

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 20**

RIN 1018-A193

Migratory Bird Hunting; Proposed 2003-04 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2003-04 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule, announces the Flyway Council meetings, and describes proposed changes to the regulatory alternatives for the 2003-04 duck hunting seasons. We also request proposals from Indian tribes that wish to establish special migratory game bird hunting regulations on Federal Indian reservations and ceded lands. Migratory game bird hunting seasons provide hunting opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory game bird population status and habitat conditions.

DATES: You must submit comments on the proposed regulatory alternatives for the 2003-04 duck hunting seasons by May 15, 2003. You must submit comments for proposed early-season frameworks by July 30, 2003, and for proposed late-season frameworks by August 30, 2003. Tribes should submit proposals and related comments by June 1, 2003.

ADDRESSES: Send your comments on the proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms MBSP-4107-ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 4107, Arlington Square Building, 4501 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel at: Division of Migratory Bird Management, U.S. Fish and Wildlife

Service, Department of the Interior, ms MBSP-4107-ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358-1714.

SUPPLEMENTARY INFORMATION:**Background and Overview**

Migratory game birds are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Under the Migratory Bird Treaty Act (16 U.S.C. 703-712), the Secretary of the Interior is authorized to determine when "hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any . . . bird, or any part, nest or egg" of migratory game birds can take place and to adopt regulations for this purpose. These regulations must be written based on "the zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds" and must be updated annually. This responsibility has been delegated to the Fish and Wildlife Service (Service) of the Department of the Interior as the lead Federal agency for managing and conserving migratory birds in the United States.

The Service develops migratory game bird hunting regulations by establishing the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. Acknowledging regional differences in hunting conditions, the Service has administratively divided the nation into four Flyways for the primary purpose of managing migratory game birds. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State and Province in that Flyway. The Flyway Councils, established through the International Association of Fish and Wildlife Agencies (IAFWA), also assist in researching and providing migratory game bird management information for Federal, State, and Provincial Governments, as well as private conservation agencies and the general public.

The migratory game bird hunting regulations, located at 50 CFR 20, are constrained by three primary factors. Legal and administrative considerations dictate how long the rulemaking process will last. Most importantly though, the biological cycle of migratory game birds controls the timing of data-gathering activities and thus the date on which these results are available for consideration and deliberation.

The process includes two separate regulations-development schedules, based on early- and late-hunting season regulations. Early-hunting seasons pertain to all migratory game bird species in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; migratory game birds other than waterfowl (*i.e.*, dove, woodcock, etc.); and special early waterfowl seasons, such as teal or resident Canada geese. The early-hunting season generally begins prior to October 1. Late-hunting seasons generally start on or after October 1, and include most waterfowl seasons not already established.

There are basically no differences in the processes for establishing either early- or late-hunting seasons. For each cycle, Service biologists gather, analyze, and interpret biological survey data and provide this information to all those involved in the process through a series of published status reports and presentations to Flyway Councils and other interested parties. Because the Service is required to take abundance of migratory game birds and other factors into consideration, the Service undertakes a number of surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, and State and Provincial wildlife-management agencies. To determine the appropriate frameworks for each species we consider factors such as population size and trend, geographical distribution, annual breeding effort, the condition of breeding, wintering habitat, the number of hunters, and the anticipated harvest.

After frameworks, or outside limits, are established for season lengths, bag limits, and areas for migratory game bird hunting, migratory game bird management becomes a cooperative effort of State and Federal governments. After Service establishment of final frameworks for hunting seasons, the States may select season dates, bag limits, and other regulatory options for the hunting seasons. States may always be more conservative in their selections than the Federal frameworks but never more liberal.

Notice of Intent To Establish Open Seasons

This notice announces our intent to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 2003-04 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

For the 2003–04 migratory game bird hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). We describe these proposals under Proposed 2003–04 Migratory Game Bird Hunting Regulations (Preliminary) in this document.

We published definitions of waterfowl flyways and mourning dove management units, as well as a description of the data used in and the factors affecting the regulatory process in the March 14, 1990, *Federal Register* (55 FR 9618).

Regulatory Schedule for 2003–04

This document is the first in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations. We will publish additional supplemental proposals for public comment in the *Federal Register* as population, habitat, harvest, and other information become available. Because of the late dates when certain portions of these data become available, we anticipate abbreviated comment periods on some proposals. Special circumstances limit the amount of time we can allow for public comment on these regulations.

