DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20 and 21

RIN 1018–AF85

Migratory Bird Hunting; Regulations Designed To Reduce the Mid-Continent Light Goose Population

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends the Fish and Wildlife Service regulations based on recent Congressional action that effectively reinstated regulations intended to reduce the population of mid-continent light geese (MCLG). The new law authorizes the use of additional hunting methods (electronic calls and unplugged shotguns) to increase take of MCLG. In addition, a conservation order for the reduction of the MCLG population was authorized.

DATES: This rule is effective on December 20, 1999, and shall be in force until May 15, 2001, at the latest.

ADDRESSES: Copies of the Environmental Assessment are available by writing to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Office of Migratory Bird Management, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240; (703) 358–1714.

SUPPLEMENTARY INFORMATION: The Service (or ''we'') promulgated regulations on February 16, 1999, (64 FR 7507; 64 FR 7517) that authorized additional methods of take of mid-continent light geese and established a conservation order for the reduction of the MCLG population. In issuing those regulations, we indicated that we would initiate preparation of an Environmental Impact Statement (EIS) beginning in 2000 to consider the effects on the human environment of a range of long-term resolutions for the MCLG population problem. Those regulations were subsequently challenged in a United States District Court by the Humane Society of the United States (HSUS) and other groups. Though the judge refused to preliminarily enjoin the program, he did indicate a likelihood that the plaintiffs might prevail on the EIS issue when the lawsuit proceeded. In light of our earlier commitment to prepare an EIS on the larger, long-term program and to preclude further litigation on the issue, we published a Notice of Intent to begin immediate preparation of the EIS (May 13, 1999; 64 FR 26268). Subsequent to this action, we withdrew the regulations promulgated on February 16, 1999 (June 17, 1999; 64 FR 32778). On November 10, 1999, Congress passed the Arctic Tundra Habitat Emergency Conservation Act (Act), which effectively reinstated the MCLG regulations that we withdrew on June 17, 1999. The Act was signed by the President on November 24, 1999 (Pub. L. 106–108). The Act stated that, ''the rules published by the Service on February 16, 1999, * * * shall have the force and effect of law.'' (Section 3(a)(1)). In addition, it provided that, (t)he Secretary, acting through the Director * * * shall take such action as is necessary to appropriately notify the public . . .'' We have determined that amending the CFR by use of this document is the most appropriate method.

Background

Lesser snow (*Anser caerulescens caerulescens*) and Ross' (*Anser rossii*) geese that primarily migrate through the Mississippi and Central Flyways are collectively referred to as mid-continent light geese (MCLG). They are referred to as ''light'' geese due to the light coloration of the white-phase plumage form, as opposed to ''dark'' geese such as the white-fronted or Canada goose. We include both plumage forms of geese (white, or ''snow,'' and dark, or ''blue'') under the designation light geese. MCLG breed in the central and eastern arctic and subarctic regions of northern Canada. The total MCLG population is experiencing a high population growth rate and has become seriously injurious to its arctic and subarctic breeding grounds through the feeding actions of geese. Our management goal is to reduce the MCLG population by 50% by the year 2005 in order to prevent further habitat degradation.

We have attempted to curb the growth of the total MCLG population by increasing bag and possession limits and extending the open hunting season length for light geese to 107 days, the maximum allowed by the Migratory Bird Treaty. However, due to the rapid rise in the MCLG population, low hunter success, and low hunter interest, harvest rate (the percentage of the population that is harvested) has declined despite evidence that the actual number of geese harvested has increased (USFWS 1997b). The decline in harvest rate indicates that the past management strategies were not sufficient to stabilize or reduce the population growth rate.

On February 16, 1999, we published rules that: (1) Authorized additional methods of take of MCLG (electronic calls and unplugged shotguns; 64 FR 7507); and (2) created a conservation order for the reduction of the MCLG population (64 FR 7517). These actions were designed to reduce the population of MCLG over a period of several years in order to bring the population to a level that their breeding habitat can support. We prepared an Environmental Assessment (EA) in support of this program, which resulted in a Finding of No Significant Impact.

