

(b) *Application.* This section applies to the ten States that have had the most highway-rail grade crossing collisions, on average, during the calendar years 2006, 2007, and 2008. FRA will notify these ten States prior to November 2, 2009.

(c) *Action Plans.* (1) The ten identified States shall each develop a State highway-rail grade crossing action plan and submit such a plan to FRA for review and approval not later than November 2, 2010.

(2) A State highway-rail grade crossing action plan shall:

(i) Identify specific solutions for improving safety at crossings, including highway-rail grade crossing closures or grade separations;

(ii) Focus on crossings that have experienced multiple accidents or are at high risk for such accidents; and

(iii) Cover a five-year time period.

(d) *Review and Approval.* (1) State highway-rail grade crossing action plans required under paragraph (c) of this section shall be submitted for FRA review and approval using at least one of the following methods: mail to the Associate Administrator for Railroad Safety/Chief Safety Officer, U.S. Department of Transportation, Federal Railroad Administration, 1200 New Jersey Ave., SE., W12-140, Washington, DC 20590; or e-mail to [rrs.correspondence@fra.dot.gov](mailto:rrs.correspondence@fra.dot.gov).

(2) FRA will review and approve or disapprove a State highway-rail grade crossing action plan submitted pursuant to paragraph (d) of this section within 60 days of receipt.

(3) If the proposed State highway-rail grade crossing action plan is disapproved, FRA will notify the affected State as to the specific areas in which the proposed plan is deficient. A State shall correct all deficiencies within 30 days following receipt of written notice from FRA.

(4) FRA may condition the awarding of any grants under 49 U.S.C. 20158, 20167, or 22501 to an identified State on the development of such State's highway-rail grade crossing action plan.

Issued in Washington, DC, on August 27, 2009.

**Joseph C. Szabo,**

*Administrator, Federal Railroad Administration.*

[FR Doc. E9-21089 Filed 9-1-09; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

[FWS-R9-MB-2009-0124]  
[91200-1231-9BPP-L2]

RIN 1018-AW31

#### Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2009-10 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, 2009.

**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, VA or at <http://www.regulations.gov>.

**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 11, 2009, **Federal Register** (74 FR 40138), we proposed special migratory bird hunting regulations for the 2009-10 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 10, 2009, **Federal Register** (74 FR 16339), we requested that tribes desiring special hunting regulations in the 2009-10 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 doves. 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 street address indicated under **ADDRESSES** or from our website <http://www.fws.gov/migratorybirds/NewsPublicationsReports.html>.

#### 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 cover over 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 during the 2009 Waterfowl Breeding Population and Habitat Survey were characterized by above-average moisture across the southern portions of the traditional survey area, good habitat in the eastern survey area, and late spring conditions across northern survey areas. The total pond estimate (prairie Canada and United States combined) was  $6.4 \pm 0.2$  million. This was 45 percent above last year's estimate of  $4.4 \pm 0.2$  million ponds and 31 percent above the long-term average of  $4.9 \pm 0.03$  million ponds. The 2009 estimate of ponds in prairie Canada was  $3.6 \pm 0.1$  million. This was a 17 percent increase from last year's estimate ( $3.1 \pm 0.1$  million) and was similar to the long-term average ( $3.4 \pm 0.03$  million). The 2009 pond estimate for the northcentral United States of  $2.9 \pm 0.1$  million was 108 percent above last year's estimate ( $1.4 \pm 0.07$  million) and 87 percent above the long-term average ( $1.5 \pm 0.02$  million).

#### 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  $42.0 \pm 0.7$  [SE] million birds. This estimate represents a 13 percent increase over last year's estimate of  $37.3 \pm 0.6$  million birds and was 25 percent above the long-term average (1955–2008).

