

(b) The Contractor shall deliver under this contract only such of the following commercial or non-commercial items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

(1) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof; or

(2) Tents, tarpaulins, covers, textile belts, bags, protective equipment (such as body armor), sleep systems, load carrying equipment (such as fieldpacks), textile marine equipment, parachutes or bandages.

(c) The Contractor shall deliver under this contract only such of the following non-commercial items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

(1) Cotton and other natural fiber products.

(2) Woven silk or woven silk blends.

(3) Spun silk yarn for cartridge cloth.

(4) Synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics).

(5) Canvas products.

(6) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(7) Any item of individual equipment manufactured from or containing any of the fibers, yarns, fabrics, or materials listed in this paragraph (c).

(d) This clause does not apply—

(1) To items listed in (FAR) 48 CFR 25.104, or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at United States market prices;

(2) To incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool is not more than 10 percent of the total price of the end product; or

(3) To items that are eligible products per (FAR) 48 CFR Subpart 25.4.

(End of clause.)

[FR Doc. E9-19647 Filed 8-13-09; 8:45 am]

BILLING CODE 9110-9B-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Parts 25 and 32

[Docket No. FWS-R3-NSR-2009-0007]  
[32579-1261-0000-4A]

RIN 1018-AW48

#### 2009-2010 Hunting and Sport Fishing Regulations for the Upper Mississippi River National Wildlife and Fish Refuge

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or we) amends the

regulations for the Upper Mississippi River National Wildlife and Fish Refuge (refuge) that pertain to existing programs for migratory game bird hunting, upland game hunting, and big game hunting. These changes take effect with the 2009-2010 season, implement portions of the Comprehensive Conservation Plan for the refuge approved in 2006, and amend other regulations. We also make amendments to reflect recent OMB approval of new hunting and fishing application forms and activity reports for national wildlife refuges.

**DATES:** This rule is effective August 17, 2009.

**FOR FURTHER INFORMATION CONTACT:** Rick Frietsche, (507) 452-4232; Fax (507) 452-0851.

#### SUPPLEMENTARY INFORMATION:

##### Background

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge Improvement Act of 1997 (16 U.S.C. 668dd-668ee), authorizes the Secretary of the Interior (Secretary) to allow uses of refuge areas, including hunting and/or sport fishing, upon a determination that such uses are compatible with the purposes of the refuge and National Wildlife Refuge System (Refuge System) mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), and consistent with the principles of sound fish and wildlife management and administration. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

The law requires the Secretary to prepare a Comprehensive Conservation Plan (CCP) for each refuge and to manage each refuge in a manner consistent with the CCP. Each CCP is guided by the overarching requirement that refuges are to be managed to fulfill the purposes for which they were established and the mission of the Refuge System. In addition, we must administer the Refuge System to provide for the conservation of fish, wildlife and plant resources and their habitat and to ensure their biological integrity, diversity, and environmental health. Each CCP must identify and describe the refuge's purposes; fish, wildlife, and plant populations; cultural resources; areas for administrative or visitor facilities; significant problems affecting resources and actions necessary; and

opportunities for compatible wildlife-dependent recreation. Each CCP must also be developed through consultation with the States, other Federal agencies, and the public, and be coordinated with applicable State conservation plans.

#### Upper Mississippi River National Wildlife and Fish Refuge

The Upper Mississippi River National Wildlife and Fish Refuge (refuge) encompasses 240,000 acres in a more-or-less continuous stretch of 261 miles of Mississippi River floodplain in Minnesota, Wisconsin, Iowa, and Illinois. Congress established the refuge in 1924 to provide a refuge and breeding ground for migratory birds, fish, other wildlife, and plants. The refuge is perhaps the most important corridor of habitat in the central United States due to its species diversity and abundance and is the most visited refuge in the United States with 3.7 million annual visitors. Approximately 187,000 acres of the refuge is open to all hunting, and approximately 140,000 acres of surface water is open to year-round fishing.

On July 11, 2006, we published a notice of availability of our Final Environmental Impact Statement (EIS) and CCP for the refuge (71 FR 39125), and we accepted public comments on the Final EIS for 30 days. On August 24, 2006, the Regional Director of the Midwest Region of the Fish and Wildlife Service signed the Record of Decision that documented the selection of Alternative E, the Preferred Alternative presented in the Final EIS. We published a notice of availability of that Record of Decision on November 2, 2006 (71 FR 64553). In accordance with the Record of Decision, we prepared a CCP based on Alternative E. The CCP was approved on October 24, 2006. The Final EIS and CCP are available at <http://www.fws.gov/midwest/planning/uppermiss/>.

