamp. Several expressed that the removal of the permanent theme was against the tradition and purpose of the Federal Duck Stamp. A couple of commenters stated that if the hunting theme was removed, as hunters, they would opt out of purchasing a Duck

Stamp. Several were strongly opposed to the nonhunting community having any say in the perpetuation of the theme.

Those who responded in favor of removing the permanent theme stated that they purchased stamps and included self-identified hunters, nonhunters, bird watchers, users of and volunteers at National Wildlife Refuges, general conservationists or naturalists, land managers, photographers, and stamp and art collectors. Nonconsumptive users expressed the desire to also feel recognized and appreciated for their conservation contributions as they were voluntary contributors and were not legally bound to purchase a Duck Stamp for hunting. Many commented that they were aware and thankful for the contributions to conservation that hunters have made but felt that the permanent theme was not necessary because the hunting community was acknowledged in other ways. Recognizing the decrease in the number of waterfowl hunters and the increase in the number of nonconsumptive users who benefit from habitat conservation led to several comments stating the nonhunting community had the responsibility to take on a larger financial contribution to the conservation of wildlife habitat within the National Wildlife Refuge System. Comments from several respondents recognized that habitat conservation provides many benefits of which hunting is just one and that it was the responsibility of all to support conservation. Several comments asked hunters to recognize the advocacy of all who worked to conserve habitat. Several commented that the permanent theme reinforced the idea that the Duck Stamp's only purpose was as a hunting stamp, rather than a widely available mechanism to raise funds for habitat conservation within the National Wildlife Refuge System.

Service Response: The Service made no changes to the final rule in response to these comments. The Service will continue to provide information and messaging that honors hunters' conservation contributions and promotes the interest and contributions of all user groups towards habitat conservation. The Service will use messaging on the

Duck Stamp to highlight important anniversaries, successes, and challenges in habitat and wildlife conservation. The formal name of the Duck Stamp will continue to promote both the hunting and general conservation purposes of the stamp. Waterfowl will continue to be the primary species of focus on the Duck Stamp. Waterfowl hunters will still be required to purchase an annual stamp, as a theme or depicted species on the stamp has no bearing on the legal requirements for migratory bird hunters to have a valid Duck Stamp as part of their annual licensing. As the permanent hunting theme was only instituted in 2020, removing the theme aligns with the origins of the Duck Stamp Contest.

Mandatory Inclusion of a Hunting Element in Entries

(2) *Comment:* Commenters in favor of and against removing the mandatory inclusion of a hunting related accessory presented two primary arguments: one based on creating the art and the annual art contest, and the second on the effect of the design on the Duck Stamp's marketing potential.

Of the commenters opposed to removing the mandatory inclusion of a hunting element in the design of the stamp, one stated the need for a clear and unambiguous illustrative connection between hunters and wildlife resource conservation. Another stated that the art must show a tie to hunting or it becomes just another wildlife art contest. Several commenters felt that removal of the mandatory hunting element would go against the traditional artwork of the Duck Stamp or would lead to the same stale images.

Several commenters felt the mandatory inclusion greatly limited artistic creativity. Artists are already limited to producing a design that has a live portrayal of an eligible species as the dominant and central focus of their entry. The entry size requirements and the subsequent reduction of the chosen entry to the size of a stamp is seen as a limit to the choice of an appropriate element that could be incorporated. Several commenters wanted a better description of what was acceptable as a "hunting element" and thought past

entries in the 2018 and 2020 Contests incorporated inappropriate elements, which created a bad image of hunters instead of celebrating their conservation ethic.

Several commenters felt that the overall design should promote wildlife and were afraid that mandatory inclusions made viewers lose sight of the beauty of the depicted species itself. One respondent commented that the inclusion of hunting elements limits the eligible species list to those only with open seasons and favored the most popularly harvested species.

Because not all artists who enter the Contest are hunters, many felt they were at an unfair disadvantage in composing their entry and gathering reference materials. One commenter also noted that any hunting element or scene would need to be appropriate for the depicted season and plumage of waterfowl so that no implicit game violations would be illustrated. The mandatory inclusion of a hunting element was seen to discourage young and new artists interested in entering the Contest but who are already overwhelmed by the restrictive rules and competition.