Estimated mallard (*Anas platyrhynchos*) abundance was  $8.5 \pm 0.2$  million birds, which was a 10 percent increase over last year's estimate of  $7.7 \pm 0.3$  million birds and 13 percent above the long-term average. Estimated abundance of gadwall (*A. strepera*;  $3.1 \pm 0.2$  million) was similar to the 2008 estimate and 73 percent above the long-term average. Estimated American wigeon abundance (*A. americana*;  $2.5 \pm 0.1$  million) was similar to 2008 and the long-term average. Estimated abundances of green-winged teal (*A. crecca*;  $3.4 \pm 0.2$  million) and blue-winged teal (*A. discors*;  $7.4 \pm 0.4$  million) were similar to last year's estimates and well above their long-term averages (+79 percent and +60 percent, respectively). Northern shovelers (*A. clypeata*;  $4.4 \pm 0.2$  million) were 25 percent above the 2008 estimate and remain well above their long-term average (+92 percent). The estimate for northern pintails (*A. acuta*) was  $3.2 \pm 0.2$  million, which was 23 percent above the 2008 estimate of  $2.6 \pm 0.1$  million, and 20 percent below the long-term average. Estimated abundance of redheads (*Aythya americana*;  $1.0 \pm 0.1$  million) was similar to last year and 62 percent above the long-term average. The canvasback estimate (*A. valisineria*;  $0.7 \pm 0.06$  million) was 35 percent above the 2008 estimate ( $0.5 \pm 0.05$  million) and similar to the long-term average. The scaup estimate (*A. affinis* and *A. marila* combined;  $4.2 \pm 0.2$  million) was similar to that of 2008 and 18 percent below the long-term average of  $5.1 \pm 0.05$  million.

The eastern survey area was reestratified in 2005 and is now composed of strata 51–72. Estimates of mallards, scaup, scoters (black [*Melanitta nigra*], white-winged [*M. fusca*], and surf [*M. perspicillata*]), green-winged teal, American wigeon, bufflehead (*Bucephala albeola*), American black duck (*Anas rubripes*), ring-necked duck (*Aythya collaris*), mergansers (red-breasted [*Mergus serrator*], common [*M. merganser*], and hooded [*Lophodytes cucullatus*]), and goldeneye (common [*B. clangula*] and Barrow's [*B. islandica*]) all were similar to their 2008 estimates and long-term averages.

#### Fall Flight Estimate

The mid-continent mallard population is composed of mallards from the traditional survey area (revised in 2008 to exclude Alaska mallards),

Michigan, Minnesota, and Wisconsin, and was estimated to be  $10.3 \pm 0.9$  million in 2009. This was similar to the 2008 estimate of  $9.2 \pm 0.8$  million.

#### 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*). In May of 2009, temperatures were 1–5 degrees Celsius colder than average throughout the central region of subarctic and Arctic Canada. In some locales harsh spring conditions persisted into June. In areas near Hudson Bay and the Queen Maud Gulf, goose and swan nesting activities were delayed by 1 to 3 weeks. In contrast, nesting conditions were favorable near Wrangel Island, Alaska's North Slope and eastern interior regions, parts of the Canadian high Arctic, and Newfoundland. Improved wetland abundance in the Canadian and U.S. prairies, and other temperate regions, will likely improve the production of Canada geese that nest at southern latitudes. Primary abundance indices decreased for 15 goose populations and increased for 10 goose populations in 2009 compared to 2008. Primary abundance indices for both populations of tundra swans increased in 2009 from 2008 levels. The following populations displayed significant positive trends during the most recent 10-year period ( $P < 0.05$ ): Mississippi Flyway Giant, Aleutian, Atlantic, and Eastern Prairie Canada geese; Greater, Western Arctic/Wrangel Island, and Western Central Flyway light geese; and Pacific white-fronted geese. No populations showed a significant negative 10-year trend. The forecast for the production of geese and swans in North America for 2009 is regionally variable, but production for many populations will be reduced this year due to harsh spring conditions in much of central Canada.

#### Waterfowl Harvest and Hunter Activity

National surveys of migratory bird hunters were conducted during the 2007 and 2008 hunting seasons. About 1.2 million waterfowl hunters harvested 14,578,900 ( $\pm 4\%$ ) ducks and 3,666,100 ( $\pm 6\%$ ) geese in 2007, and harvested 13,635,700 ( $\pm 4\%$ ) ducks and 3,792,600 ( $\pm 5\%$ ) geese in 2008. Mallard, green-winged teal, gadwall, wood duck (*Aix sponsa*), and American wigeon were the 5 most-harvested duck species in the United States, and Canada goose was

the predominant goose species in the goose harvest. Coot hunters (about 33,700 in 2007 and 31,100 in 2008) harvested 198,300 ( $\pm 29\%$ ) coots in 2007 and 275,900 ( $+43\%$ ) in 2008.

