

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

RIN 1018-AT53

**Migratory Bird Hunting; Proposed 2004-05 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals and Requests for 2004 Spring/Summer Migratory Bird Subsistence Harvest Proposals in Alaska****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule; availability of supplemental information.

**SUMMARY:** The U.S. Fish and Wildlife Service (hereinafter the Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2004-05 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule, describes proposed changes to the regulatory alternatives for the 2004-05 duck hunting seasons, requests proposals from Indian tribes that wish to establish special migratory game bird hunting regulations on Federal Indian reservations and ceded lands, requests proposals for the 2004 spring/summer migratory bird subsistence season in Alaska, and announces the availability of an updated cost-benefit analysis. 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 2004-05 duck hunting seasons and the updated cost/benefit analysis by May 15, 2004. Following later **Federal Register** notices, you will be given an opportunity to submit comments for proposed early-season frameworks by July 30, 2004, and for proposed late-season frameworks and subsistence migratory bird seasons in Alaska by August 30, 2004. Tribes must submit proposals and related comments by June 1, 2004. Proposals from the Co-management Council for the 2005 spring/summer migratory bird subsistence harvest season must be submitted to the Flyway Councils and the Service by June 15, 2004.

**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 are 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 are updated annually. This responsibility has been delegated to the U.S. 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 part 20, are constrained by three primary factors. Legal and administrative considerations dictate how long the rulemaking process will last. Most importantly, however, the biological cycle of migratory game birds controls the timing of data-gathering activities and thus the dates 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. Early hunting seasons generally begin 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 and 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 2004–05 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 2004–05 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 2004–05 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 2004–05

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 2004–05 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 2004–05 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, 2004, and those for late seasons on or about September 15, 2004.

### Request for 2004 Spring/Summer Migratory Bird Subsistence Harvest Proposals in Alaska

#### Background

The 1916 Convention for the Protection of Migratory Birds between the United States and Great Britain (for Canada) established a closed season for the taking of migratory birds between March 10 and September 1. Residents of northern Alaska and Canada traditionally harvested migratory birds for nutritional purposes during the spring and summer months. The governments of Canada, Mexico, and the United States recently amended the 1916 Convention and the subsequent 1936 Mexico Convention for the Protection of Migratory Birds and Game Mammals. The amended treaties provide for the legal subsistence harvest of migratory birds and their eggs in Alaska and Canada during the closed season.

On August 16, 2002, we published in the **Federal Register** (67 FR 53511) a final rule that established procedures for incorporating subsistence management into the continental migratory bird management program. These regulations, developed under a new co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives, established an annual procedure to develop harvest guidelines for implementation of a spring/summer migratory bird subsistence harvest. Eligibility and inclusion requirements necessary to participate in the spring/summer migratory bird subsistence season in Alaska are outlined in 50 CFR part 92.

This proposed rule calls for proposals for regulations that will expire on August 31, 2005, for the spring/summer subsistence harvest of migratory birds in Alaska. Each year, seasons will open after March 11 and close prior to September 1.

#### Alaska Spring/Summer Subsistence Harvest Proposal Procedures

We will publish details of the Alaska spring/summer subsistence harvest proposals in later **Federal Register** documents under 50 CFR part 92. The general relationship to the process for developing national hunting regulations for migratory game birds is as follows:

*(a) Alaska Migratory Bird Co-management Council*

Proposals may be submitted by the public to the Co-management Council during the period of November 1–December 15, 2004, to be acted upon for the 2005 migratory bird subsistence harvest season. Proposals should be submitted to the Executive Director of the Co-management Council, listed above under the caption **ADDRESSES**.

*(b) Flyway Councils*

(1) Proposed 2005 regulations recommended by the Co-management Council will be submitted to all Flyway Councils for review and comment. The Council's recommendations must be submitted prior to the Service Regulations Committee's last regular meeting of the calendar year in order to be approved for spring/summer harvest beginning March 11 of the following calendar year.

(2) Alaska Native representatives may be appointed by the Co-management Council to attend meetings of one or more of the four Flyway Councils to discuss recommended regulations or other proposed management actions.

