

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

RIN 1018-AT76

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2005-06 Early Season**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: This rule prescribes special early season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on September 1, 2005.

ADDRESSES: You may inspect comments received on the proposed special hunting regulations and tribal proposals during normal business hours in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358-1967.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

In the August 5, 2005, **Federal Register** (70 FR 45336), we proposed special migratory bird hunting regulations for the 2005-06 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some

tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, 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, the regulations established under the guidelines must be consistent with the March 10-September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the April 6, 2005, **Federal Register** (70 FR 17574), we requested that tribes desiring special hunting regulations in the 2005-06 hunting season submit a proposal including details on:

(a) Harvest anticipated under the requested regulations;

(b) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(c) Steps that would be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

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

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985-86 hunting season. We finalized the guidelines beginning with the 1988-89 hunting season (August 18, 1988, **Federal Register** (53 FR 31612)).

Although the proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the early-season proposals. Late-season hunting will be addressed in late-September. As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons begin about October 1 or later each year and have a primary emphasis on waterfowl.

Population Status and Harvest

The following paragraphs provide a brief summary of information on the status and harvest of waterfowl excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **ADDRESSES** or from our Web site at <http://migratorybirds.fws.gov>.

Status of Ducks

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft and helicopters and encompass principal breeding areas of North America, and more than 2.0 million square miles. The Traditional survey area comprises Alaska, Canada, and the northcentral United States, and includes approximately 1.3 million square miles. The Eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Breeding Ground Conditions

Habitat conditions at the time of the survey in May 2005 were variable, with some areas improved relative to last year and others remaining or becoming increasingly dry. The total May pond estimate (Prairie and Parkland Canada and the northcentral U.S. combined) was 5.4 ± 0.2 million ponds. This was 37 percent greater than last year's estimate of 3.9 ± 0.2 million ponds and 12 percent higher than the long-term average of 4.8 ± 0.1 million ponds.

Habitat in the surveyed portion of the U.S. prairies was in fair to poor condition due to a dry fall, winter, and early spring and warm winter temperatures. Nesting habitat was particularly poor in South Dakota because of below average precipitation resulting in degraded wetland conditions and increased tilling and grazing of wetland margins. Birds may have overflowed the State for wetter conditions to the north. Water levels and upland nesting cover were relatively better in North Dakota and eastern Montana, and wetland conditions in these regions improved markedly during June following the survey, with the onset of well-above average precipitation. The 2005 pond estimate for north-central U.S. (1.5 ± 0.1 million) was similar to last year's estimate.

The prairies of southern Alberta and southwestern Saskatchewan were also quite dry in early May. The U.S. and Canadian prairies received substantial rain in late May and during the entire month of June that recharged wetlands and encouraged growth of vegetation. While this rain improved habitat quality on the Prairies, it probably came too late to benefit early-nesting species or prevent overflight. This heavy rain likely benefited late-nesting species and improved reneating. Record high rains flooded the lower elevation prairie areas of central Manitoba during April, producing fair or poor nesting conditions for breeding waterfowl. In contrast, the Canadian Parklands were much improved compared to last year, due to several years of improving nesting cover and above-normal precipitation last fall and winter. These areas were in good-to-excellent condition at the start of the survey and remained so into July. Overall, the May pond estimate in Prairie and Parkland Canada was 3.9 ± 0.2 million. This was a 56 percent increase over last year's estimate of 2.5 ± 0.1 million ponds and 17 percent higher than the long-term average of 3.3 ± 0.3 million ponds. Portions of northern Manitoba and northern Saskatchewan also experienced flooding, resulting in only fair conditions for breeding waterfowl.

In contrast, most of the Northwest Territories was in good condition due to adequate water and a timely spring break-up that made habitat available to early-nesting species. However, dry conditions in eastern parts of the Northwest Territories and northern Alberta resulted in low water levels in lakes and ponds and the complete drying of some wetlands. Therefore, habitat was also classified as fair in these areas.

For the most part, habitats in Alaska were in excellent condition, with an early spring and good water levels, except for a few flooded river areas and on the North Slope, where spring was late.