### Comments and Issues Concerning Tribal Proposals

For the 2009–10 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; 23 tribes have proposals with early seasons. The comment period for the proposed rule, published on August 11, 2009, closed on August 21, 2009. Because of the necessary brief comment period, we will respond to any comments on the proposed rule and/or these regulations postmarked by August 21, but not received prior to final action by us, in the September late-season final rule. At this time, we have not received any comments.

### NEPA Consideration

NEPA considerations are covered by the programmatic document “Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14),” filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled “Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands” is available from the street address indicated under the caption **ADDRESSES**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). A scoping report summarizing the scoping comments and scoping meetings is available by either writing to the street address indicated under **ADDRESSES** or by viewing on our website at <http://www.fws.gov/migratorybirds/>.

### 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 the Section 7 Consultation on the Proposed 2009–10 Migratory Game Bird Hunting Regulations (dated August 24, 2009). The consultation concluded that the 2009-10 regulations are not likely to jeopardize the continued existence of either the whooping crane or Steller’s eider. To prevent take of whooping cranes, the Contingency Plan for Federal-State Cooperative Protection of whooping cranes provides a protective program in thirteen States. In addition, the State of Kansas will implement specific restrictions to avoid accidental shootings. To prevent take of Steller’s eiders, the 2009–10 regulations include the continued implementation of measures initiated and outlined under the 2009 Alaska migratory bird subsistence regulations. These measures include Service initiated conservation measures that increase migratory bird hunter outreach prior to the opening of the hunting season, increased Service enforcement of migratory bird regulations, and conducting in-season harvest verification of Steller’s eider mortality and injury. Additionally, any modifications resulting from this consultation 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 Division of Migratory Bird Management, at the street address indicated under **ADDRESSES**.

### Executive Order 12866

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule

under Executive Order 12866. OMB bases its determination of regulatory significance upon 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, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

An Economic Analysis was prepared for the 2008–09 season. This analysis was based on data from the 2006 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimates consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) Issue restrictive regulations allowing fewer days than those issued during the 2007–08 season, (2) Issues moderate regulations allowing more days than those in alternative 1, and (3) Issue liberal regulations identical to the regulations in the 2007–08 season. For the 2008–09 season, we chose alternative 3, with an estimated consumer surplus across all flyways of \$205–\$270 million. For the upcoming 2009–10 season, we again considered these three alternatives and again chose alternative 3 for ducks. We made minor modifications to the season frameworks for some other species, but these do not significantly change the economic impacts of the rule, which were not quantified for other species. For these reasons, we have not conducted a new Economic Analysis, but the 2008–09 analysis is part of the record for this rule and is available at <http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs> or at <http://www.regulations.gov>.

### Regulatory Flexibility Act

The 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. 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, 2004, and 2008. 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 2008 Analysis was based on the 2006 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 approximately \$1.2 billion at small businesses in 2008. Copies of the Analysis are available upon written request from the street address indicated under **ADDRESSES** or from our website at <http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs> or at <http://www.regulations.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, it has an annual effect on the economy of \$100 million or more.

#### **Paperwork Reduction Act**

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). 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 our Migratory Bird Surveys and assigned control number 1018-0023 (expires 2/28/2011). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska, and assigned control number 1018-0124 (expires 1/31/2010). 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 rule, has determined that it 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 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**

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this 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.

#### **Government-to-Government Relationship with Tribes**

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, in the April 10 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2009-10 migratory bird hunting season. The resulting proposals were contained in an August 11 proposed rule (74 FR 40138). By virtue of these actions, we have consulted with Tribes affected by this rule.

#### **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.

#### **Regulations Promulgation**

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, Tribes would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703-711), these regulations will take effect immediately upon publication.

**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:** Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703-712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a-j; Pub. L. 106-108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

(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, 2009; then open November 15, through December 29, 2009.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or 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, 2009, through March 9, 2010.

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

**Ducks:****1854 and 1837 Ceded Territories:**

Season Dates: Begin September 19 and end November 29, 2009.

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

**Reservation:**

Season Dates: Begin September 5 and end November 29, 2009.

Daily Bag Limit: 12 ducks, including no more than 8 mallards (only 2 of which may be hens), 2 black ducks, 4 scaup, 4 redheads, 2 pintails, 4 wood ducks, and 2 canvasbacks.

**Mergansers:****1854 and 1837 Ceded Territories:**

Season Dates: Begin September 19 and end November 29, 2009.