*(c) Service Regulations Committee*

Proposed annual regulations recommended by the Co-management Council will be submitted to the Service Regulations Committee for their review and recommendation to the Service Director. Following the Service Director's review and recommendation, the proposals will be forwarded to the Department of the Interior for approval. Proposed annual regulations will then be published in the **Federal Register** for public review and comment, similar to the annual migratory game bird hunting regulations. Final spring/summer regulations for Alaska will be published in the **Federal Register** in the preceding fall.

Because of the time required for review by us and the public, proposals from the Co-management Council for the 2005 spring/summer migratory bird subsistence harvest season must be submitted to the Flyway Councils and the Service by June 15, 2004, for Council comments and Service action at the late-season SRC meeting.

**Review of Public Comments**

This proposed rulemaking contains the proposed regulatory alternatives for the 2004–05 duck hunting seasons. This proposed rulemaking also describes other recommended changes or specific preliminary proposals that vary from the 2003–04 final frameworks (see August 27, 2003, **Federal Register** (68 FR 51658) for early seasons and September

26, 2003, **Federal Register** (68 FR 55784) 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 2004–05 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, the request for tribal proposals, and the request for Alaska migratory bird subsistence seasons 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 NE. 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. 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 review by us and the public, Indian tribes that desire special migratory game bird hunting regulations for the 2004–05 hunting season should submit their proposals as soon as possible, but no later than June 1, 2004.

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 (FSSES 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. We plan to begin the public scoping process in 2005.

### Endangered Species Act Consideration

Prior to issuance of the 2004–05 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

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, and then updated in 1998. We have updated again this year. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 2004 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of \$734 to \$1,064 million, with a mid-point estimate of \$899 million. To make our cost/benefit analysis as complete as possible, we seek additional information and comments. You must submit comments on the analysis by May 15, 2004. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at [www.migratorybirds.gov](http://www.migratorybirds.gov).

Executive Order 12866 also 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?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

### 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 as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. 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 2004 Analysis was based on the 2001 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 \$481 million and \$1.2 billion at small businesses in 2004. To make our cost/benefit analysis as complete as possible, we seek additional information and comments. You must submit comments on the analysis by May 15, 2004. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at [www.migratorybirds.gov](http://www.migratorybirds.gov).

### 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 surveys associated with 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 Survey and assigned clearance number 1018–0023 (expires 10/31/2004). 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. Lastly, OMB has approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska. The OMB control number for the information collection is 1018–0124 (expires 10/31/2006).

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 that it 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 2004–05 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: March 5, 2004.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

#### Proposed 2004–05 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. At this time, we are proposing no changes from the final 2003–04 frameworks established on August 27 and September 26, 2003 (68 FR 51658 and 55784). 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 2004–05 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 four 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 would be 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). We propose to continue the constraint on closed seasons enacted last year. This constraint explicitly excludes from consideration closed hunting seasons in the Mississippi, Central, and Pacific Flyways whenever the mid-continent mallard population is at least 5.5 million. Closed seasons targeted at particular species or populations could still be necessary in some situations regardless of the status of mallards.

The prescribed regulatory alternative for the Atlantic Flyway would be 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 2004–05 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 2002, 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). Last year, based on recommendations from the Flyway Councils, we eliminated the “very restrictive” alternative. Expected harvest rates under the “very restrictive” alternative did not differ significantly from those under the “restrictive” alternative, and moreover, the “very restrictive” alternative would be expected to be prescribed for only about 5 percent or less of all hunting seasons.

For 2004–05, 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 “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 15, 2004, and should be sent to the address under the caption **ADDRESSES**.

*D. Special Seasons/Species Management*

iv. Canvasbacks

In the past few seasons, the Flyway Councils have recommended that the Service depart from the Canvasback Harvest Strategy (adopted in 1994) and adopt a strategy to allow for a limited harvest when the population and habitat conditions would not support a full season length set for ducks. We have accommodated these requests by allowing a shortened season at the "restrictive" regulatory-alternative level. However, rather than continuing to depart from the current strategy, we believe that the strategy should be amended to address these types of situations. Last year, we agreed (68 FR 55786) to work with Flyway Councils in the coming year to consider modification of the current strategy for years when a full season would not be allowed, with the intent to reduce harvest and allow the population to attain the spring-abundance objective.

Therefore, we would appreciate Flyway Councils reviewing the current Canvasback Harvest Strategy and propose any modification during the early-season regulations process, to allow for proposed changes to be incorporated into the strategy for this year's late-season regulations process.

