

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 21

[DA 01-1072]

#### Multipoint Distribution Service (MDS); Two-Way Transmissions

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Mass Media Bureau ("Bureau") seeks comment on a proposal to extend the current five-year build-out requirement imposed upon Basic Trading Area ("BTA") authorization holders in the Multipoint Distribution Service ("MDS") by two years. BTA authorization holders currently have five years from the grant date of the initial BTA authorization to construct, develop and expand MDS station operations in their respective protected service areas. On August 16, 1996, the Commission granted 334 of the 493 BTA authorizations to 54 different entities. By this proposed rule, the Bureau seeks comment on its proposal to extend the build-out requirement by two years.

**DATES:** Comments due on or before May 9, 2001. Reply comments are due on or before May 16, 2001.

**FOR FURTHER INFORMATION CONTACT:** Brad Lerner (202) 418-7066, Video Services Division, Mass Media Bureau.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Mass Media Bureau's Public Notice entitled, *In the Matter of Extension of the Five-year Build-out Period for BTA Authorization Holders in the Multipoint Distribution Service*, DA 01-1072, released April 25, 2001. The full text of this Public Notice is available for inspection and copying during normal business hours in the FCC Reference Room, Room CY-A257, Portals II, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. ("ITS"), Portals II, 445 12th Street, SW. Room CY-B402, Washington, DC 20554.

#### Synopsis of Public Notice

Traditionally, MDS spectrum has been used to deliver multichannel video programming services similar to cable television. As noted above, the Commission auctioned 493 BTAs for the provision of these wireless cable services. Since the 1996 auction, the MDS industry has been rapidly evolving. In October 1996, the Commission allowed MDS operators to

use their spectrum for high-speed digital data applications, including Internet access. In March 1997, the Wireless Cable Association International, Inc., along with over 100 participants, petitioned the Commission to grant the industry the right to use MDS and Instructional Television Fixed Service ("ITFS") spectrum for two-way services. Two-way authorization would effectively enable voice, video, and data over the spectrum. In 1998, the Commission approved the use of two-way transmissions on MDS and ITFS frequencies.

In the initial filing window for two-way service, which was held August 14-18, 2000, MDS and ITFS licensees filed approximately 2,267 applications. On April 6, 2001, the Bureau released its first Public Notice announcing the grant of 1,024 of these applications. The Bureau will continue to grant additional two-way applications and on April 16, 2001, the Bureau began the transition to the rolling one-day filing window procedure. Section 21.930(c)(1) of the Commission's rules provides that within five years of the grant of a BTA authorization, the authorization holder must construct MDS stations to provide signals pursuant to section 21.907, 47 CFR 21.907, that are capable of reaching at least two-thirds of the population of the applicable service area, excluding the populations within protected service areas of incumbent stations. The build-out benchmarks were originally established in order to ensure that BTA authorization holders would promptly deliver their anticipated video programming service to the public.

The Bureau proposes to extend the five-year build-out requirement as set forth in § 21.930(a)(1) of the Commission's rules, 47 CFR 21.930(a)(1), by two years. In light of the service rule changes, the timing of the initial filing window, the recent two-way application grants allowing BTA authorization holders to provide broadband service, the forthcoming grants of other pending two-way applications, and the upcoming August 16, 2001 build-out deadline for many BTAs, we tentatively conclude that extension of the five-year build-out requirement by two years for all BTAs will promote the maximization of efficient and effective use of this service. The Bureau believes that it would be inequitable to require authorization holders to follow build-out criteria applicable to rules governing wireless cable operations since many of them are now providing high-speed broadband services.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

RIN 1018-AH79

#### Migratory Bird Hunting; Proposed 2001-02 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 2001-02 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. We also request proposals from Indian tribes that wish to establish special migratory 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 bird population status and habitat conditions.

**DATES:** You must submit comments for proposed early-season frameworks by July 30, 2001, and for proposed late-season frameworks by September 7, 2001. Tribes should submit proposals and related comments by June 1, 2001.

**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 634-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 634, Arlington Square Building, 4401 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 634-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 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 waterfowl and obtaining assistance in the formulation of these regulations. 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 also assist in researching and providing management techniques for Federal, State, and Provincial Governments, as well as private conservation agencies and the general public.

