**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 20**

**[Docket No. FWS–HQ–MB–2017–0028; FF09M21200–178–FXMB1231099BPP0]**

**RIN 1018–BB73**

## Migratory Bird Hunting; Proposed 2018–19 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals; Notice of Meetings

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

**ACTION:** Proposed rule; availability of supplemental information.

**SUMMARY:** The U.S. Fish and Wildlife Service (hereinafter the Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2018–19 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule, announces the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings, describes the proposed regulatory alternatives for the 2018–19 duck hunting seasons, and requests proposals from Indian tribes that wish to establish special migratory game bird hunting regulations on Federal Indian reservations and ceded lands. Migratory bird hunting seasons provide opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory game bird population status and habitat conditions.

**DATES:** *Comments:* You may comment on the proposed regulatory alternatives for the 2018–19 season until September 5, 2017. You may comment on the draft environmental assessment to establish a framework for general swan hunting season in the Atlantic, Mississippi, and Central Flyways until October 15, 2017. Comments on the information collection requirements must be received by September 5, 2017. Following subsequent **Federal Register** documents, you will be given an opportunity to submit comments on the proposed frameworks by January 15, 2018. Tribes must submit proposals and related comments on or before December 1, 2017.

*Meetings:* The SRC will meet to consider and develop proposed regulations for the 2018–19 migratory game bird hunting seasons on October 17–18, 2017. Meetings on both days will commence at approximately 8:30 a.m.

**ADDRESSES:** You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–MB–2017–0028.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–HQ–MB–2017–0028; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041.

We will not accept emailed or faxed comments. We will post all comments on *http://www.regulations.gov.* This generally means that your entire submission—including any personal identifying information—will be posted on the Web site. See the Public Comments section, below, for more information.

Send your comments and suggestions on the information collection requirements to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: BPHC, Falls Church, VA 22041–3803 (mail); or *info_coll@fws.gov* (email). Please reference OMB Control Number 1018–BB73 in the subject line of your comments.

*Meetings:* The October 17–18, 2017, SRC meeting will be at the U.S. Fish and Wildlife Service, 5600 American Boulevard, Bloomington, MN 55437.

**FOR FURTHER INFORMATION CONTACT:** Ron W. Kokel at: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041; (703) 358–1714.

**SUPPLEMENTARY INFORMATION:**

### New Process for the Annual Migratory Game Bird Hunting Regulations

As part of DOI's retrospective regulatory review, 2 years ago we developed a schedule for migratory game bird hunting regulations that is more efficient and provides hunting season dates much earlier than was possible under the old process. The new process makes planning much easier for the States and all parties interested in migratory bird hunting. Beginning in the summer of 2015, with the development of the 2016–17 hunting seasons, we started promulgating our annual migratory game bird hunting regulations using a new schedule that combines the previously used early- and late-season regulatory processes into a single process. We make decisions for harvest management based on predictions derived from long-term biological information and established harvest strategies and, therefore, can establish migratory bird hunting seasons much earlier than the system we used for many years. Under the new process, we develop proposed hunting season frameworks for a given year in the fall of the prior year. We then finalize those frameworks a few months later, thereby enabling the State agencies to select and publish their season dates in early summer. This proposed rule is the first in a series of proposed and final rulemaking documents for the establishment of the 2018–19 hunting seasons.

### Background and Overview

Migratory game birds are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when ''hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any * * * bird, or any part, nest, or egg'' of migratory game birds can take place, and to adopt regulations for this purpose. These regulations are written after giving due regard to ''the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds'' and are updated annually (16 U.S.C. 704(a)). This responsibility has been delegated to the Service as the lead Federal agency for managing and conserving migratory birds in the United States. However, migratory game bird management is a cooperative effort of State, Tribal, and Federal governments.

The Service develops migratory game bird hunting regulations by establishing the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. Acknowledging regional differences in hunting conditions, the Service has administratively divided the Nation into four Flyways for the primary purpose of managing migratory game birds. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State and Province in that Flyway. The Flyway Councils, established through the

Association of Fish and Wildlife Agencies, also assist in researching and providing migratory game bird management information for Federal, State, and Provincial governments, as well as private conservation entities and the general public.

The process for adopting migratory game bird hunting regulations, located in title 50 of the Code of Federal Regulations (CFR) at part 20, is constrained by three primary factors. Legal and administrative considerations dictate how long the rulemaking process will last. Most importantly, however, the biological cycle of migratory game birds controls the timing of data-gathering activities and thus the dates on which these results are available for consideration and deliberation.