Daily Bag Limit: 15 mergansers, including no more than 6 hooded mergansers.

**Reservation:**

Season Dates: Begin September 5 and end November 29, 2009.

Daily Bag Limit: 10 mergansers, including no more than 4 hooded mergansers.

**Canada Geese: All Areas:**

Season Dates: Begin September 1 and end November 29, 2009.

Daily Bag Limit: 20 geese.

Coots and Common Moorhens (Common Gallinules):

**1854 and 1837 Ceded Territories:**

Season Dates: Begin September 19 and end November 29, 2009.

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

**Reservation:**

Season Dates: Begin September 5 and end November 29, 2009.

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

**Sora and Virginia Rails:****1854 and 1837 Ceded Territories:**

Season Dates: Begin September 1 and end November 29, 2009.

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

**Reservation:**

Season Dates: Begin September 1 and end December 2, 2009.

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

**Common Snipe: All Areas:**

Season Dates: Begin September 1 and end November 29, 2009.

Daily Bag Limit: Eight common snipe.

**Woodcock: All Areas:**

Season Dates: Begin September 1 and end November 29, 2009.

Daily Bag Limit: Three woodcock.

**Mourning dove: All Areas:**

Season Dates: Begin September 1 and end October 30, 2009.

Daily Bag Limit: 30 mourning dove.

**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. These 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 bag or possession limit.

(d) *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 20, 2009, through January 18, 2010.

Daily Bag Limit: 15 ducks, which may include no more than 3 pintail, 3 canvasback, 3 black ducks, 1 hooded merganser, 5 wood ducks, 3 redheads, and 7 mallards (only 3 of which may be hens).

#### Canada and Snow Geese

Season Dates: Open September 1, through November 30, 2009; and open January 1, 2010, through February 8, 2010.

Daily Bag Limit: 10 geese.

#### Other Geese (white-fronted geese and brant)

Season Dates: Open September 20, through November 30, 2009.

Daily Bag Limit: Five geese.

#### Sora Rails, Common Snipe, and Woodcock

Season Dates: Open September 1, through November 14, 2009.

Daily Bag Limit: 10 rails, 10 snipe, and 5 woodcock.

#### Mourning Doves

Season Dates: Open September 1, through November 14, 2009.

Daily Bag Limit: 10 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.

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

#### Ducks:

Wisconsin and Minnesota 1837 and 1842 Treaty Areas:

Season Dates: Begin September 15 and end December 31, 2009.

Daily Bag Limit: 30 ducks, including no more than 5 black ducks, 5 pintails, and 5 canvasbacks.

#### Michigan 1836 Treaty Area:

Season Dates: Begin September 15 and end December 31, 2009.

Daily Bag Limit: 20 ducks, including no more than 5 black ducks, 5 pintails, and 5 canvasbacks.

#### Mergansers: All Ceded Areas:

Season Dates: Begin September 15 and end December 31, 2009.

Daily Bag Limit: 10 mergansers.

#### Geese: All Ceded Areas:

Season Dates: Begin September 1 and end December 31, 2009. In addition, any portion of the ceded territory that is open to State-licensed hunters for goose hunting after December 1 will also be open concurrently for tribal members.

Daily Bag Limit: 20 geese in aggregate.

#### Other Migratory Birds:

#### Coots and Common Moorhens (Common Gallinules):

Season Dates: Begin September 15 and end December 31, 2009.

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

#### Sora and Virginia Rails:

Season Dates: Begin September 15 and end December 31, 2009.

Daily Bag Limits: 20 Sora and Virginia rails, singly or in the aggregate.

Possession Limit: 25.

#### Common Snipe:

Season Dates: Begin September 15 and end December 31, 2009.

Daily Bag Limit: 16 common snipe.

#### Woodcock:

Season Dates: Begin September 8 and end December 1, 2009.

Daily Bag Limit: 10 woodcock.

#### Mourning Dove: 1837 and 1842 Ceded Territories.

Season Dates: Begin September 1 and end November 9, 2009.

Daily Bag Limit: 15.

#### General Conditions

1. All tribal members will be required to obtain 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 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. Chapter 10 in each of these model codes regulates ceded territory migratory bird hunting. Both versions of Chapter 10 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 contained in 50 CFR part 20.

3. Particular regulations of note include:

i. Nontoxic shot is required for all off-reservation waterfowl hunting by tribal members.