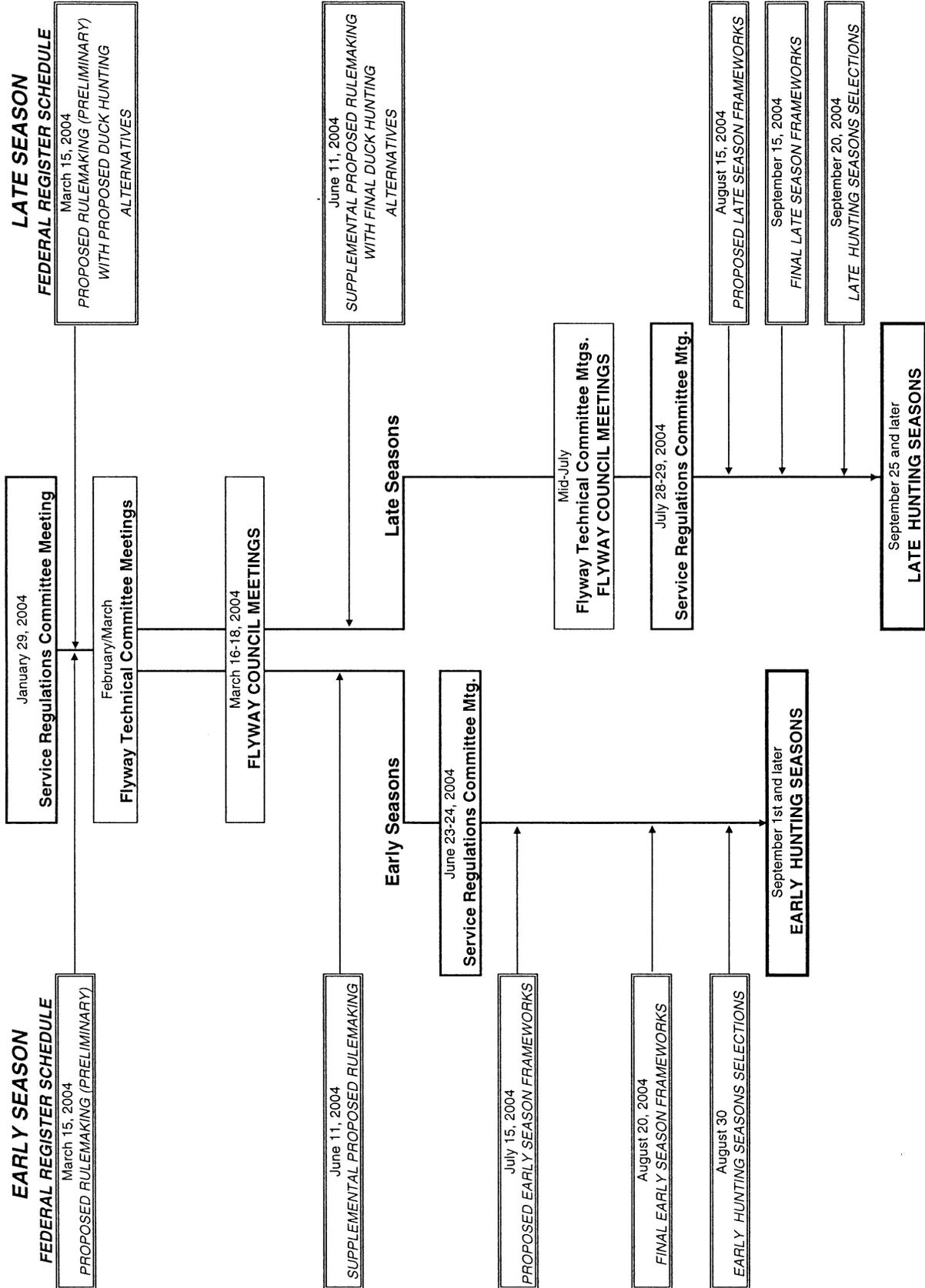
v. Pintails

The Service and the majority (3 of 4) of the Flyway Councils have recommended and the Service subsequently adopted regulations that depart from a specific provision in the interim pintail harvest strategy during the past two seasons. We have stated that we would like to amend the existing strategy to reflect this modified approach and have requested that the Councils review the specific provision that recommends seasons that are projected to reduce subsequent breeding populations in the existing strategy. Specifically, we are seeking the Councils' input on the provision that recommends a 1-bird daily bag limit on