For the regulatory cycle, Service biologists gather, analyze, and interpret biological survey data and provide this information to all those involved in the process through a series of published status reports and presentations to Flyway Councils and other interested parties. Because the Service is required to take abundance of migratory game birds and other factors into consideration, the Service undertakes a number of surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, and State and Provincial wildlife-management agencies. To determine the appropriate frameworks for each species, we consider factors such as population size and trend, geographical distribution, annual breeding effort, condition of breeding and wintering habitat, number of hunters, and anticipated harvest. After frameworks are established for season lengths, bag limits, and areas for migratory game bird hunting, States may select season dates, bag limits, and other regulatory options for the hunting seasons. States may always be more conservative in their selections than the Federal frameworks, but never more liberal.

**Service Migratory Bird Regulations Committee Meetings**

The SRC will conduct an open meeting on October 17–18, 2017, to review information on the current status of migratory game birds and develop 2018–19 migratory game bird regulations recommendations for these species. In accordance with Departmental policy, these meetings are open to public observation. You may submit written comments to the Service on the matters discussed. See **DATES** and **ADDRESSES** for information about these meetings.

**Announcement of Flyway Council Meetings**

Service representatives will be present at the individual meetings of the four Flyway Councils this August and September. Although agendas are not yet available, these meetings usually commence at 8 a.m. on the days indicated.

*Atlantic Flyway Council:* August 31 and September 1, 2017; The Westin Annapolis, 100 Westgate Circle, Annapolis, MD.

*Mississippi Flyway Council:* August 24–25, 2017; Park Place Hotel, 300 East State St., Traverse City, MI 49684.

*Central Flyway Council:* August 30–31, 2017; Hilton Garden Inn Manhattan and Manhattan Conference Center, 410 South 3rd Street, Manhattan, KS.

*Pacific Flyway Council:* August 25, 2017; Hotel RL Spokane at the Park, 303 W. North River Drive, Spokane, WA.

**Notice of Intent To Establish Open Seasons**

This document announces our intent to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 2018–19 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20. For the 2018–19 migratory game bird hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). We describe these proposals under Proposed 2018–19 Migratory Game Bird Hunting Regulations (Preliminary) in this document. We annually publish definitions of flyways and management units, and a description of the data used in and the factors affecting the regulatory process (see May 30, 2017, **Federal Register** (82 FR 24786) for the latest definitions and descriptions).

**Regulatory Schedule for 2018–19**

This document is the first in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations. We will publish additional supplemental proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available. Major steps in the 2018–19 regulatory cycle relating to open public meetings and **Federal Register** notifications are illustrated in the diagram at the end of this proposed rule. All publication dates of **Federal Register** documents are target dates. All sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
   - A. General Harvest Strategy
   - B. Regulatory Alternatives
   - C. Zones and Split Seasons
   - D. Special Seasons/Species Management
   - i. September Teal Seasons
   - ii. September Teal/Wood Duck Seasons
   - iii. Black Ducks
   - iv. Canvasbacks
   - v. Pintails
   - vi. Scaup
   - vii. Mottled Ducks
   - viii. Wood Ducks
   - ix. Youth Hunt
   - x. Mallard Management Units
   - xi. Other
2. Sea Ducks
3. Mergansers
4. Canada Geese
   - A. Special Early Seasons
   - B. Regular Seasons
   - C. Special Late Seasons
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Doves
17. Alaska
18. Hawaii
19. Puerto Rico
20. Virgin Islands
21. Falconry
22. Other

Later sections of this and subsequent documents will refer only to numbered items requiring your attention. Therefore, it is important to note that we will omit those items requiring no attention, so remaining numbered items will be discontinuous, making the list appear incomplete.

The proposed regulatory alternatives for the 2018–19 duck hunting seasons are contained at the end of this document. We plan to publish final regulatory alternatives in mid-August. We plan to publish proposed season frameworks in mid-December 2017. We plan to publish final season frameworks in late February 2018.

**Review of Public Comments**

This proposed rulemaking contains the proposed regulatory alternatives for the 2018–19 duck hunting seasons. This proposed rulemaking also describes

other recommended changes or specific preliminary proposals that vary from the 2017–18 regulations and issues requiring early discussion, action, or the attention of the States or tribes. We will publish responses to all proposals and written comments when we develop final frameworks for the 2018–19 season. We seek additional information and comments on this proposed rule.

**Consolidation of Rulemaking Documents**

For administrative purposes, this document consolidates the notice of our intent to establish open migratory game bird hunting seasons and the request for tribal proposals with the preliminary proposals for the annual hunting regulations-development process. We will publish the remaining proposed and final rulemaking documents separately. For inquiries on tribal guidelines and proposals, tribes should contact the following personnel:

Region 1 (Idaho, Oregon, Washington, Hawaii, and the Pacific Islands)—Nanette Seto, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, OR 97232–4181; (503) 231–6164.

Region 2 (Arizona, New Mexico, Oklahoma, and Texas)—Scott Carleton, U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Albuquerque, NM 87102; (505) 248–6639.

Region 3 (Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin)—Tom Cooper, U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; (612) 713–5101.

Region 4 (Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, Virgin Islands, South Carolina, and Tennessee)—Laurel Barnhill, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, GA 30345; (404) 679–4000.