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

iii. 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 bag or possession limit.

iv. The baiting restrictions included in section 10.05(2)(h) of the model ceded territory conservation code will be amended to include language which parallels that in place for non-tribal members as published at 64 FR 29799, June 3, 1999.

v. The shell limit restrictions included in section 10.05(2)(b) of the model ceded territory conservation code will be removed.

vi. Hunting hours shall be from a half hour before sunrise to 15 minutes after sunset.

4. 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.

(f) *Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)*.

#### Nontribal Hunters on Reservation Geese

Season Dates: Open September 1, through September 13, 2009, for the early-season, and open October 2, 2009,

through January 31, 2010, 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 (when the State's season is open) 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, 2009, through January 31, 2010.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 2 pintail, 1 canvasback, 3 scaup, and 2 redheads. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, 2009, through January 31, 2010.

Daily Bag Limit: 6 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.

(g) *Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only)*.

Ducks

Season Dates: Open September 19, through December 31, 2009.

Daily Bag Limits: 10 ducks.

Geese

Season Dates: Open September 1, through December 31, 2009.

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.

(h) *Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only)*.

Ducks

Season Dates: Open September 15, 2009, through January 20, 2010.

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, 2009, through February 8, 2010.

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, 2009.

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, 2009.

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

General:

1. All tribal members are required to obtain a valid tribal resource card and 2009-10 hunting license.

2. 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.

3. Particular regulations of note include:

i. Nontoxic shot will be required for all waterfowl hunting by tribal members.

ii. 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.

iii. 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.

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

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

Ducks

Season Dates: Open September 15, 2009, through December 31, 2009.

Daily Bag Limits: 20 ducks, including no more than 5 black ducks, 5 redheads,

5 wood ducks, 5 pintail, 5 hooded merganser, and 5 canvasback.

Coots and Gallinules

Season Dates: Open September 1, 2009, through December 31, 2009.

Daily Bag Limits: 20.

Canada Geese

Season Dates: Open September 1, 2009, through February 8, 2010.

Daily Bag Limit: 20.

White-fronted Geese, Snow Geese, and Brant

Season Dates: Open September 1, 2009, through February 8, 2010.

Daily Bag Limit: 20 geese in aggregate.

Sora and Virginia Rails

Season Dates: Open September 1, through December 31, 2009.

Daily Bag Limit: 20.

Snipe

Season Dates: Open September 15, through December 31, 2009.

Daily Bag Limit: 16.

Mourning Doves

Season Dates: Open September 1, through November 9, 2009.

Daily Bag Limit: 15.

Woodcock

Season Dates: Open September 5, through December 1, 2009.

Daily Bag Limit: 10.

General: Possession limits are twice the daily bag limits.

(j) *Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters)*.

Tribal Members

Ducks, Mergansers and Coots

Season Dates: Open September 20, 2009, through March 10, 2010.

Daily Bag and Possession Limits: Five ducks, including no more than five mallards (only one of which may be a hen), two scaup, one mottled duck, two redheads, two wood ducks, one canvasback, and one pintail. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than two hooded merganser. The possession limit is twice the daily bag limit.

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

Ducks

Season Dates: Open September 19, through December 31, 2009.

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 19, through December 31, 2009.

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

#### Brant

Season Dates: Open November 1, 2009, through February 15, 2010.

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

#### Coots

Season Dates: Open September 19, through December 31, 2009.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

#### Mourning Doves

Season Dates: Open September 19, through December 31, 2009.

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

#### Snipe

Season Dates: Open September 19, through December 31, 2009.

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

#### Band-tailed Pigeon

Season Dates: Open September 19, through December 31, 2009.

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

General: Tribal members must possess a tribal hunting permit from the Lower Elwha Klallam Tribe pursuant to tribal law. Hunters must observe all basic Federal migratory bird hunting regulations in 50 CFR part 20.

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

#### Band-tailed Pigeons

Season Dates: Open September 20, through October 31, 2009.

Daily Bag Limit: Two band-tailed pigeons.

#### Ducks and Coots

Season Dates: Open September 27, 2009, through January 25, 2010.

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 27, 2009, through January 25, 2010.

Daily Bag Limit: Four including no more than one brant. The seasons on Aleutian and dusky Canada geese are closed.