In the Eastern Survey Area (strata 51–72), habitat conditions were generally good due to adequate water and relatively mild spring temperatures. Exceptions were the coast of Maine and the Atlantic Provinces, where May temperatures were cool and some flooding occurred along the coast and major rivers. Also, below-normal precipitation left some habitat in fair to poor condition in southern Ontario. However, precipitation in southern Ontario after survey completion improved habitat conditions in that region.

Breeding Population Status

In the Waterfowl Breeding Population and Habitat Survey traditional survey area (strata 1–18, 20–50, and 75–77), the total duck population estimate was 31.7 ± 0.6 [SE] million birds, similar to last year's estimate of 32.2 ± 0.6 million birds but 5 percent below the 1955–2004 long-term average. Mallard (*Anas platyrhynchos*) abundance was 6.8 ± 0.3 million birds, which was 9 percent below last year's estimate of 7.4 ± 0.3 million birds and 10 percent below the long-term average. Blue-winged teal (*A. discors*) abundance was 4.6 ± 0.2 million birds, similar to last year's estimate of 4.1 ± 0.2 million birds, and the long-term average. Of the other duck species, the gadwall estimate (*A. strepera*; 2.2 ± 0.1 million) was 16 percent below that of 2004, while estimates of northern pintails (*A. acuta*; 2.6 ± 0.1 million; +17 percent) and northern shovelers (*A. clypeata*; 3.6 ± 0.2 million; +28 percent) were significantly above 2004 estimates. The estimate for northern shovelers was 67 percent above the long-term average for this species, as were estimates of gadwall (+30 percent) and green-winged teal (*A. crecca*; 2.2 ± 0.1 million; +16 percent). Northern pintails remained 38 percent below their long-term average despite this year's increase in abundance. Estimates of American wigeon (*A. americana*; 2.2 ± 0.1 million; –15 percent) and scaup (*Aythya affinis* and *A. marila* combined; 3.4 ± 0.2 ; –35 percent) also were below their respective long-term averages; the estimate for scaup was a record low. Abundances of redheads (*A. americana*) and canvasbacks (*A. valisineria*) were similar to last year's counts and long-term averages.

The eastern survey area was restratified, and is now composed of strata 51–72. Mergansers (red-breasted [*Mergus serrator*], common [*M. merganser*], and hooded [*Lophodytes cucullatus*]; –25 percent), mallards (–36 percent), American black ducks (*A. rubripes*, –24 percent), and green-winged teal (–46 percent) were all below their 2004 estimates. Ring-necked ducks (*Aythya collaris*) and goldeneyes (common [*Bucephala clangula*] and Barrow's [*B. islandica*]) were similar to their 2004 estimates. No species in the eastern survey area differed from their long-term averages.

Fall Flight Estimate

The mid-continent mallard population is composed of mallards from the traditional survey area, Michigan, Minnesota, and Wisconsin, and is 7.5 ± 0.3 million, which is 10

percent lower than the 2004 estimate of 8.3 ± 0.3 million. The 2005 mid-continent mallard fall-flight index is 9.3 ± 0.1 million, similar to the 2004 estimate of 9.4 ± 0.1 million birds. These indices were based on revised mid-continent mallard population models and, therefore, differ from those previously published.

Status of Geese and Swans

We provide information on the population status and productivity of North American Canada geese (*Branta canadensis*), brant (*B. bernicla*), snow geese (*Chen caerulescens*), Ross' geese (*C. rossii*), emperor geese (*C. canagica*), white-fronted geese (*Anser albifrons*), and tundra swans (*Cygnus columbianus*). The timing of spring snowmelt in important goose and swan nesting areas in most of the Arctic and subarctic was near average, or earlier than average in 2005. Delayed nesting phenology or reduced nesting effort was indicated for only Alaska's North Slope and areas of the eastern Canadian High Arctic. Primary abundance indices in 2005 increased from 2004 levels for 12 goose populations and decreased for 13 goose populations. Primary indices in 2005 increased for western tundra swans and decreased for eastern tundra swans. Of these 27 populations, the Atlantic, Eastern Prairie, Mississippi Flyway Giant, and Aleutian Canada goose populations, and the Western Arctic/Wrangell Island snow goose population displayed significant positive trends during the most recent 10-year period. Only Short Grass Prairie Population Canada geese and Pacific brant displayed significant negative 10-year trends. The forecast for the production of geese and swans in North America in 2005 is generally favorable and improved from that of 2004.