We developed the CCP for the refuge in accordance with all requirements including the consultation and public involvement provisions of the National Wildlife Refuge System Improvement Act. These include new compatibility determinations for hunting and fishing, which are referenced and listed in Appendix E of the Final EIS (which includes recreational and commercial fishing, migratory bird and big game hunting, wildlife observation and photography). We completed hunting and fishing regulations in 2007 to implement the goals, objectives, and strategies described in the CCP pertaining to hunting and fishing and related uses. We published a proposed rule in the **Federal Register** on June 28, 2007 (72 FR 35380), and a final rule was

effective on September 7, 2007 (72 FR 51534).

We based these compatibility determinations on all changes anticipated in the CCP, including the changes described in this rule, and they remain valid as approved in 2006. We then developed this rule to complete implementation of the hunting- and fishing-related portions of the CCP. Even after we enact the changes, opportunities for waterfowl hunting on the 240,000-acre refuge will remain abundant with 49,239 acres closed to waterfowl or other hunting compared to a pre-CCP total of 48,099 acres.

#### Proposed Rule

On April 28, 2009, we published a proposed rule (74 FR 19318) to make four changes to the existing refuge regulations (see our final rule of September 7, 2007 (72 FR 51534), for more details on closure restrictions). We proposed to modify the refuge's Waterfowl Hunting Closed Areas and/or No Hunting Zones in Pool 4; add a new No Hunting Zone in Pool 5A as scheduled in the CCP; make permanent an interim No Hunting or Trapping Zone on the recently acquired Mathy Tract (75 acres) on Brice Prairie near Pool 7, which would be used as a future office and visitor contact facility; and add a regulation on the immediate retrieval of waterfowl taken during hunting that would be applicable refuge-wide.

We made no substantive changes in this final rule. However, we are making a minor edit to correct an administrative error. In the Statutory Authority section we are correcting the date in the reference to the National Wildlife Refuge System Improvement Act of 1977 to 1997. In addition, on January 15, 2009, OMB approved the use of nine new hunting and fishing application forms and activity reports for use on national wildlife refuges (control #1018-0140). Therefore, we are also amending 50 CFR 25.23 to reflect the addition of these forms to those already used on national wildlife refuges.

The retrieval regulation resulted from discussions we had with State law enforcement personnel and was endorsed by 33 of 35 participants at a public waterfowl hunting workshop in February 2007. This regulation is designed to reduce the loss of downed waterfowl by adding a time element (i.e., "immediately") to existing State retrieval regulations and to reduce the crippling loss of waterfowl by discouraging hunters from shooting at birds that are beyond effective shotgun range. The change in Pool 5A is the addition of a 24-acre Fountain City Bay

No Hunting Zone encompassing a backwater bay adjacent to Merrick State Park, Wisconsin. This new zone, identified in the CCP, is designed to reduce conflicts with park users and will also provide a resting and feeding area for migrating puddle ducks such as mallards and blue-winged teal.

The most significant of the changes above is the modification of the Waterfowl Hunting Closed Areas in Pool 4 of the refuge, a change described and scheduled for the 2009–2010 season in the CCP. This pool currently has 6,884 acres designated as closed areas, and under this rule the acreage will drop to 3,500 acres designated as closed areas or no hunting zones. The entire Nelson–Trevino closed area will be open to hunting (3,773 acres), and a new closed area will be established that encompasses Big Lake (2,210 acres). The current Peterson Lake closed area of 3,111 acres will be reduced to 1,290 acres and also divided into more recognizable subunits, namely Peterson Lake closed area (572 acres), Rieck's Lake closed area (499 acres), and Buffalo River no hunting zone (219 acres).

These changes, although resulting in more acreage open to hunting in Pool 4, are predicted to dramatically improve the effectiveness of Pool 4 in providing waterfowl secure resting and feeding areas based on an analysis of aquatic foods and bird use patterns completed for the Final EIS and CCP. An effective system of strategically located waterfowl closed areas on the 261-mile-long refuge is critical to waterfowl using the Mississippi Flyway, and allows hunting to remain compatible. We will monitor the effectiveness of the modification to Pool 4 and will make future changes if warranted by waterfowl use surveys.