Specifically, two considerations compress the time for the rulemaking process: the need, on one hand, to establish final rules early enough in the summer to allow resource agencies to select and publish season dates and bag limits prior to the beginning of hunting seasons and, on the other hand, the lack of current status data on most migratory game birds until later in the summer. Because the regulatory process is strongly influenced by the times when information is available for consideration, we divide the regulatory process into two segments: early seasons and late seasons (further described and discussed under the Background and Overview section).

Major steps in the 2003–04 regulatory cycle relating to open public meetings and *Federal Register* notifications are illustrated in the diagram at the end of this proposed rule. All publication dates of *Federal Register* documents are target dates.

All sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks

- A. General Harvest Strategy
- B. Regulatory Alternatives
- C. Zones and Split Seasons
- D. Special Seasons/Species Management
 - i. September Teal Seasons
 - ii. September Teal/Wood Duck Seasons
 - iii. Black ducks
 - iv. Canvasbacks
 - v. Pintails
 - vi. Scaup
 - vii. Youth Hunt
2. Sea Ducks
3. Mergansers
4. Canada Geese
 - A. Special Seasons
 - B. Regular Seasons
 - C. Special Late Seasons
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Later sections of this and subsequent documents will refer only to numbered items requiring your attention. Therefore, it is important to note that we will omit those items requiring no attention and remaining numbered items will be discontinuous and appear incomplete.

We will publish final regulatory alternatives for the 2003–04 duck hunting seasons in early June. We will publish proposed early season frameworks in mid-July and late season frameworks in mid-August. We will publish final regulatory frameworks for early seasons on or about August 20, 2003, and those for late seasons on or about September 15, 2003.

Review of Public Comments

This proposed rulemaking contains the proposed regulatory alternatives for the 2003–04 duck hunting seasons. This proposed rulemaking also describes other recommended changes or specific preliminary proposals that vary from the 2002–03 final frameworks (see August 23, 2003 *Federal Register* (67 FR 54702) for early seasons and September 19, 2003 *Federal Register* (67 FR 59110) for late seasons) and issues requiring early discussion, action, or the attention of the States or tribes. We will publish responses to all proposals and written comments when we develop final frameworks for the 2003–04 season. We

seek additional information and comments on the recommendations in this proposed rule.

Consolidation of Notices

For administrative purposes, this document consolidates the notice of intent to establish open migratory game bird hunting seasons and the request for tribal proposals with the preliminary proposals for the annual hunting regulations-development process. We will publish the remaining proposed and final rulemaking documents separately. For inquiries on tribal guidelines and proposals, tribes should contact the following personnel:

Region 1 (California, Idaho, Nevada, Oregon, Washington, Hawaii and the Pacific Islands)—Brad Bortner, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; (503) 231–6164.

Region 2 (Arizona, New Mexico, Oklahoma and Texas)—Jeff Haskins, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103; (505) 248–7885.

Region 3 (Illinois, Indiana, Iowa, Michigan, Missouri, Minnesota, Ohio and Wisconsin)—Steve Wilds, U.S. Fish and Wildlife Service, Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056; (612) 713–5432.

Region 4 (Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico/Virgin Islands, South Carolina and Tennessee)—Frank Bowers, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; (404) 679–4000.

Region 5 (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia)—George Haas, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; (413) 253–8576.

Region 6 (Colorado, Kansas, Montana, North Dakota, Nebraska, South Dakota, Utah and Wyoming)—John Cornely, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Building, Denver, Colorado 80225; (303) 236–8145.

Region 7 (Alaska)—Robert Leedy, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; (907) 786–3423.

Requests for Tribal Proposals

Background

Beginning with the 1985–86 hunting season, we have employed guidelines

described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to tribal requests for our recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, tribal regulations established under the guidelines must be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Convention). The guidelines are applicable to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also may be applied to the establishment of migratory game bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory game bird hunting by nonmembers on Indian-owned reservation lands, subject to our approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing migratory bird hunting by non-Indians on these lands. In such cases, we encourage the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we

will consult with a tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands. As explained in previous rulemaking documents, it is incumbent upon the tribe and/or the State to request consultation as a result of the proposal being published in the **Federal Register**. We will not presume to make a determination, without being advised by either a tribe or a State, that any issue is or is not worthy of formal consultation.