The migratory 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 birds controls the timing of data-gathering activities and thus the date on which results are available for consideration. The process includes two separate regulations-development schedules, based on early-and late-hunting season regulations. Early 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 season generally begins prior to October 1. Late 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 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 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. 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 are considered to determine the appropriate frameworks for each species.

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. The Service works together with the States by allowing them certain authority to regulate hunting of migratory birds. 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 be more conservative in their selections than the Federal frameworks but never more liberal.

**Consolidation of Notices**

For administrative purposes, this document consolidates the notice of intent to establish open migratory 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—Brad Bortner, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181; (503) 231-6164

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

Region 3—Steve Wilds, U.S. Fish and Wildlife Service, Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111-4056; (612) 713-5432

Region 4—Frank Bowers, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; (404) 679-4000

Region 5—George Haas, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035-9589; (413) 253-8576

Region 6—John Cornely, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Building, Denver, Colorado 80225; (303) 236-8145

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

**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 2001–02 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 2001–02 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 2001–02 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 2001–02**

This document is the first in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations. In supplemental proposed rulemakings, we will make proposals relating to the harvest of migratory game birds initiated after this publication is available for public review. Also, 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.

Major steps in the 2001–02 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
2. Sea Ducks
3. Mergansers
4. Canada Geese
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.

## 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 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 capable of application to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also are capable of application to the establishment of migratory 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 bird resource. For several years, we have reached annual agreement with tribes for migratory 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. Nevertheless, we believe that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory 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 2001–02 hunting season should submit a proposal that includes:

- (1) The requested hunting season dates and other details regarding regulations;
- (2) Harvest anticipated under the requested 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 bird resource; and

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

A tribe that desires the earliest possible opening of the waterfowl season should specify this request in their 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, the proposal should request the same daily bag and possession limits and season length for ducks and geese 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 bird hunting regulations for the 2001–02 hunting season should submit their proposals as soon as possible, but no later than June 1, 2001. Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed under the caption **SUPPLEMENTARY INFORMATION**. 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**.

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 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**.

#### **Endangered Species Act Consideration**

Prior to issuance of the 2001–02 migratory game bird hunting regulations, we will consider 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 (E.O.) 12866**

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under E.O. 12866. E.O. 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.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail, and the Service issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis utilized the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between \$429 million and \$1,084 million at small businesses in 1998. Copies of the 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 09/30/2001). 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 07/30/2003). 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.

#### Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards found in 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.

#### 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 and 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 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 2001–02 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742a–j.

Dated: April 19, 2001.

**Joseph E. Doddridge,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

#### Proposed 2001–02 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 framework proposals (including opening and closing dates, season lengths, and bag limits). Unless otherwise specified, we are proposing no change from the final 2000–01 frameworks of August 23 and September 27, 2000 (65 FR 51496 and 58152). Specific preliminary proposals that vary from the 2000–01 frameworks and 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. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

##### A. General Harvest Strategy

All of our success in duck-harvest management notwithstanding, we continue to be faced with uncertainty about the biological and sociological impacts of hunting regulations. In 1995, we embarked on a regulatory approach known as adaptive harvest management (AHM), which is intended to help address that uncertainty. The AHM approach recognizes that we cannot predict the consequences of hunting regulations with certainty, and provides a means for making objective decisions

despite this uncertainty. In addition, a tightly integrated cycle of monitoring, assessment, and decision-making is required under AHM to better understand the relationships among hunting regulations, harvests, and waterfowl abundance. More detailed information about AHM can be found on the Internet at: <http://www.fws.gov/r9mbmo/homepg.html>.

Since 1995, AHM regulatory strategies have been based on the status of midcontinent mallards, which are defined as those breeding from South Dakota to Alaska (Federal survey strata 1–18, 20–50, and 75–77), and in Minnesota, Wisconsin, and Michigan. An optimal regulatory alternative for midcontinent mallards is based on breeding population size and water conditions in the Canadian prairies, and on empirical weights assigned to four competing models of population dynamics. The same regulatory alternative is applied in all four Flyways, although season lengths and bag limits are Flyway-specific.