Finally, we make corrections to some acreage figures for the "No Entry—Sanctuary," "Area Closed," "Area Closed—No Motors," "No Hunting Zone" and "No Hunting or Trapping Zone" listings in the respective sections of this rule to reflect increased accuracy based on actual signing and mapping in the field and subsequent Geographic Information System analysis since we published the 2007–08 Hunting and Fishing final rule. These are considered administrative changes since the corrections match the areas shown on maps provided to the public since 2007. We have summarized these administrative changes below:

#### No Entry—Sanctuary Areas

Pool Slough, Pool 9, Minnesota/Iowa, from 1,112 to 1,126 acres

Spring Lake, Pool 13, Illinois, from 3,686 to 3,697 acres

#### Areas Closed and Areas Closed—No Motors

Big Lake, Pool 4, Wisconsin, from 2,626 to 2,210 acres

Peterson Lake, Pool 4, Wisconsin, from 672 to 572 acres

Spring Lake, Pool 5, Wisconsin, from 243 to 254 acres

Polander Lake, Pool 5A, Minnesota/Wisconsin, from 1,907 to 1,873 acres

Lake Onalaska, Pool 7, Wisconsin, from 7,369 acres to 7,366 acres

Wisconsin Islands, Pool 8, Minnesota/Wisconsin, from 6,510 to 6,538 acres

Wisconsin River Delta, Pool 10, Wisconsin, from 1,406 to 1,414 acres

12-Mile Island, Pool 11, Iowa, from 1,145 to 1,139 acres

Kehough Slough, Pool 12, Illinois, from 343 to 333 acres

Pleasant Creek, Pool 13, Iowa, from 2,067 to 2,191 acres

Elk River, Pool 13, Iowa, from 1,237 to 1,248 acres

Beaver Island, Pool 14, Iowa, from 717 to 864 acres

#### No Hunting or No Hunting or Trapping Zones

Upper Halfway Creek Marsh, Pool 7, Wisconsin, from 141 to 143 acres

Goose Island, Pool 8, Wisconsin, from 986 to 984 acres

Goetz Island Trail, Pool 11, Iowa, from 32 to 31 acres

Crooked Slough Backwater, Pool 13, Illinois, from 2,467 to 2,453 acres

Crooked Slough Proper, Pool 13, Illinois, from 192 to 270 acres

#### Response to Public Comment

In the April 28, 2009, proposed rule (74 FR 19318), we invited public comments on the proposed amendments to the refuge-specific regulations for the refuge. We reviewed and considered all comments received by May 28, 2009, the end of the 30-day comment period. We received four comments on the proposed rule. Since comments were often similar or commenters covered multiple topics, we have treated the comments/responses by major issue area.

*Comment 1:* Two commenters expressed their disapproval of hunting programs on refuges in general.

*Response 1:* We understand some citizens' concern with hunting on national wildlife refuges. However, hunting on refuges remains an important form of outdoor recreation for millions of citizens and a use which we are to facilitate when compatible with the purpose of the refuge and the mission of the Refuge System per the National Wildlife Refuge System Administrative Act (Refuge

Administration Act). We have taken care to ensure the right balance between the needs of wildlife and people on the refuge in keeping with the Refuge Administration Act and Service policy and regulation. We have also determined in a compatibility determination that hunting, with stipulations such as a system of hunting closed areas included in this and previous rules, is a compatible use on the refuge. We made no change to the rule as a result of these comments.

*Comment 2:* A commenter suggested that we include a clause requiring the use of steel shot in shotshells for hunting on the refuge.

*Response 2:* This rule amends existing regulations for hunting on the refuge. The full regulations not cited in this amendment require the use of steel or other nontoxic shot. The actual regulations in 50 CFR 32.42, Section A.8 (migratory bird hunting) and Section B.7 (upland game hunting) read: "You may possess only approved nontoxic shot shells while in the field" and "You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey." We made no change to the rule as a result of this comment.

*Comment 3:* One commenter was opposed to the hunting program changes in Pool 4 of the refuge citing loss of a traditional waterfowl hunting area, lack of reason for the change, and saying there were plenty of other closed areas available for waterfowl.