One of the guidelines provides for the continuation of tribal members' harvest of migratory game birds on reservations where such harvest is a customary practice. We do not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory game bird resource. Since the inception of these guidelines, we have reached annual agreement with tribes for migratory game bird hunting by tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

Tribes should not view the guidelines as inflexible. We believe that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while also ensuring that the migratory game bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 2003–04 migratory game bird hunting season should submit a proposal that includes:

(1) The requested migratory game bird hunting season dates and other details regarding the proposed regulations;

(2) Harvest anticipated under the proposed regulations;

(3) Methods that will be employed to measure or monitor harvest (mail-questionnaire survey, bag checks, etc.);

(4) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest

would seriously impact the migratory game bird resource; and

(5) Tribal capabilities to establish and enforce migratory game bird hunting regulations.

A tribe that desires the earliest possible opening of the migratory game bird season for nontribal members should specify this request in its proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit for nontribal members, the proposal should request the same daily bag and possession limits and season length for migratory game birds that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

Tribal Proposal Procedures

We will publish details of tribal proposals for public review in later **Federal Register** documents. Because of the time required for our and public review, Indian tribes that desire special migratory game bird hunting regulations for the 2003–04 hunting season should submit their proposals as soon as possible, but no later than June 1, 2003.

Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed above under the caption Consolidation of Notices. Tribes that request special migratory game bird hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments Solicited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. We invite interested persons to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES**.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from

the rulemaking record, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. 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 representatives or officials of organizations or businesses, available for public inspection in their entirety.

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's Division of Migratory Bird Management office in room 4107, 4501 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date in any final rules.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)," filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the address indicated under the caption **ADDRESSES**.

In a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new Supplemental Environmental Impact Statement for the migratory bird hunting program.

Endangered Species Act Consideration

Prior to issuance of the 2003-04 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531-1543; hereinafter the Act) to ensure that hunting is not likely to

jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order 12866

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. The migratory bird hunting regulations are economically significant and are annually reviewed by OMB under Executive Order 12866. As such, a cost/benefit analysis was prepared in 1998 and is further discussed below under the heading Regulatory Flexibility Act. Copies of the cost/benefit analysis are available upon request from the address indicated under the caption **ADDRESSES**.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite 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 rule?
- (6) What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

In 1998, we analyzed the economic impacts of the annual hunting regulations on small business entities in detail, and issued a Small Entity Flexibility Analysis (Analysis). The 1998 Analysis documented the significant beneficial economic effect on a substantial number of small entities and estimated that migratory bird hunters would spend between \$429 million and \$1.084 billion at small businesses in 1998. The primary source of information about hunter

expenditures for migratory game bird hunting is the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, which is conducted at 5-year intervals. The 1998 Analysis utilized the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns.

In 2002, the results from the 2001 National Hunting and Fishing Survey were released. This year, we will update the 1998 Analysis with information from the 2001 National Hunting and Fishing Survey. Copies of the 1998 Analysis are available upon request from the Division of Migratory Bird Management.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of \$100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808 (1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018-0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018-0023 (expires 07/31/2003). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of the harvest, and the portion it constitutes of the total population.

A Federal agency 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of 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. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform-Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more

restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do 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. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

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

The rules that eventually will be promulgated for the 2003–04 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742a–j.

Dated: March 25, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

Proposed 2003–04 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific regulatory proposals. With the exception of modifying the framework opening and closing dates within the regulatory alternatives, we are proposing no change from the final 2002–03 frameworks of August 23 and September 19, 2002 (67 FR 54702 and 59110). Other issues requiring early discussion, action, or the attention of the States or tribes are contained below:

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. Only those containing substantial recommendations are discussed below.

A. General Harvest Strategy

We propose to continue use of adaptive harvest management (AHM) to help determine appropriate duck-hunting regulations for the 2003–04

season. AHM is a tool that permits sound resource decisions in the face of uncertain regulatory impacts, as well as providing a mechanism for reducing that uncertainty over time. The current AHM protocol is used to evaluate five alternative regulatory levels based on the population status of mallards (special hunting restrictions are enacted for species of special concern, such as canvasbacks, scaup, and pintails). The prescribed regulatory alternative for the Mississippi, Central, and Pacific Flyways is based on the status of mallards and breeding-habitat conditions in central North America (Federal survey strata 1–18, 20–50 and 75–77, and State surveys in Minnesota, Wisconsin, and Michigan). The prescribed regulatory alternative for the Atlantic Flyway is based on the population status of mallards breeding in eastern North America (Federal survey strata 51–54 and 56, and State surveys in New England and the mid-Atlantic region) and, thus, may differ from that in the remainder of the country. We will propose a specific regulatory alternative for each of the Flyways during the 2003–04 season after survey information becomes available in late summer. More information on AHM is located at <http://migratorybirds.fws.gov/mgmt/ahm/ahm-intro.htm>.