Waterfowl Harvest and Hunter Activity

During the 2004–05 hunting season, both duck and goose harvest decreased from the previous year. U.S. hunters harvested 12,312,200 ducks in 2004–05 compared to 13,165,500 ducks in 2003–04, and they harvested 3,189,700 geese, compared to 3,828,200 geese taken in 2003–04. The five most commonly harvested duck species were mallard (4,531,600), green-winged teal (1,373,600), gadwall (1,364,000), wood duck (1,105,500), and wigeon (750,600).

Comments and Issues Concerning Tribal Proposals

For the 2005–06 migratory bird hunting season, we proposed regulations for 28 tribes and/or Indian groups that followed the 1985 guidelines and were considered

appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements. However, as noted earlier, only those with early-season proposals are included in this final rulemaking; 19 tribes have proposals with early seasons. The comment period for the proposed rule, published on August 5, 2005, closed on August 15, 2005. Because of the necessary brief comment period, we will respond to any comments on the proposed rule and/or these regulations postmarked by August 15, but not received prior to final action by us, in the September late-season final rule.

We received one comment regarding the notice of intent published on April 6, 2005, which announced rulemaking on regulations for migratory bird hunting by American Indian tribal members. The Michigan Department of Natural Resources commented on the establishment of tribal regulations on 1836 Treaty areas. Michigan believed it was premature of the Service to establish waterfowl regulations in areas covered by the 1836 Treaty until such time as the issue of 1836 Treaty hunting rights is affirmed by a court of competent jurisdiction.

Service Response: We have addressed this issue several times in the last few years. Our position is that the Federal Government does recognize the Treaty of 1836 as reserving to the affected tribes or bands hunting rights in the ceded territory. Further, the Federal courts have already confirmed the retention of reserved fishing rights in the territory ceded by the Treaty of 1836 in *United States v. Michigan*, 471 F.Supp. 192 (W.D. Mich. 1979), *remanded*, 623 F.2d 448 (6th Cir. 1980), *order modified*, 653 F.2d 277 (6th Cir. 1981), *cert. denied*, 454 U.S. 1124 (1981). That case and cases dealing with other treaty cessions, such as *Lac Courte Oreilles v. Wisconsin* (*i.e.*, both the 1837 and the 1842 Treaties), provide persuasive precedent for the belief that hunting as well as fishing rights were reserved by the tribes in the Treaty of 1836. We have not altered our position on this matter.

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) and our Record of Decision on August 18, 1988 (53 FR 31341).

In addition, 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 EIS for the migratory bird hunting program. We plan to begin the public scoping process this year.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531-1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *"

Consequently, we conducted consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and MBM, at the address indicated under **ADDRESSES**.

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, updated in 1998 and updated again in 2004. 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. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at <http://www.migratorybirds.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. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at <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 2/29/2008). 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 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.

Government-to-Government Relationship With Tribes

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. Thus, in accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals contained in this proposed rule, we have consulted with all the tribes affected by this rule.

List of Subjects in 50 CFR Part 20

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

■ Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j, Pub L. 106–108.

Note: The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature.

■ 2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Nontribal Hunters)

Doves

Season Dates: Open September 1, through September 15, 2005; then open November 12, through December 26, 2005.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or 10 white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits.

General Conditions: All persons 14 years and older must be in possession of a valid Colorado River Indian Reservation hunting permit before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona.

(b) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal Hunters)

Tribal Members Only

Ducks (Including Mergansers)

Season Dates: Open September 1, 2005, through March 9, 2006.

Daily Bag and Possession Limits: The Tribe does not have specific bag and possession restrictions for Tribal members. The season on harlequin duck is closed.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

General Conditions: Tribal and Nontribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are sunrise to sunset, and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

(c) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Nontribal Hunters)*Sandhill Cranes*

Season Dates: Open September 10, through October 16, 2005.

Daily Bag Limit: Three sandhill cranes.

Permits: Each person participating in the sandhill crane season must have a valid Federal sandhill crane hunting permit in his or her possession while hunting.

Doves

Season Dates: Open September 1, through October 30, 2005.

Daily Bag Limit: 15 mourning doves.

General Conditions: The possession limit is twice the daily bag limit. Tribal and nontribal hunters must comply with basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Crow Creek Sioux Tribe also apply on the reservation.