*Response 3:* We understand that changes to the system of Waterfowl Hunting Closed Areas of the refuge reflected in this rule are generally met with resistance since some of the changes affect long-standing patterns of use by waterfowl hunters and others. However, we thoroughly documented the issue, the science, and the need for change in the Draft and Final EIS. We added Appendix Q in the Final EIS, which gives details on each closed area and rationale for changes based on public questions and concerns. The system of Waterfowl Hunting Closed Areas has remained virtually unchanged since 1958, and we believe we need the adjustments reflected in the CCP and in this rule based on current habitat conditions, waterfowl population and use data, human disturbance studies, and energetics modeling. These changes also allow waterfowl hunting and other uses to remain compatible. We made no change to the rule based on these comments.

### Available Information for Specific Districts of the Refuge

The refuge is divided into four districts for management, administrative, and public service effectiveness and efficiency. These districts correspond to two or more Mississippi River pools created by the series of locks and dams on the river. District offices are located in Winona, Minnesota (Pools 4–6), La Crosse, Wisconsin (Pools 7–8), McGregor, Iowa (Pools 9–11), and Savanna, Illinois (Pools 12–14). If you are interested in specific information pertaining to a specific area encompassed in this rule, you may contact the appropriate district office listed below:

Winona District, U.S. Fish and Wildlife Service, 51 East Fourth Street, Room 203, Winona, MN 55987; Telephone (507) 454-7351.

La Crosse District, U.S. Fish and Wildlife Service, 555 Lester Avenue, Onalaska, WI 54650; Telephone (608) 783-8405.

McGregor District, U.S. Fish and Wildlife Service, P.O. Box 460, McGregor, IA 52157; Telephone (563) 873-3423.

Savanna District, U.S. Fish and Wildlife Service, 7071 Riverview Road, Thomson, IL 61285; Telephone (815) 273-2732.

### Fish Advisory

For health reasons, anglers should review and follow State-issued consumption advisories before enjoying recreational sport fishing opportunities on Service-managed waters. You can find information about current fish consumption advisories on the internet at: <http://www.epa.gov/waterscience/fish/>.

### Plain Language Mandate

In this rule, we comply with a Presidential mandate to use plain language in regulations. As examples, we use "you" to refer to the reader and "we" to refer to the Service, the word "allow" instead of "permit" when we do not require the use of a permit for an activity, and we use active voice whenever possible (i.e., "We allow hunting of upland game on designated areas" vs. "Upland game hunting in designated areas is allowed").

### Effective Date

This rule is effective upon publication in the **Federal Register**. We have determined that any further delay in implementing these refuge-specific hunting and sport fishing regulations would not be in the public interest as a delay would disrupt goals, objectives, and strategies described in the CCP. All

changes in the refuge's hunting program found in this rule were described in the CCP. A description of the comprehensive coordination of these regulations with the public through the development of the Environmental Impact Statement (EIS) and CCP is found in the "Background" section of this document. Implementing these regulations immediately will allow the Service to better manage refuge resources in time for the opening of the various seasons. These regulations also improve the conservation of resources and a delay would lessen the management effectiveness of this regulation- the requirement for a reasonable attempt at immediate retrieval of downed waterfowl reduces waste, while closing portions of pool 4 will provide additional secure waterfowl resting and feeding areas. This rule does not impact the public generally in terms of requiring lead time for compliance. These regulations implement management decisions made and published in the final CCP adopted October 24, 2006, giving refuge users and the affected public significant advance notice (see **SUPPLEMENTARY INFORMATION**). Therefore, we find good cause under 5 U.S.C. 553(d)(3) to make this rule effective upon publication.

### Statutory Authority

The National Wildlife Refuge System Administration Act of 1966 (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act), (16 U.S.C. 668dd-668ee) and the Refuge Recreation Act of 1962 (16 U.S.C. 460k-460k-4) (Recreation Act) govern the administration and public use of refuges. In addition, the Migratory Bird Treaty Act (16 U.S.C. 703-711) grants authority for management of migratory birds and the closing of any areas to migratory bird hunting.

The Migratory Bird Treaty Act (MBTA) designates the protection of migratory birds as a Federal responsibility. The MBTA enables the setting of seasons, and other regulations including the closing of areas, Federal and non-Federal, to the hunting of migratory birds. You can find regulations stemming from the MBTA pertaining to migratory bird hunting in 50 CFR part 20.