B. Regulatory Alternatives

The basic structure of the current regulatory alternatives for AHM was adopted in 1997. The alternatives remained largely unchanged until last year, when we (based on recommendations from the Flyway Councils) extended framework dates in the "moderate" and "liberal" regulatory alternatives by changing the opening date from the Saturday nearest October 1 to the Saturday nearest September 24, and changing the closing date from the Sunday nearest January 20 to the last Sunday in January. These extended dates were made available with no associated penalty in season length or bag limits. At that time we stated our desire to keep these changes in place for 3 years to allow for a reasonable opportunity to monitor the impacts of framework-date extensions on harvest distribution and rates of harvest prior to considering any subsequent use (67 FR 12501 and 67 FR 47224). Therefore, we are proposing to maintain the same regulatory alternatives that were in effect last year (*see* accompanying table for specifics of the proposed regulatory alternatives). Alternatives are specified for each Flyway and are designated as "VERY RES" for the very restrictive, "RES" for the restrictive, "MOD" for the

moderate, and "LIB" for the liberal alternative. We will announce final regulatory alternatives in early June. Public comments will be accepted until May 1, 2003, and should be sent to the address under the caption **ADDRESSES**.

D. Special Seasons/Species Management

iv. Canvasbacks

Since 1994, we have followed a canvasback harvest strategy such that, if canvasback population status and expected production are sufficient to permit a harvest of one canvasback per day nationwide for the entire length of the regular duck season, while attaining a spring population objective of 500,000 birds in the subsequent year, the season on canvasbacks should be opened. If not, the strategy prescribes that the season on canvasbacks be closed nationwide. Last spring, the estimate of canvasback abundance was 487,000 birds, and the number of May ponds in Prairie Canada (1.4 million) was the lowest recorded since surveys began in 1961 (58 percent below the long-term average). The size of the spring population, together with expected natural mortality and below-average production due to the dry conditions, was insufficient to offset expected mortality associated with a canvasback season lasting the entire season length of the "liberal" regulatory alternative and still attain a population objective of 500,000 canvasbacks in the spring of 2003. Therefore, we closed the season on canvasbacks for the 2002–03 hunting season.

In 2002, the Flyway Councils proposed modifications to the harvest strategy (67 FR 59110). We choose not to implement proposed modifications because a thorough technical assessment and subsequent review by all stakeholders has not been conducted. Service technical staff will complete an assessment of the performance of the canvasback population model, as well as a comparison of the expected long-term performance of the current strategy and that proposed by the Flyway Councils in 2002. The results of this review will be available to the Flyway Council technical committees for discussion at their winter meetings.

In 2003, we will again consider the size of the spring canvasback population and model-based predictions of production and harvest in the development of canvasback regulations proposals. We continue to support the harvest strategy adopted in 1994 and believe that it should be used to guide seasons in the upcoming year. However, we will continue to cooperatively work with the Flyway Councils to complete

technical assessment of any proposed changes in the canvasback harvest strategy.

v. Pintails

We will continue to utilize an interim strategy to guide the harvest of pintails. Last year we updated the equations that predict harvest by Flyway, and we will continue to use these in the strategy this year. As we did last year, we will consider population status and expected recruitment using this strategy to predict the subsequent years, Fall Flight. Should circumstances warrant, we will again consider a season length of less than that employed for the general duck season, if warranted by these calculations, to maintain a breeding population of pintails above the closure threshold level established in the strategy.

4. Canada Geese

B. Regular Seasons

We are concerned about the recent status and trend of the Short Grass Prairie (SGP) Canada goose population. Midwinter survey population estimates of SGP Canada geese have declined sharply since 1995–96. Although recent winter indices are still somewhat above the population goal of 150,000 that was established in 1982, these recent indices likely contain a higher proportion of geese of larger races than in 1982. Indices of adult survival of SGP Canada geese have been declining during 1992–2000, and indices of small Canada geese harvested in the Central Flyway appear to reflect the sharp decreases indicated by the midwinter surveys since the mid-1990s.

We encourage the Central Flyway States and Canadian Provinces to exercise caution in the harvest of small races of Canada geese until the status of SGP Canada geese can be more reliably monitored, and to review existing monitoring methods and management plan criteria.