The first application of the AHM process involved midcontinent mallards because of their ubiquitous distribution, their importance in the harvest, and because the data and understanding associated with mallards surpassed that of all other species. In the last few years, however, we have begun to examine other populations of mallards, as well as other species, in a search for an appropriate AHM approach to these stocks.

A growing concern relates to how all these stock-specific applications ultimately will fit together in a coherent approach to duck harvest management. For example:

- How much biological variation among duck stocks should we account for in the design of regulatory strategies?
- Should the traditional Flyway-based approach to duck harvest management be modified to take advantage of new information and capabilities?
- What monitoring and assessment capabilities will be needed to support these refinements?
- What are realistic expectations of our ability to reduce uncertainty through the experience of management?
- Even more fundamentally, should sustainable harvest be the sole or even principal currency by which we measure success?

These questions and others suggest that the time has arrived to contemplate the basic goals and overall framework of duck harvest management, and how we might use the AHM process to help us steer an appropriate course. Moreover, the last Supplemental Environmental Impact Statement (SEIS) on migratory bird hunting was issued in 1988, and

our approach to duck harvest management has evolved beyond the preferred alternative identified at that time. Therefore, it is our intent to begin the process of preparing a new EIS that will describe new alternatives brought to light by our experience with AHM.

In beginning the dialogue, we suggest the need to focus on three key themes:

(1) Goal setting—AHM can produce optimal regulatory decisions in the face of uncertainty, but, if and only if, there is agreement about the goals and objectives of harvest management. Clearly, the goals of duck harvest management extend well beyond simple measures of hunter success and population size, and many of the difficulties in duck harvest management today probably relate more to ambiguity in objectives, rather than to uncertainty about biological impacts. Tacit disagreement over management objectives poses a serious threat to the long-term viability of AHM.

(2) Limits to system control—There are both theoretical and practical limits to our ability to predict, control, and measure the size of waterfowl populations and harvests and, as a consequence, operational constraints on short-term hunting opportunity and on the learning needed to increase long-term performance. The waterfowl management community needs to better explore, understand, and acknowledge these limits, and to develop regulatory alternatives and strategies that avoid the most undesirable consequences of those limits, while meeting reasonable demands for hunting opportunity.

(3) Management scale—The history of duck harvest management has been characterized by efforts to account for increasingly more spatial, temporal, and organizational variability in waterfowl demographics. We have begun to question the wisdom of this approach, given the inevitable tradeoff between harvest benefits and the direct and indirect costs of managing at progressively finer scales. It remains to be seen what level of resolution ultimately will be most appropriate in the AHM process, but we are increasingly concerned about what we see as unrealistic expectations for accommodating small-scale variation in waterfowl population dynamics.

We look forward to exploring these and other duck-harvest management issues with the Flyway Councils and other stakeholders in the coming year. We hope these discussions will culminate in the issuance of a new EIS for migratory bird hunting sometime in 2004.

#### AHM for Eastern Mallards

For the purposes of harvest regulation, eastern mallards are defined as those breeding in southern Ontario and Quebec (Federal survey strata 51–54 and 56), and in New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, and Virginia. In 2000, with assistance from the Atlantic Flyway Council, we proposed mechanisms by which the status of eastern mallards could be considered in the development of a regulatory strategy for the Atlantic Flyway. However, the Service has not made a final decision about whether the Atlantic Flyway regulatory strategy also should be solely based on the status of eastern mallards. This decision was deferred pending further analyses of the implications of this decision for midcontinent mallards and other species. We also have concerns about the timing of this decision in the face of previous comments about the future of duck harvest management. Therefore, we consider the approach used last year to consider only eastern mallard status in the selection of Atlantic Flyway regulations as provisional. It is our recommendation, however, to continue this approach for the 2001–02 hunting season.