This document codifies in the Code of Federal Regulations amended hunting and sport fishing regulations that are applicable to the Upper Mississippi River National Wildlife and Fish Refuge. We are amending these regulations to implement the refuge CCP, better inform the general public of the regulations at

the refuge, increase understanding and compliance with these regulations, and make enforcement of these regulations more efficient. In addition to finding these regulations in 50 CFR part 32, visitors will find them reiterated in literature distributed by the refuge and posted on signs at major access points. Visitors will also find the boundaries of closed areas or other restricted-use areas referenced in this document marked by specific signs.

**Regulatory Planning and Review**

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination on the following four criteria:

- (a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.
- (b) Whether the rule will create inconsistencies with other Federal agencies' actions.
- (c) Whether the rule will materially affect entitlements, grants, use fees, loan programs, or the rights and obligations of their recipients.
- (d) Whether the rule raises novel legal or policy issues.

**Regulatory Flexibility Act**

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601, *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for "significant impact" and a threshold for a "substantial number of small entities." See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

This rule does not increase the number of recreation types allowed on the refuge but amends hunting and fishing regulations on the refuge. As a result, opportunities for hunting and

fishing recreation on the refuge will remain abundant and increase over time based on analysis done in the Final EIS and CCP for the refuge.

Many small businesses within the retail trade industry (such as hotels, gas stations, taxidermy shops, bait and tackle shops, etc.) may benefit from some increased refuge visitation. A large percentage of these retail trade establishments in the majority of affected counties qualify as small businesses (see table below).

We expect that the incremental recreational opportunities will be scattered, and so we do not expect that the rule will have a significant economic effect (benefit) on a substantial number of small entities in any given community or county. We expect recreationists to spend an additional \$2 million annually in total in the refuges' local economies. As shown in the table below, this represents 0.02 percent of the total amount of retail expenditures in the 19-county area. For comparison purposes, the county with the smallest retail expenditure total, Buffalo County in Wisconsin, is shown. If the entire retail trade expenditures associated with the hunting and fishing regulations occurred in Buffalo County, this would amount to 3.4 percent increase in annual retail expenditures.

TABLE: COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION 2009–2010 HUNTING AND FISHING REGULATIONS

	Retail Trade in 2002	Change Due to 2009–2010 Hunting and Fishing Regulations (15-year span of CCP)	Change as Percent of Total Retail Trade	Total Number of Retail Establishments	Establishments with fewer than 10 Employees
19-County Area	\$9.8 billion	\$1,999,216	0.02%	24,878	17,957
Buffalo County, WI	\$58.3 million	\$1,999,216	3.4%	350	290

**Small Business Regulatory Enforcement Fairness Act**

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no significant employment or small business effects. This rule:

- a. Would not have an annual effect on the economy of \$100 million or more. By the end of the 15-year CCP lifespan, the additional fishing and hunting opportunities on the refuge would generate an additional \$2 million in angler and hunter expenditures with an economic impact estimated at \$2.5 million per year (2003 dollars). Consequently, the maximum benefit of

this rule for businesses both small and large would not be sufficient to make this a major rule. The impact would be scattered across 19 counties and would most likely not be significant in any local area.

- b. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. We do not expect this rule to affect the supply or demand for fishing and hunting opportunities in the United States, and, therefore, it should not affect prices for fishing and hunting equipment and supplies, or the retailers that sell equipment.

- c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule represents only a small proportion of recreational spending of a small number of affected hunters. Therefore, this rule would have virtually no economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of over \$72 billion nationwide.

**Unfunded Mandates Reform Act**

Since this rule would apply to public use of federally owned and managed

refuges, it would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

#### **Takings (E.O. 12630)**

In accordance with E.O. 12630, this rule would not have significant takings implications. This rule would affect only visitors to the refuge and describe what they can do while they are on the refuge.

#### **Federalism (E.O. 13132)**

As discussed in the Unfunded Mandates Reform Act section above, this rule would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment under E.O. 13132. In preparing the CCP for the refuge, we worked closely with the four States bordering the refuge, and this rule reflects the CCP.

#### **Civil Justice Reform (E.O. 12988)**

In accordance with E.O. 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. This rule would clarify established regulations and result in better understanding of the regulations by refuge visitors.