On February 25, 1999, several groups filed a complaint in the District Court for the District of Columbia seeking an injunction against these regulations. On March 2, 1999, the plaintiffs filed a motion for a preliminary injunction against the two rules cited above. The lawsuit alleged that we had implemented the rules without adequate scientific evidence that MCLG were causing habitat destruction, that we did not have the authority under the Migratory Bird Treaty to allow take of MCLG after March 10, and that an EIS should have been prepared prior to implementation of the rules. In his memorandum opinion, the judge indicated that ''the scientific evidence regarding the overpopulation of snow geese strongly favors FWS'' and that we had exercised a reasonable use of our authority under the Migratory Bird Treaty Act to initiate population control measures. Although the judge refused to issue an injunction, he did indicate a likelihood that plaintiffs might succeed on their argument that an EIS should have been prepared. In order to avoid further litigation, and because we had earlier indicated we would begin preparing in the year 2000 an EIS on the larger, long-term program, we decided to withdraw the regulations and begin immediate preparation of the EIS. On August 30, 1999, we published a schedule of nine public scoping meetings to receive public input on the issues and management alternatives that should be analyzed in the EIS. The public comment period for the scoping process ended on November 22, 1999. We anticipate publication of a draft EIS in late winter of 2000.

On November 10, 1999, Congress passed and on November 24, 1999, the President signed into law the Arctic Tundra Habitat Emergency Conservation Act (Pub. L. 106–108) to ''reduce the population of mid-continent light geese,'' and ''to assure the long-term conservation of mid-continent light geese and the biological diversity of the

ecosystem upon which many North American migratory birds depend'' (Pub. L. 106–108). The Act further states that, ''the rules published by the Service on February 16, 1999, relating to use of additional hunting methods to increase the harvest of mid-continent light geese (64 FR 7517–7528) and the establishment of a conservation order for the reduction of mid-continent light goose populations (64 FR 7514–7528), shall have the force and effect of law.'' The Act instructed the Secretary of Interior, acting through the Director of the Service, to take such action as is necessary to appropriately notify the public of the force and effect of the rules referenced above. The Act remains in effect until, ''the latest of—

(A) The effective date of rules issued by the Service after such date of the enactment to control overabundant mid-continent light geese populations;

(B) The date of the publication of a final environmental impact statement for such rules under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); and

(C) May 15, 2001.''

The Act further directs the Secretary to, ''prepare, and as appropriate implement, a comprehensive, long-term plan for the management of mid-continent light geese and the conservation of their habitat.'' The Act requires that, ''The plan shall apply principles of adaptive resource management and shall include—

(1) A description of methods for monitoring the levels of populations and the levels of harvest of mid-continent light geese, and recommendations concerning long-term harvest levels;

(2) Recommendations concerning other means for the management of mid-continent light goose populations, taking into account the reasons for the population growth specified in section 102(a)(3);

(3) An assessment of, and recommendations relating to, conservation of the breeding habitat of mid-continent light geese;

(4) An assessment of, and recommendations relating to, conservation of native species of wildlife adversely affected by the overabundance of mid-continent light geese, including the species specified in section 102(a)(5); and

(5) An identification of methods for promoting collaboration with the Government of Canada, States, and other interested persons.''

Public Comment

We are establishing this final rule without the standard notice for public comment. As required by the Administrative Procedure Act (5 U.S.C. 553(b)(B)), we have found that the notice and public procedure required by the APA are impracticable, unnecessary, and contrary to the public interest for the following reasons: (1) We are reinstating the rule at the direction of Congress; (2) public comment can not change the Congressional action; and (3) providing an unnecessary comment period at this time might preclude some affected States from implementing the expanded hunting methods and conservation order on time.

Effective Date

Under 5 U.S.C. 553 (d)(3), we find good cause to make the rule effective upon publication because, for the following reasons, it is unnecessary and not in the public interest. Reinstatement of these rules is being done as a result of a directive contained in law. We are reinstating rules with regard to light geese that were in place previously and which were adopted after notice and opportunity for public comment. In addition, under 5 U.S.C. § 553 (d)(1), this is a substantive rule that relieves the current restrictions on taking light geese.