5. White-Fronted Geese

Fall indices of Mid-continent Population (or midcontinent) white-fronted geese have declined from 1,058,000 in 1998 to about 640,000 geese in 2002. Although the 3-year average is currently above the established goal of 600,000, estimates of survival rates for this population have also declined in recent years. We encourage the States and Provinces in the Central and Mississippi Flyways to cooperatively review spatial and temporal harvest characteristics for this population and consider appropriate harvest strategies.

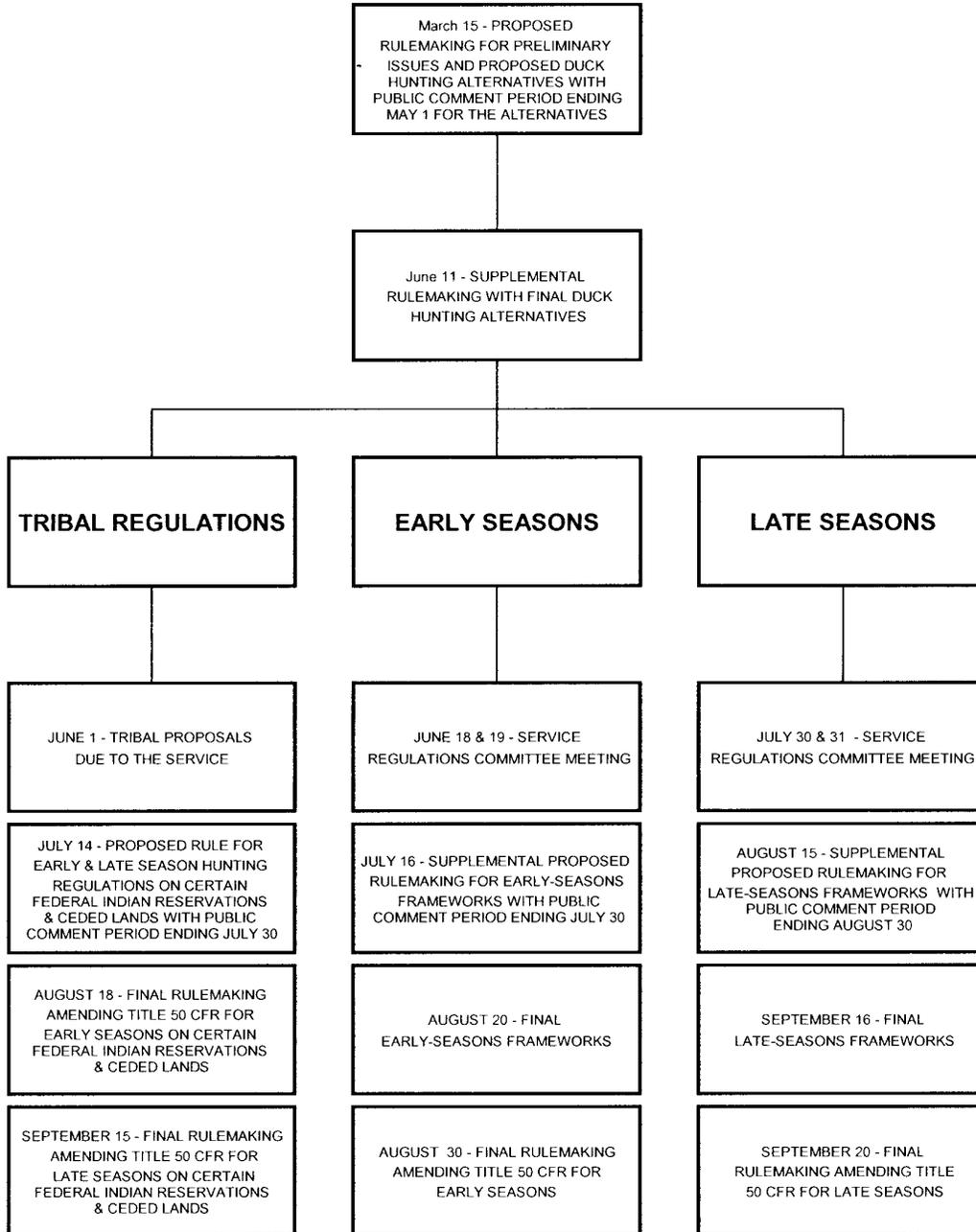
8. Swans

In 1995, we instituted a legal swan season in the Pacific Flyway that permitted the take of a limited number of trumpeter swans. Prior to that time, and beginning in 1962, a tundra swan season had been in effect in the Pacific Flyway. During the tundra swan seasons, it was known that some number of trumpeter swans were taken by swan hunters who mistook them for tundra swans. We authorized this limited take of trumpeter swans in an attempt to reconcile potentially conflicting strategies for managing two swan species in the Pacific Flyway. The potentially conflicting strategies are: (1) To enhance the winter range distribution of the less abundant Rocky Mountain Population (RMP) of trumpeter swans by severely restricting or eliminating swan hunting in portions of the Pacific Flyway currently open to hunting these species, and (2) to optimize hunting of the more numerous and widely distributed Western Population (WP) of tundra swans in the Pacific Flyway. The regulations establishing this limited take have been based on three Environmental Assessments (Bartonek *et al.* 1995; Trost *et al.* 2000; and Trost *et al.* 2001) and three Findings of No Significant Impact regarding these Environmental Assessments (EA) issued by the Service.

The scope of the most recent EA (Trost *et al.* 2001) was the 2001–03 hunting seasons only. Upon completion of these seasons, we have stated our plans to review the results with respect to both tundra swan and trumpeter swan harvests. As we stated in 2001, we view the seasons in Montana and Nevada as operational seasons that are subject to the normal annual review of status and harvest of the affected populations. Adjustments to these seasons are made, if needed, as part of the normal annual regulatory process for hunting migratory birds. The season in Utah was experimental and now that the experimental period has been completed, a forthcoming review, assessment, and determination as to the appropriate course of action for either continuation or suspension of this experimental season will be necessary. As such, the first step in this process is the preparation of a new EA. We expect the new EA to be completed and available to the public for comment in April. Copies will be available upon request from the Division of Migratory Bird Management at the address indicated under the caption **ADDRESSES** or from the Division's Web site at <http://migratorybirds.fws.gov/>.