#### **Energy Supply, Distribution or Use (E.O. 13211)**

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is a modification of an existing hunting and fishing program on the refuge, we do not expect it to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

#### **Consultation and Coordination with Indian Tribal Governments (E.O. 13175)**

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on national wildlife refuges with Tribal governments having adjoining or

overlapping jurisdiction before we propose changes to the regulations. During scoping and preparation of the Final EIS, we contacted 35 Indian tribes to inform them of the process and seek their comments. Only the Iowa Tribe of Oklahoma provided comment on the Draft EIS, saying they have an historic presence in counties adjacent to the refuge, and they wish to be kept informed of any artifact discoveries as we implement refuge plans. We replied in the Final EIS that we appreciated their interest in the refuge and would keep them informed of any cultural resource issues and discoveries.

#### **Paperwork Reduction Act**

This rule does not contain any information collection requirements other than those already approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (OMB Control Numbers 1018-0102 and 1018-0140). See 50 CFR 25.23 for information concerning that approval. An 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.

#### **Endangered Species Act Section 7 Consultation**

During preparation of the Final EIS, we completed a section 7 consultation and determined that the preferred alternative, which included hunting and fishing changes reflected in this rule, is not likely to adversely affect individuals of listed or candidate species or designated critical habitat of such species. The Service's Ecological Services Office concurred with this determination. The listed species on the refuge is the Higgins eye mussel; candidate species are the Eastern massasauga and spectaclecase and sheepsnose mussels. A copy of the section 7 evaluation and accompanying biological assessment is available from the refuge at the locations listed in the "Available Information for Specific Districts of the Refuge" section of this document.

#### **National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*)**

Concerning the actions that are the subject of this rulemaking, we have complied with NEPA through the preparation of a Final EIS and Record of Decision, which include the major hunting changes reflected in this rule. An Environmental Assessment (EA) was prepared for the 75-acre No Hunting and Trapping Zone on Brice Prairie near Pool 7. The NEPA documents are

available on or through our website at <http://www.fws.gov/midwest/UpperMississippiRiver/>. Then click on Current Topics on the left, which will bring you to the Mathy Tract EA.

#### **Primary Author**

Don Hultman, Refuge Manager, Upper Mississippi River National Wildlife and Fish Refuge, is the primary author of this rulemaking document.

#### **List of Subjects**

50 CFR Part 25

Administrative practice and procedure, Concessions, Reporting and recordkeeping requirements, Safety, Wildlife refuges.

50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

#### **Regulation Promulgation**

■ For the reasons set forth in the preamble, we amend title 50, Chapter I, subchapter C of the Code of Federal Regulations as follows:

#### **PART 25—[AMENDED]**

■ 1. The authority citation for part 25 continues to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i, 3901 *et seq.*; and Pub. L. 102-402, 106 Stat. 11961.

■ 2. Revise § 25.23 to read as follows:

#### **§ 25.23 What are the general regulations and information collection requirements?**

The Office of Management and Budget has approved the information collection requirements contained in subchapter C, parts 25, 32, and 36 under 44 U.S.C. 3501 *et seq.* and assigned the following control numbers: 1018-0014 for Special Use Permit Applications on National Wildlife Refuges in Alaska; 1018-0102 for Special Use Permit Applications on National Wildlife Refuges Outside Alaska; and 1018-0140 for Hunting and Fishing Application Forms and Activity Reports for National Wildlife Refuges. We collect information to assist us in administering our programs in accordance with statutory authorities that require that recreational or other uses be compatible with the primary purposes for which the areas were established. Send comments on any aspect of these forms to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222 ARLSQ, Washington, DC 20240.

**PART 32—[AMENDED]**

■ 3. The authority citation for part 32 continues to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i.

■ 4. Amend § 32.42 Minnesota by revising paragraphs A.2., A.3., A.4., and A.6. of Upper Mississippi River National Wildlife and Fish Refuge to read as follows:

**§ 32.42 Minnesota.**

\* \* \* \* \*

**Upper Mississippi River National Wildlife and Fish Refuge**

*A. Migratory Game Bird Hunting.* \* \* \*

\* \* \* \* \*

2. In areas posted and shown on maps as “No Entry—Sanctuary,” we prohibit migratory bird hunting at all times and all public entry except as specified. These areas are named and located as follows:

- i. Pool Slough, Pool 9, Minnesota/Iowa, 1,126 acres.
- ii. Bertom Island, Pool 11, Wisconsin, 31 acres.
- iii. Guttenberg Ponds, Pool 11, Iowa, 252 acres.
- iv. Spring Lake, Pool 13, Illinois, 3,697 acres.