Service Response: The Service made no changes to the final rule in response to these comments. Like other elements, hunting accessories and scenes will be optional to be used at the artist's discretion in their composition. The Service does not intend to change requirements for the entry size or remove the primary focus of the Duck Stamp art from the actual waterfowl species. Comments on the judging procedures are not within the scope of this rule and will not be addressed here.

The Service believes the annual Contest functions to promote wildlife artists, inform different audiences about the many contributions to conservation, diversify our audience and stakeholders in habitat conservation, and promote the tradition and heritage of the Duck Stamp. The Service feels the Contest should be as inclusive as possible to achieve these goals.

Marketing the Duck Stamp

(3) *Comment:* Those who provided comments on marketing the Duck Stamp agreed with the importance of revenues from sales of the stamp to conserve habitat. The majority of respondents recognized the many contributions that waterfowl hunters provide in their role as conservationists. Most felt that the annual purchase of a stamp, while necessary for legal migratory bird hunting, should not preclude purchase by other interested parties. Continuation of stamp and print collections, having to sign the stamp used for hunting, purchase of the stamp as a pass to a National Wildlife Refuge, and support of conservation were expressed as reasons to purchase a Duck Stamp other than to be legal while hunting migratory birds.

Those in favor of the removing the permanent hunting theme and the mandatory hunting element overwhelmingly stated that this was a precursor to increasing sales and expanding support for the Duck Stamp as a conservation tool. They expressed the opinion that mandatory inclusion of hunting elements in the artwork was a divisive and alienating barrier which perpetuated the perception of exclusivity of Duck Stamp purchasers. Several individual comments indicated that stamps that are artistically pleasing and concentrate on the wildlife species itself are the ones most sought after and are what attracts new audiences to the Duck Stamp.

Several respondents offered other specific changes to the Duck Stamp that they felt would make them more accepted among different audiences. Several specific marketing tactics were also suggested.

Service Response: The Service made no changes to the final rule in response to these comments. The Service is continually looking for ways to increase our relevance and promote our mission among a changing demographic while recognizing all partners. The Service believes the Duck Stamp can play an important role in supporting habitat conservation among an increasingly diverse population but only if it is seen as an inclusive tool with a wide appeal to a variety of stakeholders.

While the Service appreciates the comments on specific marketing tactics for the Duck Stamp, they are beyond the scope of this rule and are not addressed here.

Effect of Final Rule on 2021 Duck Stamp Contest

(4) *Comment:* One comment was received that stated that the Service should make accommodations for artists who did not include the mandatory hunting element or theme in their entries for the 2021 Contest.

Service Response: The Service made no changes to the final rule in response to this comment. This final rule will be in effect starting with the 2022 Contest and will not change the requirements for the 2021 Contest entries. The Contest Rules Brochure for the 2021 Contest was made public in October 2020. This annual brochure outlined the requirements for entries in the 2021 Contest, included a list of the eligible species, and emphasized the requirement of the mandatory inclusion of a waterfowl hunting element or scene. Many artists begin their entries as soon as the brochure is available and work diligently throughout the following months to complete it on time. Art entries are accepted beginning on June 1, and must be postmarked by August 15 to be eligible for the Contest. Artists have been made aware of the 2021 Contest requirements and are expected to follow all the rules or be disqualified. As in the 2018 and 2020 Contests, the mandatory hunting accessory or scene can include a variety of different elements; there are many ways an artist may choose to illustrate the required theme of “celebrating our waterfowl hunting heritage” to be successful in adhering to this requirement.

Judge Qualifications and Scoring Criteria

(5) *Comment:* Six of the seven comments did not oppose the alignment of the qualifications for selection as a judge and the scoring criteria for the Contest with the removal of the permanent theme and requirement for inclusion of a mandatory waterfowl hunting accessory in Contest entries. One comment stated that given the change in the Contest rules, the Service should eliminate the qualification that a judge be familiar with

the wildlife sporting world in which the Duck Stamp is used. Several comments addressed other changes to the judging panel and process that are beyond the scope of this rule.