(d) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only)

All seasons in Minnesota, 1854 and 1837 Treaty Zones:

Doves

Season Dates: Open September 1, through October 30, 2005.

Daily Bag Limit: 12 doves.

Ducks and Mergansers

Season Dates: Open September 15, through December 1, 2005.

Daily Bag Limit for Ducks: 18 ducks, including no more than 12 mallards (only 6 of which may be hens), 3 black ducks, 6 scaup, 4 wood ducks; 6 redheads, 3 pintails and 3 canvasbacks.

Daily Bag Limit for Mergansers: 15 mergansers, including no more than 3 hooded mergansers.

Canada Geese

Season Dates: Open September 1, through December 1, 2005.

Daily Bag Limit: 12 geese.

Coots and Common Moorhens (Gallinule)

Season Dates: Open September 15, through December 1, 2005.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails

Season Dates: Open September 1, through December 1, 2005.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate. There is no possession limit.

Common Snipe and Woodcock

Season Dates: Open September 1, through December 1, 2005.

Daily Bag Limit: Eight snipe and three woodcock.

General Conditions:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

3. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. There are no possession limits on any species, unless otherwise noted above. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation daily bag or possession limit.

(e) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

All seasons in Michigan, 1836 Treaty Zone:

Ducks

Season Dates: Open September 15, 2005, through January 15, 2006.

Daily Bag Limit: 12 ducks, which may include no more than 2 pintail, 2 canvasback, 3 black ducks, 1 hooded merganser, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens).

Canada Geese

Season Dates: Open September 1, through November 30, and open January 1, 2006, through February 8, 2006.

Daily Bag Limit: Five geese.

Other Geese (White-Fronted Geese, Snow Geese, and Brant)

Season Dates: Open September 20, through November 30, 2005.

Daily Bag Limit: Five geese.

Sora Rails, Common Snipe, and Woodcock

Season Dates: Open September 1, through November 14, 2005.

Daily Bag Limit: Ten rails, ten snipe, and five woodcock.

Mourning Doves

Season Dates: Open September 1, through November 14, 2005.

Daily Bag Limit: Ten mourning doves.

General Conditions: A valid Grand Traverse Band Tribal license is required and must be in possession before taking any wildlife. All other basic regulations contained in 50 CFR part 20 are valid. Other tribal regulations apply, and may be obtained at the tribal office in Suttons Bay, Michigan.

(f) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)*Ducks*

A. Wisconsin and Minnesota 1837 and 1842 Zones:

Season Dates: Open September 15, through December 1, 2005.

Daily Bag Limit: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks, 4 redheads, 4 pintails, and 2 canvasbacks.

B. Michigan 1836 and 1842 Treaty Zones:

Season Dates: Open September 15, through December 1, 2005.

Daily Bag Limit: 10 ducks, including no more than 5 mallards (only 2 of which may be hens), 2 black ducks, 2 redheads, 2 pintails, and 1 canvasback.

Mergansers: All Ceded Areas

Season Dates: Open September 15, through December 1, 2005.

Daily Bag Limit: Five mergansers.

Geese: All Ceded Areas

Season Dates: Open September 1, through December 1, 2005. In addition, any portion of the ceded territory that is open to State-licensed hunters for goose hunting after December 1 shall also be open concurrently for tribal members.

Daily Bag Limit: 10 geese in the aggregate.

Other Migratory Birds: All Ceded Areas except where noted below.

A. Coots and Common Moorhens (Common Gallinules)

Season Dates: Open September 15, through December 1, 2005.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

B. Sora and Virginia Rails

Season Dates: Open September 15, through December 1, 2005.

Daily Bag Limit: 25 sora and Virginia rails singly, or in the aggregate.

Possession Limit: 25.

C. Common Snipe

Season Dates: Open September 15, through December 1, 2005.

Daily Bag Limit: Eight common snipe.

D. Woodcock

Season Dates: Open September 6, through December 1, 2005.

Daily Bag Limit: Five woodcock.

E. Mourning Doves: 1837 and 1842 Ceded Territories

Season Dates: Open September 1, through October 30, 2005.

Daily Bag Limit: 15 mourning doves.