3. In areas posted and shown on maps as “Area Closed” and “Area Closed—No Motors,” we prohibit migratory bird hunting at all times. We ask that you practice voluntary avoidance of these areas by any means or for any purpose from October 15 to the end of the respective State duck season. In areas also marked “no motors,” we prohibit the use of motors on watercraft from October 15 to the end of the respective State duck season. These “Area(s) Closed” are named and located as follows:

- i. Big Lake, Pool 4, Wisconsin, 2,210 acres.

- ii. Weaver Bottoms/Lost Island, Pool 5, Minnesota/Wisconsin, 3,508 acres.
  - iii. Polander Lake, Pool 5A, Minnesota/Wisconsin, 1,873 acres.
  - iv. Lake Onalaska, Pool 7, Wisconsin, 7,366 acres (voluntary avoidance on 3,365 acres until mid-November).
  - v. Wisconsin Islands, Pool 8, Minnesota/Wisconsin, 6,538 acres.
  - vi. Harpers Slough, Pool 9, Iowa/Wisconsin, 5,209 acres.
  - vii. Wisconsin River Delta, Pool 10, Wisconsin, 1,414 acres (closed November 1 to end of duck season).
  - viii. 12-Mile Island, Pool 11, Iowa, 1,139 acres.
  - ix. Bertom—McCartney, Pool 11, Wisconsin, 2,384 acres (no voluntary avoidance provision).
  - x. Pleasant Creek, Pool 13, Iowa, 2,191 acres.
  - xi. Elk River, Pool 13, Iowa, 1,248 acres.
- The “Area(s) Closed—No Motors” are named and located as follows:
- xii. Peterson Lake, Pool 4, Wisconsin 572 acres.
  - xiii. Rieck’s Lake, Pool 4, Wisconsin, 499 acres.
  - xiv. Spring Lake, Pool 5, Wisconsin, 254 acres.
  - xv. Sturgeon Slough, Pool 10, Wisconsin, 340 acres.
  - xvi. 12-Mile Island, Pool 10, Iowa, 540 acres.
  - xvii. John Deere Marsh, Pool 11, Iowa, 439 acres.
  - xviii. Kehough Slough, Pool 12, Illinois, 333 acres.
  - xiv. Beaver Island, Pool 14, Iowa, 864 acres.

4. In areas posted and shown on maps as “No Hunting Zone” or “No Hunting or Trapping Zone,” we prohibit migratory bird hunting at all times. These areas are named and located as follows:

- i. Buffalo River, Pool 4, Wisconsin, 219 acres.

- ii. Fountain City Bay, Pool 5A, Wisconsin, 24 acres.
- iii. Upper Halfway Creek Marsh, Pool 7, Wisconsin, 143 acres.
- iv. Mathy Tract (Brice Prairie), Pool 7, Wisconsin, 75 acres.
- v. Hunter’s Point, Pool 8, Wisconsin, 82 acres.
- vi. Goose Island, Pool 8, Wisconsin, 984 acres (also no motors and voluntary avoidance as in condition A3).
- vii. Sturgeon Slough, Pool 10, Wisconsin, 66 acres.
- viii. Goetz Island Trail, Pool 11, Iowa, 31 acres.
- ix. Crooked Slough Backwater, Pool 13, Illinois, 2,453 acres.
- x. Crooked Slough Proper, Pool 13, Illinois, 270 acres.
- xi. Frog Pond, Pool 13, Illinois, 64 acres.
- xii. Ingersoll Learning Center, Pool 13, Illinois, 41 acres.

\* \* \* \* \*

6. You must immediately make a reasonable attempt to retrieve downed waterfowl unless the bird lies in plain sight of you, is clearly dead, and there is no risk of the bird drifting off due to wind or current. You may retrieve dead or wounded game from areas posted “Area Closed,” “No Hunting Zone,” and “No Hunting or Trapping Zone” provided you do not attempt to chase birds from the area. You may not use a motor to aid in the retrieval of game in areas posted “Area Closed—No Motors.” You may not retrieve birds or other game from areas posted “No Entry—Sanctuary.”

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Dated: August 6, 2009.

**Jane Lyder,**

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

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