#### C. Zones and Split Seasons

In 1990, because of concerns about the proliferation of zones and split seasons for duck hunting, a cooperative review and evaluation of the historical use of zone/split options was conducted. This review did not show that the proliferation of these options had increased harvest pressure; however, the ability to detect the impact of zone/split configurations was poor because of unreliable response variables, the lack of statistical tests to differentiate between real and perceived changes, and the absence of adequate experimental controls. Consequently, guidelines were established to provide a framework for controlling the proliferation of changes in zone/split options. The guidelines identified a limited number of zone/split configurations that could be used for duck hunting and restricted the frequency of changes in these configurations to 5-year intervals. In 1996, the guidelines were revised to provide States greater flexibility in using their zone/split arrangements. Open seasons for changes occurred in 1991 for the 1991–1995 period and in 1996 for 1996–2000. The third open season will occur this year when zone/

split configurations will be established for the 2001–2005 period.

In response to recommendations from the Flyway Councils, we considered changes to the current zone/split guidelines during last year's late-season regulations cycle. We believe that the guidelines implemented in 1996 (61 FR 38000) have achieved their intended objectives while allowing States sufficient flexibility to address differences in physiography, climate, and other factors. Accordingly, as announced in last year's **Federal Register** (65 FR 51176), we made no changes in the 1996 guidelines. A copy of the guidelines is included herein for information and use in selecting zone/split configuration for 2001–2005.

As indicated in the guidelines, States that made changes during the last open season should provide us a review of pertinent data (e.g., estimates of harvest, hunter numbers, hunter success, etc.) by April 15, 2001. However, it would be in the interest of each affected State to complete this report as soon as possible for internal consideration of any changes they might wish to make for the next 5-year period. We reiterate that this review does not have to be the result of a rigorous experimental design, but nonetheless should assist us in ascertaining whether major changes in harvest or hunter activity occurred as a result of zone/split regulations.

We also request that by April 15, 2001, States notify us whether or not they plan to change their zone/split configurations for the next 5-year period (2001–2005). Those States wishing to change their configuration should submit a proposal for the change by this date.

#### Guidelines for Duck Zones and Split Seasons, 2001–2005

The following zone/split-season guidelines apply only for the *regular* duck season:

1. A zone is a geographic area or portion of a State, with a contiguous boundary, for which independent dates may be selected for the regular duck season.
  2. Consideration of changes for management-unit boundaries is not subject to the guidelines and provisions governing the use of zones and split seasons for ducks.
  3. Only minor (less than a county in size) boundary changes will be allowed for any grandfather arrangement, and changes are limited to the open season.
  4. Once a zone/split option is selected during an open season, it must remain in place for the following 5 years.
- For the 2001–2005 period, any State may continue the configuration used in

1996–2000. If changes are made, the zone/split-season configuration must conform to one of the following options:

1. Three zones with no splits,
2. Split seasons (no more than 3 segments) with no zones, or
3. Two zones with the option for 2-way split seasons in one or both zones.

At the end of 5 years after any changes in splits or zones, States will be required to provide the Service with a review of pertinent data (e.g., estimates of harvest, hunter numbers, hunter success, etc.). This review does not have to be the result of a rigorous experimental design, but nonetheless should assist the Service in ascertaining whether major undesirable changes in harvest or hunter activity occurred as a result of split and zone regulations. The next open season for changes in zone/split configurations will be in 2006.

#### Grandfathered Zone/Split Arrangements

When the zone/split guidelines were first implemented in 1991, several States had completed experiments with zone/split arrangements different from Options 1–3 above. Those States were offered a one-time opportunity to continue those arrangements, with the

stipulation that only minor changes could be made to zone boundaries; and if they ever wished to change their zone/split arrangement, the new arrangement would have to conform to one of the 3 options identified above. If a grandfathered State changed its zoning arrangement, it could not go back to the grandfathered arrangement it previously had. Current grandfathered arrangements are:

#### *Atlantic Flyway:*

Massachusetts, New Jersey—3 zones with 2-segment splits in each zone

New York—5 zones with 2-segment splits in each zone

Pennsylvania—4 zones with 2-segment splits in each zone

#### *Mississippi Flyway:*

Michigan, Indiana, Ohio—3 zones with 2-segment splits in each zone

#### *Central Flyway:*

Nebraska—5 zones with 2-segment splits in each zone

South Dakota—4 zones with 2-segment splits in each zone

#### *Pacific Flyway:*

Alaska—5 zones with 2-segment splits in 1 zone

California—5 zones with 2-segment splits in each zone

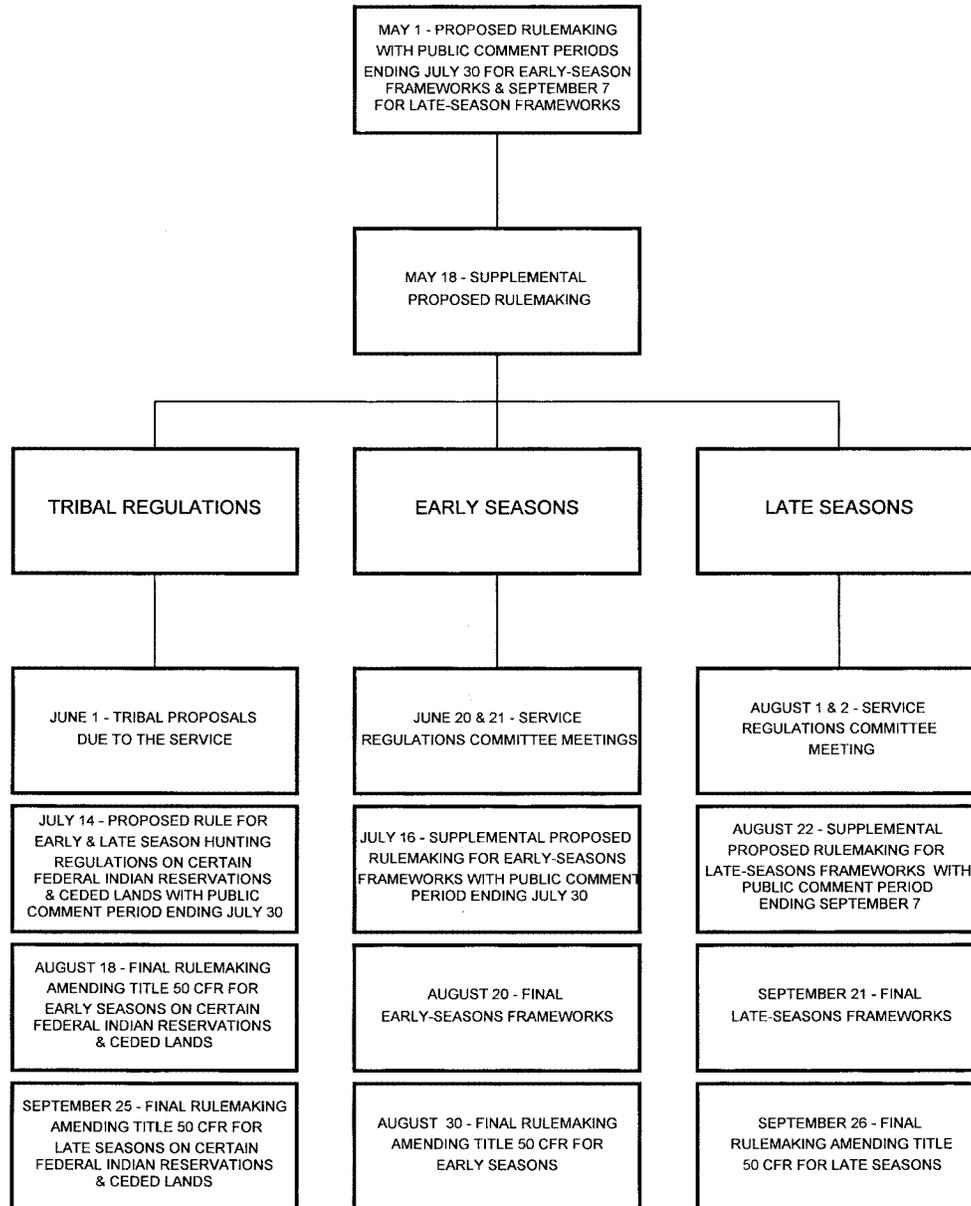
#### *D. Special Seasons/Species Management*