General Conditions:

A. All tribal members will be required to obtain a valid tribal waterfowl hunting permit.

B. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the model ceded territory conservation codes approved by Federal courts in the *Lac Courte Oreilles v. State of Wisconsin (Voigt)* and *Mille Lacs Band v. State of Minnesota* cases. The respective Chapters 10 of these model codes regulate ceded territory migratory bird hunting. They parallel Federal requirements as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting. They also automatically incorporate by reference the Federal migratory bird regulations adopted in response to this proposal.

C. Particular regulations of note include:

1. Nontoxic shot will be required for all off-reservation waterfowl hunting by tribal members.

2. Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

3. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds that are cleaned, dressed, and at a

member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession and custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as taken on reservation lands. All migratory birds that fall on reservation lands will not count as part of any off-reservation daily bag or possession limit.

4. The baiting restrictions can be obtained at the Tribal office in the model ceded territory conservation codes. These codes will be amended to include language that parallels that in place for nontribal members as published by the Service in the June 3, 1999, **Federal Register** (64 FR 29804).

5. The shell limit restrictions of the model ceded territory conservation codes will be removed.

D. Michigan—Duck Blinds and Decoys.

Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(g) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)

Nontribal Hunters on Reservation

Geese

Season Dates: Open September 3, 2005, through September 18, for the early-season, and open October 1, through January 31, 2006, for the late-season. During this period, days to be hunted are specified by the Kalispel Tribe. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: 5 Canada geese for the early season, and 3 light geese and 4 dark geese, for the late season. The daily bag limit is 2 brant and is in addition to dark goose limits for the late-season. The possession limit is twice the daily bag limit.

Tribal Hunters Within Kalispel Ceded Lands

Ducks

Season Dates: Open September 1, 2005, through January 31, 2006.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 4 scaup, and 2 redheads. The seasons on canvasbacks and pintail are closed. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, 2005, through January 31, 2006.

Daily Bag Limit: 3 light geese and 4 dark geese. The daily bag limit is 2 brant and is in addition to dark goose limits.

General: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit.

(h) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only)

Ducks

Season Dates: Open September 17, through December 31, 2005.

Daily Bag Limits: 10 ducks.

Geese

Season Dates: Open September 1, through December 31, 2005.

Daily Bag Limits: 10 geese.

General: Possession limits are twice the daily bag limits. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required. Use of live decoys, bait, and commercial use of migratory birds are prohibited. Waterfowl may not be pursued or taken while using motorized craft.

(i) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only)

Ducks

Season Dates: Open September 15, 2005, through January 20, 2006.

Daily Bag and Possession Limits: 12 ducks, including no more than 2 pintail, 2 canvasback, 1 hooded merganser, 3 black ducks, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens). The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open September 1, through February 8, 2006.

Daily Bag and Possession Limits: Five Canada geese and possession limit is twice the daily bag limit.

White-Fronted Geese, Snow Geese, Ross Geese, and Brant

Season Dates: Open September 20, through November 30, 2005.

Daily Bag and Possession Limits: Five birds and the possession limit is twice the daily bag limit.

Mourning Doves, Rails, Snipe, and Woodcock

Season Dates: Open September 1, through November 14, 2005.

Daily Bag and Possession Limits: 10 doves, 10 rails, 10 snipe, and 5 woodcock. The possession limit is twice the daily bag limit.

General:

A. All tribal members are required to obtain a valid tribal resource card and 2005–06 hunting license.

B. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20.

C. Particular regulations of note include:

(1) Nontoxic shot will be required for all waterfowl hunting by tribal members.

(2) Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

(3) Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

D. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(j) The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only)

Ducks

Season Dates: Open September 15, 2005, through January 20, 2006.

Daily Bag Limits: 12 ducks, including no more than 6 mallards (only 3 of which may be hens), 3 black ducks, 3 redheads, 3 wood ducks, 2 pintail, 1 hooded merganser, and 2 canvasback.

Canada Geese

Season Dates: Open September 1, 2005, through February 8, 2006.

Daily Bag Limit: Five geese.

White-Fronted Geese, Snow Geese, and Brant

Season Dates: Open September 1, through November 30, 2005.

Daily Bag Limit: 10 of each species.

Sora Rails, Snipe, and Mourning Doves

Season Dates: Open September 1, through November 14, 2005.

Daily Bag Limit: 10 of each species.

Woodcock

Season Dates: Open September 1, through November 14, 2005.