pintails in all Flyways when the May Breeding Population Survey in the traditional survey areas is above 1.5 million or the projected fall flight is predicted to be at least 2 million (as calculated by the models in the interim strategy). This is the level established as the closure threshold for pintails in the strategy. The practice that we have followed in the past two seasons has been to adopt the season length in each flyway that was projected to keep harvest at levels that would provide for the 6 percent annual growth identified as an objective in the strategy. Season-length choices have been limited to the 4 alternative season lengths available in the AHM regulatory alternatives. We would appreciate the Councils' review and recommendation regarding this provision of the interim strategy during the early-season regulations process, to allow for any proposed changes to be incorporated into the strategy for this year's late-season regulations process.

**BILLING CODE 4310-55-P**

# 2004 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS



**PROPOSED REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2004-05 SEASON**

|  | ATLANTIC FLYWAY        |                        |                        | MISSISSIPPI FLYWAY     |                        |                        | CENTRAL FLYWAY (a)     |                        |                        | PACIFIC FLYWAY (b)(c)  |                        |                        |
|--|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|------------------------|
|  | RES                    | MOD                    | LIB                    |
| Beginning Shooting Time                                      | 1/2 hr. before sunrise |
| Ending Shooting Time   | Sunset                 |
| Opening Date   | Oct. 1                 | Sat. nearest Sept. 24  | Sat. nearest Sept. 24  | Sat. nearest Oct. 1    | Sat. nearest Sept. 24  | Sat. nearest Sept. 24  | Sat. nearest Oct. 1    | Sat. nearest Sept. 24  | Sat. nearest Oct. 1    | Sat. nearest Oct. 1    | Sat. nearest Sept. 24  | Sat. nearest Sept. 24  |
| Closing Date   | Jan. 20                | Last Sunday in Jan.    | Last Sunday in Jan.    | Sun. nearest Jan. 20   | Last Sunday in Jan.    | Last Sunday in Jan.    | Sun. nearest Jan. 20   | Last Sunday in Jan.    | Sun. nearest Jan. 20   | Last Sunday in Jan.    | Last Sunday in Jan.    | Last Sunday in Jan.    |
| Season Length (in days)                                      | 30                     | 45                     | 60                     | 30                     | 45                     | 60                     | 30                     | 60                     | 74                     | 60                     | 86                     | 107                    |
| Daily Bag/Possession Limit                                   | 3<br>6                 | 6<br>12                | 6<br>12                | 3<br>6                 | 6<br>12                | 6<br>12                | 3<br>6                 | 6<br>12                | 6<br>12                | 4<br>8                 | 7<br>14                | 7<br>14                |
| <b>Species/Sex Limits within the Overall Daily Bag Limit</b> |                        |                        |                        |                        |                        |                        |                        |                        |                        |                        |                        |                        |
| Mallard (Total/Female)                                       | 3/1                    | 4/2                    | 4/2                    | 2/1                    | 4/1                    | 4/2                    | 3/1                    | 5/1                    | 5/2                    | 3/1                    | 5/2                    | 7/2                    |
| Pintail  | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      |
| Black Duck   | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      |
| Scaup (d)  | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      |
| Canvasback   | 2                      | 2                      | 2                      | 1                      | 2                      | 2                      | 1                      | 2                      | 2                      | 2                      | 2                      | 2                      |
| Redhead  | 2                      | 2                      | 2                      | 2                      | 2                      | 2                      | 2                      | 2                      | 2                      | 2                      | 2                      | 2                      |
| Wood Duck  | 1                      | 1                      | 1                      | -                      | -                      | -                      | -                      | -                      | -                      | -                      | -                      | -                      |
| Whistling Ducks  | Closed                 | Closed                 | Closed                 | -                      | -                      | -                      | -                      | -                      | -                      | -                      | -                      | -                      |
| Harlequin  | 1                      | 1                      | 1                      | 3                      | 3                      | 3                      | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      |
| Mottled Duck   | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      | 1                      | 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: 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 from the remainder of the Pacific Flyway. The bag limit would be 5-7 under the restrictive alternative, 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.