Required Determinations

We published all of the required determinations in the February 16, 1999, final rules (64 FR 7507; 64 FR 7517).

Authorship. The primary author of this final rule is James R. Kelley, Jr., Office of Migratory Bird Management.

List of Subjects in 50 CFR Parts 20 and 21

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

For the reasons given in the preamble, we hereby amend Parts 20 and 21, of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 20—[AMENDED]

1. The authority citation for part 20 is revised to read as follows:

Authority: 16 U.S.C 703–712; 16 U.S.C. 742 a–j; Pub. L. 106–108.

2. Revise paragraphs (b) and (g) of § 20.21 to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(b) With a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells. This restriction does not apply during a light-goose-only season (lesser snow and Ross' geese) when all other waterfowl and crane hunting seasons, excluding falconry, are closed while hunting light geese in Central and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

* * * * *

(g) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds. This restriction does not apply during a light-goose-only season (lesser snow and Ross' geese) when all other waterfowl and crane hunting seasons, excluding falconry, are closed while hunting light geese in Central and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

* * * * *

§ 20.22 [Amended]

3. In § 20.22, the phrase ''except as provided in part 21'' is added following the word ''season'.

PART 21—[AMENDED]

4. The authority citation for part 21 is revised to read as follows:

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

5. Subpart E, consisting of § 21.60, is added to read as follows:

Subpart E—Control of Overabundant Migratory Bird Populations

§ 21.60 Conservation order for mid-continent light geese.

(a) Which waterfowl species are covered by this order? This conservation order addresses management of lesser snow (*Anser c. caerulescens*) and Ross' (*Anser rossii*) geese that breed, migrate, and winter in the mid-continent portion of North America, primarily in the Central and Mississippi Flyways (mid-continent light geese).

(b) In what areas can the conservation order be implemented? (1) The following States, or portions of States,

that are contained within the boundaries of the Central and Mississippi Flyways: Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

(2) Tribal lands within the geographic boundaries in paragraph (b)(1) of this section.

(3) The following areas within the boundaries in paragraph (b)(1) of this section are closed to the conservation order after 10 March of each year: Monte Vista National Wildlife Refuge (CO); Bosque del Apache National Wildlife Refuge (NM); the area within 5 miles of the Platte River from Lexington, Nebraska, to Grand Island, Nebraska; the following area in and around Aransas National Wildlife Refuge; those portions of Refugio, Calhoun, and Aransas Counties that lie inside a line extending from 5 nautical miles offshore to and including Pelican Island, thence to Port O'Conner, thence northwest along State Highway 185 and southwest along State Highway 35 to Aransas Pass, thence southeast along State Highway 361 to Port Aransas, thence east along the Corpus Christi Channel, thence southeast along the Aransas Channel, extending to 5 nautical miles offshore; except that it is lawful to take mid-continent light geese after 10 March of each year within the Guadalupe WMA. If at any time we receive evidence that a need to close the areas in this paragraph (b)(3) no longer exists, we will publish a proposal to remove the closures in the **Federal Register**.

(c) What is required in order for State/Tribal governments to participate in the conservation order? Any State or Tribal government responsible for the management of wildlife and migratory birds may, without permit, kill or cause to be killed under its general supervision, mid-continent light geese under the following conditions:

(1) Activities conducted under this section may not affect endangered or threatened species as designated under the Endangered Species Act.

(2) Control activities must be conducted clearly as such and are intended to relieve pressures on migratory birds and habitat essential to migratory bird populations only and are not to be construed as opening, reopening, or extending any open hunting season contrary to any regulations promulgated under section 3 of the Migratory Bird Treaty Act.

(3) Control activities may be conducted only when all waterfowl and crane hunting seasons, excluding falconry, are closed.

(4) Control measures employed through this section may be implemented only between the hours of one-half hour before sunrise to one-half hour after sunset.