Daily Bag Limit: Five woodcock.

General: Possession limits are twice the daily bag limits.

(k) Lower Elwha Klallam Tribe, Port Angeles, Washington (Tribal Members Only)

Ducks and Mergansers

Season Dates: Open September 15, through December 30, 2005.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, and two redheads. Bag and possession limits on harlequin duck are one per season. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, through December 30, 2005.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The season on Aleutian Canada geese is closed. The possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 1, 2005, through February 15, 2006.

Daily Bag and Possession Limits: Two brant. The possession limit is twice the daily bag limit.

Coots

Season Dates: Open September 15, through December 30, 2005.

Daily Bag Limits: 25 coots.

Mourning Doves

Season Dates: Open September 15, through December 30, 2005.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 15, through December 30, 2005.

Daily Bag and Possession Limits: 10 and 20 snipe, respectively.

Band-Tailed Pigeon

Season Dates: Open September 15, through December 30, 2005.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

General Conditions: All hunters authorized to hunt migratory birds on the reservation must obtain a tribal hunting permit from the Tribe. Hunters are also required to adhere to a number of special regulations available at the tribal office.

(l) Makah Indian Tribe, Neah Bay, Washington (Tribal Members)

Band-Tailed Pigeons

Season Dates: Open September 1, through October 31, 2005.

Daily Bag Limit: Two band-tailed pigeons.

Ducks and Coots

Season Dates: Open September 25, 2005, through January 19, 2006.

Daily Bag Limit: Seven ducks including no more than one redhead, one pintail, and one canvasback. The seasons on wood duck and harlequin are closed.

Geese

Season Dates: Open September 25, 2005, through January 19, 2006.

Daily Bag Limit: Four. The seasons on Aleutian and dusky Canada geese are closed.

General: All other Federal regulations contained in 50 CFR part 20 would apply. The following restrictions are also proposed by the Tribe:

(1) As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 0.25 miles of an occupied area;

(2) Hunters must be eligible, enrolled Makah tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl;

(3) The Cape Flattery area is open to waterfowl hunting, except in designated wilderness areas, or within 1 mile of Cape Flattery Trail, or in any area that is closed to hunting by another ordinance or regulation;

(4) The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited;

(5) Steel or bismuth shot only for waterfowl is allowed; the use of lead shot is prohibited;

(6) The use of dogs is permitted to hunt waterfowl.

(m) Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers)

Band-Tailed Pigeons

Season Dates: Open September 1, through September 30, 2005.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, through September 30, 2005.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck

Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(n) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)

Geese

Season Dates: Open September 1, through November 18, and open November 28, through December 31, 2005.

Daily Bag and Possession Limits: Three and six Canada geese, respectively. Hunters will be issued three tribal tags for geese in order to monitor goose harvest. An additional three tags will be issued each time birds are registered. A seasonal quota of 150 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Woodcock

Season Dates: Open September 10, through November 13, 2005.

Daily Bag and Possession Limits: 5 and 10 woodcock, respectively.

Dove

Season Dates: Open September 1, through November 13, 2005.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal member shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including season dates, shooting hours, and bag limits, that differ from tribal member seasons. Tribal members and nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: tribal members are exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells.

(o) Skokomish Tribe, Shelton, Washington (Tribal Members Only)

Ducks and Mergansers

Season Dates: Open September 16, through December 31, 2005.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, one harlequin, and two redheads. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 16, through December 31, 2005.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The season on Aleutian Canada geese is closed. The possession limit is twice the daily bag limit.

Coots

Season Dates: Open September 16, through December 31, 2005.

Daily Bag Limits: 25 coots.

Mourning Doves

Season Dates: Open September 16, through December 31, 2005.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 16, through December 31, 2005.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeon

Season Dates: Open September 16, through December 31, 2005.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

General Conditions: All hunters authorized to hunt migratory birds on the reservation must obtain a tribal hunting permit from the respective Tribe. Hunters are also required to adhere to a number of special regulations available at the tribal office.

(p) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only)

Ducks

Season Dates: Open September 1, 2005, through January 15, 2006.

Daily Bag and Possession Limits: Five ducks, which may include only one canvasback. The season on harlequin ducks is closed. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 2005, through January 15, 2006.

