DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20 and 21

RIN 1018–AF05

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

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final Rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or ''we'') is withdrawing the regulations that authorized the use of additional hunting methods (electronic calls and unplugged shotguns) to increase take of mid-continent light geese. We are also withdrawing the regulation that established a conservation order for the reduction of mid-continent light goose populations.

DATES: This rule takes effect immediately upon publication on June 17, 1999.

ADDRESSES: Copies of the EA 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, (703) 358–1714.

SUPPLEMENTARY INFORMATION: Because high populations of Mid-continent light geese (MCLG), are leading to the habitat destruction described below, we believe that management action is necessary. In fact, we promulgated regulations on February 16, 1999, (64 FR 7507; 64 FR 7517) that authorized additional methods of take of light geese and established a conservation order for the reduction of the MLGP. 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 have decided to withdraw the regulations and to begin preparation of the EIS now.

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 lesser snow 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 current management strategies are 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, the HSUS and other 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 Environmental Impact Statement (EIS) should have been prepared prior to implementation of the rules. 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 have decided to withdraw the regulations and begin preparation of that EIS now.

Effective Date

Under 5 U.S.C. 553 (b)(3)(B), we find that the notice required by § 553 (b) does not apply to this rule withdrawal because, for the following reasons, it is unnecessary and not in the public interest. We are reinstating rules with regard to light geese that have been in place and implemented for many years and which were adopted after notice and opportunity for public comment. In addition, the Service is preparing an EIS that will address all of the larger, long-term issues for light goose management, including take regulations, which will involve significant opportunities for public involvement and comment. Any regulations that may result from the EIS process would be adopted only after notice and opportunity for public comment. Finally, it is in the public interest because withdrawal of the regulations will allow us to conclude the litigation initiated by the HSUS and avoid in-season problems. Although the judge in that case did not preliminarily enjoin the new regulations, he did indicate that a decision on the merits might find them procedurally deficient. If that were to occur during the 1999–2000 hunting season, States and their licensed hunters would experience significant confusion and enforcement and administrative problems. In addition, under 5 U.S.C. 553 (d), for the above reasons, we find that good cause exists to put this rule into effect immediately upon publication.

NEPA Considerations

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we prepared an Environmental Assessment in January 1999. This EA is available to the public at the location

indicated under the **ADDRESSES** caption. We will initiate the preparation of an EIS to consider the effects on the human environment of a range of alternatives for management of the MCLG population. A Notice of Intent to prepare the EIS was published in the **Federal Register** on May 13, 1999 (64 FR 26268).

Endangered Species Act Consideration

Section 7(a)(2) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531–1543; 87 Stat. 884) provides that ''Each Federal agency shall, in consultation with the Secretary, insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of (critical) habitat . . .'' We completed a Section 7 consultation under the ESA for the rules that are being withdrawn. Withdrawal of the rules will not affect any threatened, endangered, proposed or candidate species. The result of our consultation under Section 7 of the ESA is available to the public at the location indicated under the **ADDRESSES** caption.

Regulatory Flexibility Act

The economic impacts of this rulemaking will fall primarily on small businesses because of the structure of the waterfowl hunting related industries. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities. Data are not available to estimate the number of small entities affected, but it is unlikely to be a substantial number on a national scale. We estimated that implementation of these regulations would have reduced the risk of light-goose season closures in the Central and Mississippi Flyways, subsequently avoiding a $70 million loss in output and reducing the possibility of increased agricultural loss. We estimated that special MCLG population control efforts would have created additional take opportunities that were expected to add $18 million in output to local economies. We have determined that a Regulatory Flexibility Act Analysis is not required.

Executive Order 12866

This rule was not subject to review by the Office of Management and Budget under E.O. 12866. E.O. 12866 requires each agency to write regulations that are easy to understand. The Service invites 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? What else could the Service do to make the rule easier to understand?

Congressional Review

This is not a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808), this rule has been submitted to Congress. Because this rule deals with our migratory bird hunting program, this rule qualifies for an exemption under 5 U.S.C. 808(1); therefore, the Department determines that this rule shall take effect immediately.

Paperwork Reduction Act and Information Collection

This regulation does not require any information collection for which OMB approval is required under the Paperwork Reduction Act. Information collection for any light goose harvest that occurred prior to the withdrawal of these regulations is covered by an existing OMB approval number. 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 OMB approved the information collection of the conservation order prior to withdrawal of the regulation and assigned clearance number 1018–0103 (expires 01/31/2002).

Unfunded Mandates

We have determined and certify, in compliance with the requirements of the Unfunded Mandates 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. This rule will not ''significantly or uniquely'' affect small governments. No governments below the State level will be affected by this rule. A Small Government Agency Plan is not required. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a ''significant regulatory action'' under Unfunded Mandates.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988. This rule has been reviewed by the Office of the Solicitor. Specifically, this rule has been reviewed to eliminate errors and ambiguity, has been written to minimize litigation, provides a clear legal standard for affected conduct, and specifies in clear language the effect on existing Federal law or regulation. We do not anticipate that this rule will require any additional involvement of the justice system beyond enforcement of provisions of the Migratory Bird Treaty Act of 1918 that have already been implemented through previous rulemakings.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. The rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property.

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. 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 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian Tribes and have determined that there are no effects.

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 stated in the preamble, we hereby amend parts 20 and 21, of the 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 continues to read as follows:

Authority: 16 U.S.C. 703–712; and 16 U.S.C 742a–j.

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

§ 20.21 Hunting methods

* * * * *

(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;

* * * * *

(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;

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3. Revise § 20.22 *Closed seasons* to read as follows:

§ 20.22 Closed seasons

No person shall take migratory game birds during the closed season.

PART 21—[AMENDED]

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

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

SUBPART E—[REMOVED]

2. Remove Subpart E, consisting of § 21.60.

Dated: June 3, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–15338 Filed 6–16–99; 8:45 am]

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