(5) Nothing in this section may limit or initiate management actions on Federal land without concurrence of the Federal agency with jurisdiction.

(6) States and Tribes must designate participants who must operate under the conditions of this section.

(7) States and Tribes must inform participants of the requirements/conditions of this section that apply.

(8) States and Tribes must keep records of activities carried out under the authority of this section, including the number of mid-continent light geese taken under this section, the methods by which they were taken, and the dates they were taken. The States and Tribes must submit an annual report summarizing activities conducted under this section on or before August 30 of each year to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, D.C. 20240.

(d) What is required for individuals to participate in the conservation order? Individual participants in State or tribal programs covered by this section are required to comply with the following requirements:

(1) Nothing in this section authorizes the take of mid-continent light geese contrary to any State or Tribal laws or regulations, and none of the privileges granted under this section may be exercised unless persons acting under the authority of the conservation order possess whatever permit or other authorization(s) required for such activities by the State or Tribal government concerned.

(2) Participants who take mid-continent light geese under this section may not sell or offer for sale those birds nor their plumage, but may possess, transport, and otherwise properly use them.

(3) Participants acting under the authority of this section must permit at all reasonable times, including during actual operations, any Federal or State game or deputy game agent, warden, protector, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted, and must promptly furnish whatever information an officer requires concerning the operation.

(4) Participants acting under the authority of this section may take mid-continent light geese by any method except those prohibited as follows:

(i) With a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance;

(ii) From or by means, aid, or use of a sinkbox or any other type of low-floating device having a depression affording the person a means of concealment beneath the surface of the water;

(iii) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind, except that paraplegics and persons missing one or both legs may take from any stationary motor vehicle or stationary motor-driven land conveyance;

(iv) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off and the sails furled, and its progress therefrom has ceased. A craft under power may be used only to retrieve dead or crippled birds; however, the craft may not be used under power to shoot any crippled birds;

(v) By the use or aid of live birds as decoys; although not limited to, it will be a violation of this paragraph for any person to take mid-continent light geese on an area where tame or captive live geese are present unless such birds are and have been for a period of 10 consecutive days before the taking, confined within an enclosure that substantially reduces the audibility of their calls and totally conceals the birds from the sight of mid-continent light geese;

(vi) By means or aid of any motor-driven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of mid-continent light geese;

(vii) By the aid of baiting, or on or over any baited area. As used in this paragraph, ''baiting'' means the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed so as to constitute for such birds a lure, attraction, or enticement to, on, or over any areas where hunters are attempting to take them; and ''baited area'' means any area where shelled, shucked, or unshucked corn, wheat, or other grain, salt, or other feed capable of luring, attracting, or enticing such birds is directly or indirectly placed, exposed, deposited, distributed, or scattered; and such area shall remain a baited area for 10 days following complete removal of all such

corn, wheat or other grain, salt, or other feed. However, nothing in this paragraph prohibits the taking of mid-continent light geese on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands, grain crops properly shucked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting; or

(viii) Participants may not possess shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, or bismuth-tin, or other shots that are authorized in 50 CFR 20.21(j). Season limitations in that section do not apply to participants acting under this order.

(e) Under what conditions would the conservation order be revoked? The Service will annually assess the overall impact and effectiveness of the conservation order to ensure compatibility with long-term conservation of this resource. If at any time we receive evidence that clearly demonstrates a serious threat of injury to the area or areas involved no longer exists, we will initiate action to revoke the conservation order.

(f) Will information concerning the conservation order be collected? The information collection requirements of the conservation order have been approved by OMB and assigned clearance number 1018–0103. Agencies 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. The recordkeeping and reporting requirements imposed under regulations established in this subpart E will be used to administer this program, particularly in the assessment of impacts alternative regulatory strategies may have on mid-continent light geese and other migratory bird populations. The information collected will be required to authorize State and Tribal governments responsible for migratory bird management to take Mid-continent light geese within the guidelines provided by the Service.

Dated: December 10, 1999.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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