#### General

All other Federal regulations contained in 50 CFR part 20 apply. The following restrictions also apply: (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; (7) Shooting hours for all species of waterfowl are one-half hour before sunrise to one-half hour after sunset; and (8) Open hunting areas are: GMUs 601 (Hoko), a portion of the 602 (Dickey) encompassing the area north of a line between Norwegian Memorial and east to Highway 101, and 603 (Pysht).

(m) *Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only).*

#### Ducks (including mergansers)

Season Dates: Open September 19, through November 20, 2009, and open November 30, through December 6, 2009.

Daily Bag and Possession Limits: Six, including no more than six mallards (three hen mallards), six wood ducks, one redhead, two pintail, and one hooded merganser. The possession limit is twice the daily bag limit.

#### Geese

Season Dates: Open September 1, through November 20, 2009; and open November 30, through December 30, 2009.

Daily Bag and Possession Limits: 5 and 10 Canada geese, respectively, from September 1, through September 19, 2009; and 3 and 6 Canada geese, respectively, the remainder of the

season. Hunters will be issued five tribal tags during the early season and three tribal tags during the late season for geese in order to monitor goose harvest. An additional three tags will be issued each time birds are registered. A seasonal quota of 300 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 5, through November 8, 2009.

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

#### Dove

Season Dates: Open September 1, through November 8, 2009.

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 which 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.

(n) *Point No Point Treaty Council, Kingston, Washington (Tribal Members Only).*

#### Ducks

Season Dates: Open September 1, 2009, through March 10, 2010.

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 15, 2009, through March 10, 2010.

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

## Brant

Season Dates: Open November 1, 2009, through March 10, 2010.

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

## Coots

Season Dates: Open September 1, 2009, through March 10, 2010.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

## Mourning Doves

Season Dates: Open September 1, 2009, through January 31, 2010.

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

## Snipe

Season Dates: Open September 1, 2009, through March 10, 2010.

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

## Band-tailed Pigeon

Season Dates: Open September 1, 2009, through March 10, 2010.

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

General: Tribal members must possess a tribal hunting permit from the Point No Point Tribal Council pursuant to tribal law. Hunting hours are from one-half hour before sunrise to sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

*(o) Sault Ste. Marie Tribe of Chippewa Indians, Sault Ste. Marie, Michigan (Tribal Members Only).*

## Ducks and Mergansers

Season Dates: Open September 15, through December 31, 2009.

Daily Bag and Possession Limits: 20 ducks, including no more than 5 hen mallards, 5 black ducks, 5 canvasback, 5 wood ducks, and 10 mergansers. Possession limit is twice the daily bag limit.

## Geese

Season Dates: Open September 1, through December 31, 2009.

Daily Bag and Possession Limits: 20 geese in the aggregate. Possession limit is twice the daily bag limit.

## Coots

Season Dates: Open September 1, through December 31, 2009.

Daily Bag and Possession Limits: 20 and 40 coots, respectively.

## Mourning Doves

Season Dates: Open September 1, through November 14, 2009.

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

## Snipe

Season Dates: Open September 15, through December 31, 2009.

Daily Bag and Possession Limits: 16 and 32 snipe, respectively.

## Woodcock

Season Dates: Open September 2, through December 1, 2009.

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

## Sora and Virginia Rails

Season Dates: Open September 1, through December 31, 2009.

Daily Bag and Possession Limits: 20 and 20 Sora and Virginia rails in the aggregate, respectively.

General: Tribal members must possess a tribal hunting permit from the Sault Ste. Marie Tribe pursuant to tribal law. Shooting hours are one-half hour before sunrise until 15 minutes after sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

*(p) Skokomish Tribe, Shelton, Washington (Tribal Members Only).*

## Ducks and Mergansers

Season Dates: Open September 16, 2009, through February 28, 2010.

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

## Geese

Season Dates: Open September 16, 2009, through February 28, 2010.

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

## Brant

Season Dates: Open November 1, 2009, through February 15, 2010.

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

## Coots

Season Dates: Open September 16, 2009, through February 28, 2010.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

## Mourning Doves

Season Dates: Open September 16, 2009, through February 28, 2010.

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

## Snipe

Season Dates: Open September 16, 2009, through February 28, 2010.

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

## Band-tailed Pigeon

Season Dates: Open September 16, 2009, through February 28, 2010.

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.

*(q) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only).*

## Ducks

Season Dates: Open September 1, 2009, through January 15, 2010.