Service Response: The Service made no changes to the final rule in response to these comments. An understanding of the wildlife sporting world in which the Duck Stamp is used is only one of several qualifications that an individual may possess in order to qualify to be a judge.

Amendments to Existing Regulations

The Service made no changes to the final rule in response to the comments we received on the proposed rule. As we proposed on June 23, 2021, at 86 FR 32878, this rule removes the permanent theme of “celebrating our waterfowl hunting heritage” and the mandatory inclusion of a waterfowl hunting-related scene or accessory in Contest entries and accordingly revises the qualifications for selection as a judge and the scoring criteria for the Contest, beginning with the 2022 Contest.

Accordingly, this rule sets forth amended regulations for:

- The Contest restrictions on subject matter for entries at 50 CFR 91.14.
- Judge qualifications at 50 CFR 91.21(b).
- Scoring criteria at 50 CFR 91.23.

These regulatory amendments allow artists more freedom of expression when designing their Contest entries and better engage the nonhunting audience in understanding that Duck Stamps are a vital tool available for all to contribute to habitat conservation. The Service acknowledges that waterfowl hunters remain the primary customers of Duck Stamps, as these hunters must carry an annual signed stamp as part of their licensing requirements, and rather than mandating a permanent theme for the Contest and the inclusion of a hunting-related accessory in Contest entries, we will

develop other methods to promote the wildlife and habitat conservation contributions by waterfowl hunters.

Required Determinations

For this final rule, we affirm the following required determinations provided in our June 23, 2021, proposed rule (86 FR 32878):

- National Environmental Policy Act (42 U.S.C. 4321 et seq.);
- Endangered Species Act (16 U.S.C. 1531 et seq.);
- Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2));
- Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.);
- Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.); and
- Executive Orders 12630, 12866, 12988, 13132, 13175, 13211, and 13563.

List of Subjects in 50 CFR Part 91

Hunting, Wildlife.

Regulation Promulgation

Accordingly, we amend part 91, subchapter G of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 91—MIGRATORY BIRD HUNTING AND CONSERVATION STAMP

CONTEST

1. The authority citation for part 91 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 718j; 31 U.S.C. 9701.

2. Revise § 91.14 to read as follows:

§ 91.14 Restrictions on subject matter for entry.

A live portrayal of any bird(s) of the five or fewer identified eligible waterfowl species must be the dominant feature of the design. The design may depict more than one of the eligible species. The judges' overall mandate is to select the best design that will

make an interesting, useful, and attractive duck stamp that will be accepted and prized by hunters, stamp collectors, conservationists, and others. The design must be the contestant's original hand-drawn creation. The entry design may not be copied or duplicated from previously published art, including photographs, or from images in any format published on the Internet. Photographs, computer-generated art, or art produced from a computer printer or other computer/mechanical output device (airbrush method excepted) are not eligible to be entered into the contest and will be disqualified. An entry submitted in a prior contest that was not selected for a Federal or State stamp design may be submitted in the current contest if the entry meets the criteria set forth in this section.

3. Amend § 91.21 by revising paragraph (b) to read as follows:

§ 91.21 Selection and qualification of contest judges.

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(b) *Qualifications.* The panel of five judges will comprise individuals who have one or more of the following prerequisites: Recognized art credentials, knowledge of the anatomical makeup and the natural habitat of the eligible waterfowl species, an understanding of the wildlife sporting world in which the Duck Stamp is used, an awareness of philately and the role the Duck Stamp plays in stamp collecting, and demonstrated support for the conservation of waterfowl and wetlands through active involvement in the conservation community.

* * * * *

4. Revise § 91.23 to read as follows:

§ 91.23 Scoring criteria for contest.

Entries will be judged on the basis of anatomical accuracy, artistic composition, and suitability for reduction in the production of a stamp.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

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