##### iii. September Teal/Wood Duck Seasons

The Wood Duck Population Monitoring Initiative showed that current wood duck monitoring efforts resulted in information that was capable of being used to manage wood ducks at no finer resolution than the Flyway level. Current databases do not allow proper evaluation of special September wood duck seasons on a State-by-State basis. In 1998, we stated that, after September 2000, the special wood duck seasons in Florida, Kentucky, and Tennessee would be discontinued (August 28, 1998; 63 FR 46126); the year 2000 was the last permitted for these seasons. The Service, in cooperation with the Atlantic and Mississippi Flyway Councils, is in the process of developing wood duck population models that will guide regular-season harvest management in the future. These models, and the accompanying evaluations of potential Flyway-wide expansions in harvest opportunity, will be developed prior to Spring 2001.

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# 2001 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS



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

[FR Doc. 01-10696 Filed 4-27-01; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 600

[I.D. 041801B]

#### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Exempted Fishing Permits (EFPs)

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

**SUMMARY:** NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has received a proposal to conduct experimental fishing and has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. A preliminary determination has also been made that the activities authorized under the EFP will be consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan (FMP) and within the scope of earlier analyses of impacts. However, further review and consultation may be necessary before a final determination is made to issue an EFP. Therefore, NMFS announces that the Regional Administrator is considering whether to issue an EFP that would allow a single vessel to conduct fishing operations otherwise

restricted by regulations governing the fisheries of the Northeastern United States. The University of Massachusetts at Dartmouth and Manomet Center for Conservation Sciences (Manomet) have submitted an application for an EFP to allow them to target multispecies in order to investigate the selectivity of various shapes and sizes of knotless trawl mesh, and the selectivity of finfish excluder grates with two different bar-spacings and configurations.

**DATES:** Comments must be received by May 15, 2001.

**ADDRESSES:** Comments should be sent to Patricia Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope "Comments on Proposed Experimental Fishery."

**FOR FURTHER INFORMATION CONTACT:** Tom Warren, Fishery Management Specialist, 978-281-9347.

**SUPPLEMENTARY INFORMATION:** The regulations that govern exempted experimental fishing, at 50 CFR 600.745, allow the Regional Administrator to authorize for certain purposes the targeting or incidental harvest of managed species that would otherwise be prohibited. An EFP to authorize such activity may be issued, provided there is adequate opportunity for the public to comment on the EFP application, and the conservation goals and objectives of the FMP are not compromised.

The University of Massachusetts at Dartmouth and Manomet, submitted to NMFS on April 5, 2001, an application for an EFP to conduct research in the multispecies fishery on Georges Bank. The research would target multispecies in the Georges Bank Seasonal Closure area, with the objective of investigating the selectivity of various shapes and

sizes of knotless trawl mesh, and the selectivity of finfish excluder grates with two different bar-spacings and configurations. Specifically, the research would utilize a standard 6.0-inch (15.3-cm) diamond mesh as control, and compare its selectivity to 6.5-inch (16.5-cm) hexagon, 6.5-inch (16.5-cm) square, and 6.0-inch (15.3-cm) hexagon, knotless mesh. The two configurations of finfish excluder grates to be tested on separate tows would be horizontal bars spaced at 3 inches (7.6-cm) and vertical bars spaced at 4 inches (10.2-cm). A double cod-end trawl design will be utilized on both the mesh and excluder grate trials. The goal of the research is to develop trawl gear designed to target flatfish that allows greater escapement of gadoids (e.g., cod and haddock), than the flatfish trawls that are currently utilized by the industry.

A single vessel would be issued an EFP to allow a total of 42 tows. EFPs would be required to exempt the vessel from the Days-at-Sea, closed area, and mesh restrictions of the FMP. The proposed timing and location of the research, and the applicant's justification for requesting an exemption to the Georges Bank Seasonal Closure Area is that the relatively high numbers of flatfish and gadoids that are available in that area would allow conclusive results to be obtained in a cost-effective manner. The applicant estimates that the research will take 6 to 8 days to complete.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: April 24, 2001.

**Bruce C. Morehead,**  
*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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