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, 2009, through January 15, 2010.

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, 2009.

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

## Coots

Season Dates: Open September 1, 2009, through January 15, 2010.

Daily Bag Limits: 25 coots.

## Snipe

Season Dates: Open September 15, 2009, and through January 15, 2010.

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

## Band-tailed Pigeons

Season Dates: Open September 1, through December 31, 2009.

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.

(r) *Spokane Tribe of Indians, Spokane Indian Reservation, Wellpinit, Washington (Tribal Members Only)*.

#### Ducks

Season Dates: Open September 1, 2009, through January 31, 2010.

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

#### Geese

Season Dates: Open September 1, 2009, through January 31, 2010.

Daily Bag and Possession Limits: Four dark geese and six light geese. Possession limit is twice the daily bag limit.

(s) *Tulalip Tribes, Tulalip, Washington (Tribal Members Only)*.

#### Ducks

Season Dates: Open September 15, 2009, through February 28, 2010.

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

#### Geese

Season Dates: Open September 15, 2009, through February 28, 2010.

Daily Bag and Possession Limits: Seven geese. Possession limit is twice the daily bag limit.

#### Brant

Season Dates: Open September 15, 2009, through February 28, 2010.

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

#### Coots

Season Dates: Open September 15, 2009, through February 28, 2010.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

#### Snipe

Season Dates: Open September 15, 2009, and through January 15, 2010.

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

General Conditions: All tribal hunters must have a valid Tribal ID card on his or her person while hunting. Shooting

hours are one-half hour before sunrise to sunset, and steel shot is required for all migratory bird hunting. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(t) *Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only)*.

#### Mourning Dove

Season Dates: Open September 1, through December 31, 2009.

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.

(u) *Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)*.

#### Canada Geese

Season Dates: Open September 14, and through September 28, 2009, and open October 29, 2009, through February 25, 2010.

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

#### Snow Geese

Season Dates: Open September 8, 2009, and through September 22, 2009, and October 29, 2009, through February 25, 2010.

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.

(v) *White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only)*.

#### Ducks and Mergansers

Season Dates: Open September 20, through December 19, 2009.

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 26, 2009, and open September 27, through December 19, 2009.

Daily Bag Limit: Eight geese through September 26 and five thereafter.

#### Coots

Season Dates: Open September 1, through November 30, 2009.

Daily Bag Limit: 20 coots.

#### Sora and Virginia Rails

Season Dates: Open September 1, through November 30, 2009.

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

#### Common Snipe and Woodcock

Season Dates: Open September 1, through November 30, 2009.

Daily Bag Limit: 10 snipe and 10 woodcock.

#### Mourning Dove

Season Dates: Open September 1, through November 30, 2009.

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.

(w) *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 and Y-10 in Wildlife Management Unit 7, only)

Season Dates: Open September 1, through September 15, 2009.

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

Mourning Doves (Wildlife Management Unit 10 and areas south of Y-70 and Y-10 in Wildlife Management Unit 7, only)

Season Dates: Open September 1, through September 15, 2009.

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 27, 2009.

**Thomas L. Strickland,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E9-21168 Filed 8-28-09; 4:15 pm]

BILLING CODE 4310-55-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 226

[Docket No. 070717355-91122-02]

RIN 0648-AV74

#### Endangered and Threatened Species; Critical Habitat for the Endangered Distinct Population Segment of Smalltooth Sawfish

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

**ACTION:** Final rule.

**SUMMARY:** We, the National Marine Fisheries Service (NMFS), issue a final rule to designate critical habitat for the U.S. distinct population segment (DPS) of smalltooth sawfish (*Pristis pectinata*), which was listed as endangered on April 1, 2003, under the Endangered Species Act (ESA). The critical habitat consists of two units: the Charlotte Harbor Estuary Unit, which comprises approximately 221,459 acres of coastal habitat; and the Ten Thousand Islands/ Everglades Unit (TTI/E), which comprises approximately 619,013 acres of coastal habitat. The two units are located along the southwestern coast of Florida between Charlotte Harbor and Florida Bay.

**DATES:** This rule becomes effective October 2, 2009.

**ADDRESSES:** The final rule, Final Regulatory Flexibility Analysis, and Final 4(b)(2) Report used in preparation of this final rule, as well as comments and information received, are available on the NMFS Web site at <http://www.sefo.noaa.gov/>, or <http://www.regulations.gov>, or by contacting the National Marine Fisheries Service's Southeast Regional Office, 263 13th Avenue, South, St. Petersburg, FL 33701.

