

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

RIN 1018-AH79

Migratory Bird Hunting; Proposal for Migratory Game Bird Hunting Regulations**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) proposed in previous documents to establish annual hunting regulations for certain migratory game birds for the 2001–02 hunting season. This proposed rule would change the regulatory alternatives for the 2001–02 duck hunting seasons for States in the Lower Region (Arkansas, Louisiana, Kentucky, Alabama, Mississippi and Tennessee) of the Mississippi Flyway to allow for a season length of 60 days beginning no earlier than September 29 and ending no later than January 31.

DATES: You must submit comments on the proposed “liberal” regulatory alternative for the Lower Region of the Mississippi Flyway by October 26, 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 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jonathan Andrew, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358-1714.

SUPPLEMENTARY INFORMATION:**Regulations Schedule for 2001**

On April 30, 2001, we published in the **Federal Register** (66 FR 21298) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 14, 2001, we published in the **Federal Register** (66 FR 32297) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 2001–02 duck hunting season.

On June 20–21, we held meetings that reviewed information on the current status of migratory shore and upland game birds and developed 2001–02 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2001–02 regular waterfowl seasons. On July 24, we published in the **Federal Register** (66 FR 38494) a third document specifically dealing with the proposed frameworks for early-season regulations and final regulatory alternatives for the 2001–02 duck hunting season. On August 21, 2001, we published in the **Federal Register** (66 FR 44010) a final rule that contained final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits. On August 29, 2001, we published in the **Federal Register** (66 FR 45730) a final rule amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons.

On August 1–2, 2001 we held a public meeting in Washington, DC, as announced in the April 30, and June 14 **Federal Registers**, to review the status of waterfowl. Proposed hunting regulations were discussed for late seasons. We published proposed frameworks for the 2001–02 late-season migratory bird hunting regulations on August 28, 2001, in the **Federal Register** (66 FR 45516). We published final late-season frameworks for migratory game bird hunting regulations, from which State wildlife conservation agency officials selected late-season hunting dates, hours, areas, and limits for 2001–02 in the September 27, 2001, **Federal Register** (66 FR 49478). On September 28, 2001, we published in the **Federal Register** (66 FR 49748) a final rule amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for late seasons.

Review of Public Comments

This rule-making contains amendments to the 2001–02 duck hunting regulations previously published on September 27, 2001. We are seeking any additional information

and comment on the recommendation in this proposed rule.

Lower Region of the Mississippi Flyway Duck Hunting Alternative for the 2001–2002

The Lower Region Regulations Committee of the Mississippi Flyway Council recommended that the regulations packages for 2001 be the same as those in 2000, except that the framework opening and closing dates would be the Saturday nearest September 24 through the last Sunday in January, and there would be no offsets in seasons length or bag limit.

Service Response: Upon reconsideration, the Service proposes to change the previously established “liberal” alternative for the Lower Region of the Mississippi Flyway to provide for a framework opening date no earlier than September 29 and a closing date no later than January 31, with no reduction (offset) in season length or bag limit. We will announce a final regulatory alternative for the Lower Region of the Mississippi Flyway following the public comment period.

Public Comment Invited

The Department of the Interior’s policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, seek the comments and suggestions of the public, other concerned governmental agencies, non-governmental organizations, and other private interests on these proposals. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations to the address indicated under the caption **ADDRESSES**.

Special circumstances involved in the establishment of these regulations limit the amount of time that we can allow for public comment. Specifically, the need to establish final rules at a point early enough to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms. Therefore, we believe that to allow comment periods past the dates specified is contrary to the public interest. 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.

You may inspect comments received during normal business hours at the Service’s office in room 634, 4401 North

Fairfax Drive, Arlington, Virginia. 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.

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 a 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). Copies are available from the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

Prior to issuance of this rule, 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 such action is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and that the proposed action is consistent with conservation programs for those species.

Executive Order (E.O.) 12866

While this individual rule was not reviewed by the Office of Management and Budget (OMB), the migratory bird hunting regulations are economically significant and are annually reviewed by OMB under E.O. 12866.

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 a Small Entity Flexibility Analysis (Analysis) was issued by the Service 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 was based on 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 billion 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 record keeping 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 control 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. 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 proposed 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.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare

Statements of Energy Effects when undertaking certain actions. As this supplemental proposed rule is not expected to significantly affect energy supplies, distribution, or use, this proposed action is not a significant energy action and no Statement of Energy Effects is required.

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 follows 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 record keeping 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: October 4, 2001.

Joseph E. Doddridge,

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

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