Daily Bag and Possession Limits: Four geese, and may include no more than two snow geese. The season on Aleutian and cackling Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 1, through December 31, 2005.

Daily Bag and Possession Limits: Two and four brant, respectively.

Coots

Season Dates: Open September 1, 2005, through January 15, 2006.

Daily Bag Limits: 25 coots.

Snipe

Season Dates: Open September 15, 2005, and through January 15, 2006.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeons

Season Dates: Open September 1, through December 31, 2005.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

General Conditions: All tribal hunters must obtain a Tribal Hunting Tag and Permit from the Tribe's Natural Resources Department and must have the permit, along with the member's treaty enrollment card, on his or her person while hunting. Shooting hours are one-half hour before sunrise to one-half hour after sunset, and steel shot is required for all migratory bird hunting. Other special regulations are available at the tribal office in Shelton, Washington.

(q) Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Nontribal Hunters)

Tribal Members

Ducks (Including Coots and Mergansers)

Season Dates: Open September 15, 2005, and through February 28, 2006.

Daily Bag and Possession Limits: 8 and 16 ducks, respectively, except that bag and possession limits may include no more than 2 female mallards, 1 pintail, 4 scaup, and 2 redheads.

Geese

Season Dates: Open September 15, 2005, and through February 28, 2006.

Daily Bag and Possession Limits: 7 and 14 geese, respectively; except that the bag limits may not include more than 2 brant and 1 cackling Canada goose. For those tribal members who engage in subsistence hunting, the Tribes set a maximum annual bag limit of 365 ducks and 365 geese.

Snipe

Season Dates: Open September 15, 2005, through February 28, 2006.

Daily Bag and Possession Limits: 8 and 16, respectively.

General Conditions: All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the Tribe. Nontribal hunters 16 years of age and

older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a valid Federal Migratory Bird Hunting and Conservation Stamp (Duck Stamp) and a valid State of Washington Migratory Waterfowl Stamp. Both stamps must be validated by signing across the face of the stamp. Other tribal regulations apply, and may be obtained at the tribal office in Marysville, Washington.

(r) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only)

Mourning Dove

Season Dates: Open September 1, through December 31, 2005.

Daily Bag and Possession Limits: 12 and 15 mourning doves, respectively.

Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, except shooting hours would be one-half hour before official sunrise to one-half hour after official sunset.

(s) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)

Canada Geese

Season Dates: Open September 11, and through September 25, and open November 1, through February 28, 2006.

Daily Bag Limits: 5 Canada geese during the first period, 3 during the second.

Snow Geese

Season Dates: Open September 11, 2005, and through September 25, 2005.

Daily Bag Limits: 15 snow geese.

General Conditions: Shooting hours are one-half hour before sunrise to sunset. Nontoxic shot is required. All

basic Federal migratory bird hunting regulations contained in 50 CFR part 20 will be observed.

(t) White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only)

Ducks and Mergansers

Season Dates: Open September 17, through December 18, 2005.

Daily Bag Limit for Ducks: 10 ducks, including no more than 2 mallards and 1 canvasback.

Daily Bag Limit for Mergansers: Five mergansers, including no more than two hooded mergansers.

Geese

Season Dates: Open September 1, through September 30, 2005, and open October 1, through December 18, 2005.

Daily Bag Limit: Eight geese through September 30 and five thereafter.

Coots

Season Dates: Open September 3, through November 30, 2005.

Daily Bag Limit: 20 coots.

Sora and Virginia Rails

Season Dates: Open September 3, through November 30, 2005.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe and Woodcock

Season Dates: Open September 3, through November 30, 2005.

Daily Bag Limit: 10 snipe and 10 woodcock.

Mourning Dove

Season Dates: Open September 3, through November 30, 2005.

Daily Bag Limit: 25 doves.

General Conditions: Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required.

(u) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)

Band-Tailed Pigeons (Wildlife Management Unit 10 and Areas South of Y-70 in Wildlife Management Unit 7, Only)

Season Dates: Open September 1, through September 15, 2005.

Daily Bag and Possession Limits: Three and six pigeons, respectively.

Mourning Doves (Wildlife Management Unit 10 and Areas South of Y-70 in Wildlife Management Unit 7, Only)

Season Dates: Open September 1, through September 15, 2005.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: All nontribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all nontribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking.

Dated: August 25, 2005.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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