**FOR FURTHER INFORMATION CONTACT:** Shelley Norton, NMFS, Southeast Regional Office, at 727-824-5312; or Lisa Manning, NMFS, Office of Protected Resources, at 301-713-1401.

**SUPPLEMENTARY INFORMATION:**

#### Background

Under the ESA, we are responsible for determining whether certain species are threatened or endangered and for designating critical habitat for such species (16 U.S.C. 1533). On April 1, 2003, we listed the U.S. DPS of smalltooth sawfish ("the species") as endangered (68 FR 15674). At the time of listing, we also announced that critical habitat was not then determinable because we were completing ongoing studies necessary for the identification of specific habitats and environmental features important for the conservation of the species. Subsequently, we have sponsored additional research on the species, its habitat use, and its conservation needs. Additionally, NMFS has developed a recovery plan (NMFS, 2009) for the species pursuant to section 4(f) of the ESA. We have reviewed the best available scientific data and identified specific areas in the species' occupied range on which are located those physical and biological features essential to the conservation of the species that may require special management considerations or protection. We published a proposed critical habitat designation for the smalltooth sawfish on November 20, 2008 (73 FR 70290), and requested comments by January 20, 2009. On December 9, 2008, we published a notice in the **Federal Register** (73 FR 74681) announcing the dates, times, and locations of two public hearings to receive public comments on the proposed critical habitat rule. In addition to the **Federal Register** notice announcing the public hearings, we advertised the public hearings in the local newspapers (News-Press of Ft. Myers on December 8, 2008, and in the Naples-News on December 14, 2008). During the public comment period we received several requests to extend the public comment period. On January 29, 2009, we reopened the public comment period until February 13, 2009 (74 FR 5141).

The key conservation objective we have identified for the species is the need to facilitate recruitment into the adult sawfish population by protecting juvenile nursery areas. We determined the location of nursery areas by applying a model developed for identifying elasmobranch nursery areas to smalltooth sawfish encounter data. Additionally, we determined that the habitat features essential to the conservation of the species (also known as the essential features) are red mangroves and shallow euryhaline habitats characterized by water depths

between the Mean High Water line and 3 ft (0.9 m) measured at Mean Lower Low Water (MLLW). These essential features are necessary to facilitate recruitment of juveniles into the adult population, because they provide for predator avoidance and habitat for prey in the areas currently being used as juvenile nursery areas. We determined these features may require special management considerations or protection due to human and natural impacts to the features, including development, marine construction, and storms. We proposed designating two specific areas that are nursery areas and contain the essential features necessary to the species conservation. The two areas are: the Charlotte Harbor Estuary Unit, which comprises approximately 221,459 acres (346 mi<sup>2</sup>) of coastal habitat; and the Ten Thousand Islands/ Everglades Unit (TTI/E), which comprises approximately 619,013 acres (967 mi<sup>2</sup>) of coastal habitat. The two units are located along the southwestern coast of Florida between Charlotte Harbor and Florida Bay.

#### Smalltooth Sawfish Natural History

The following discussion of the distribution, life history, and habitat use of the U.S. DPS of smalltooth sawfish is based on the best available commercial and scientific information, including information provided in the Status Review (65 FR 12959; March 10, 2000) and the Smalltooth Sawfish Recovery Plan (January 2009).

#### Distribution and Range

Smalltooth sawfish are tropical marine and estuarine elasmobranch (*e.g.*, sharks, skates, and rays) fish that are reported to have a circumtropical distribution. The historic range of the smalltooth sawfish in the United States extends from Texas to New York (NMFS, 2009). The U.S. region that has historically harbored the largest number of smalltooth sawfish is south and southwest Florida from Charlotte Harbor to the Dry Tortugas. Most historic capture records along the Atlantic coast north of Florida are from spring and summer months and warmer water temperatures. Most specimens captured along the Atlantic coast north of Florida were also large (greater than 10 ft or 3 m) adults and thought to represent seasonal migrants, wanderers, or colonizers from a core or resident population(s) to the south rather than being resident members of a continuous, even-density population (Bigelow and Schroeder, 1953). Historic records from Texas to the Florida Panhandle suggest a similar spring and summer pattern of occurrence. While less common, winter