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2003 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS



DATES SHOWN RELATIVE TO PUBLICATION OF FEDERAL REGISTER DOCUMENTS ARE TARGET DATES

PROPOSED REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2003-04 SEASON

	ATLANTIC FLYWAY			MISSISSIPPI FLYWAY			CENTRAL FLYWAY (a)			PACIFIC FLYWAY (b)(c)		
	VERY RES	RES	LIB									
Beginning Shooting Time	1/2 hr before sunrise											
Ending Shooting Time	Sunset											
Opening Date	Oct. 1	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Oct. 1	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Oct. 1	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Oct. 1	Sat. nearest Oct. 1	Sat. nearest Sept. 24
Closing Date	Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Jan. 20	Sun. nearest Jan. 20	Last Sunday in Jan.	Jan. 20	Sun. nearest Jan. 20	Last Sunday in Jan.	Jan. 20	Sun. nearest Jan. 20	Last Sunday in Jan.
Season Length (in days)	20	30	45	60	20	30	45	60	74	38	60	86
Daily Bag/Possession Limit	3 6	3 6	6 12	6 12	3 6	6 12	3 6	6 12	6 12	4 8	4 8	7 14
Species/Sex Limits within the Overall Daily Bag Limit												
Mallard (Total/Female)	3/1	3/1	4/2	4/2	2/1	2/1	4/1	4/2	5/1	3/1	3/1	5/2
Pintail	1	1	1	1	1	1	1	1	1	1	1	1
Black Duck	2	2	2	2	1	1	2	2	2	1	1	2
Scaup (d)	2	2	2	2	2	2	2	2	2	2	2	2
Canvasback	1	1	1	1	1	1	1	1	1	1	1	1
Redhead	Closed											
Wood Duck	1	1	1	1	1	1	1	1	1	1	1	1
Whistling Ducks	1	1	1	1	1	1	1	1	1	1	1	1
Harlequin	1	1	1	1	1	1	1	1	1	1	1	1
Mottled Duck	1	1	1	1	3	3	3	3	3	1	1	1

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway with the exception of season length. Additional days would be allowed under the various alternatives as follows: very restrictive - 8, restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different than the remainder of the Pacific Flyway. The bag limit would be 5-7 under the very restrictive and restrictive alternatives, and 8-10 under the moderate and liberal alternatives. There would be no restrictions on pintails, and canvasback limits would follow those for the remainder of the Pacific Flyway. Under all alternatives, season length would be 107 days and framework dates would be Sep 1 - Jan 26.

(d) Scaup daily bag limits will be based on current scaup status information until an agreed upon harvest strategy is completed and implemented.