Region 5 (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia)—Pam Toschik, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589; (413) 253–8610.

Region 6 (Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming)—Casey Stemler, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Building, Denver, CO 80225; (303) 236–8145.

Region 7 (Alaska)—Pete Probasco, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503; (907) 786–3423.

Region 8 (California and Nevada)—Amedee Brickey, U.S. Fish and Wildlife Service, 2800 Cottage Way, Sacramento, CA 95825–1846; (916) 414–6480.

**Requests for Tribal Proposals**

**Background**

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to tribal requests for our recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates, season length, and daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, tribal regulations established under the guidelines must be consistent with the annual March 11 to August 31 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Convention). The guidelines are applicable to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also may be applied to the establishment of migratory game bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife-management authority over such hunting, or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory game bird hunting by nonmembers on Indian-owned reservation lands, subject to our approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing migratory bird hunting by non-Indians on these lands. In such cases, we encourage the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands. It is incumbent upon the tribe and/or the State to request consultation as a result of the proposal being published in the **Federal Register**. We will not presume to make a determination, without being advised by either a tribe or a State, that any issue is or is not worthy of formal consultation.

One of the guidelines provides for the continuation of tribal members' harvest of migratory game birds on reservations where such harvest is a customary practice. We do not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory game bird resource. Since the inception of these guidelines, we have reached annual agreement with tribes for migratory game bird hunting by tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members. Tribes should not view the guidelines as inflexible. We believe that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while also ensuring that the migratory game bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

**Details Needed in Tribal Proposals**

Tribes that wish to use the guidelines to establish special hunting regulations for the 2018–19 migratory game bird hunting season should submit a proposal that includes: (1) The requested migratory game bird hunting season dates and other details regarding the proposed regulations; (2) Harvest anticipated under the proposed regulations; and (3) Tribal capabilities to enforce migratory game bird hunting

regulations. For those situations where it could be shown that failure to limit Tribal harvest could seriously impact the migratory game bird resource, we also request information on the methods employed to monitor harvest and any potential steps taken to limit level of harvest.

A tribe that desires the earliest possible opening of the migratory game bird season for nontribal members should specify this request in its proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit for nontribal members, the proposal should request the same daily bag and possession limits and season length for migratory game birds that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

**Tribal Proposal Procedures**

We will publish details of tribal proposals for public review in later **Federal Register** documents. Because of the time required for review by us and the public, Indian tribes that desire special migratory game bird hunting regulations for the 2018–19 hunting season should submit their proposals no later than December 1, 2017. Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed above under the caption Consolidation of Rulemaking Documents. Tribes that request special migratory game bird hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

**Public Comments**

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments we receive. Such comments, and any additional information we receive, may lead to final regulations that differ from these proposals.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**. We will post all comments in their entirety—including your personal identifying information—on *http://www.regulations.gov.* Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 5275 Leesburg Pike, Falls Church, VA 22041.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but may not respond in detail to, each comment. As in the past, we will summarize all comments we receive during the comment period and respond to them after the closing date in any final rules.

**National Environmental Policy Act (NEPA) Consideration**

The programmatic document, ''Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139),'' filed with the Environmental Protection Agency (EPA) on May 24, 2013, addresses NEPA compliance by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being ''Duck Hunting Regulations for 2017–18,'' with its corresponding April 7, 2017, finding of no significant impact. In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

**Endangered Species Act Consideration**

Before issuance of the 2018–19 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under section 7 of the Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

**Regulatory Planning and Review (Executive Orders 12866 and 13563)**

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has reviewed this rule and has determined that this rule is significant because it would have an annual effect of $100 million or more on the economy.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

An economic analysis was prepared for the 2013–14 season. This analysis was based on data from the 2011 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). We will use this analysis again for the 2018–19 season. This analysis estimated 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 2012–13 season, (2) issue moderate regulations allowing more days than those in alternative 1, and (3) issue liberal regulations identical to the regulations in the 2012–13 season. For the 2013–14 season, we chose Alternative 3, with an estimated consumer surplus across all flyways of $317.8–$416.8 million. We also chose alternative 3 for the 2009–10 through 2017–18 seasons. The 2013–14 analysis is part of the record for this rule and is available at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2017–0028.

**Regulatory Flexibility Act**

The annual migratory bird hunting 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 through 1995. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, 2008, and 2013. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is generally conducted at 5-year intervals. The 2013 Analysis was based on the 2011 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 $1.5 billion at small businesses in 2013. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **FOR FURTHER INFORMATION CONTACT**) or from *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2017–0028.

**Clarity of the Rule**

We are required by E.O. 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**Small Business Regulatory Enforcement Fairness Act**

This proposed rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule would have an annual effect on the economy of $100 million or more. However, because this rule would establish hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

**Paperwork Reduction Act**

This proposed rule contains existing and new information collections. All information collections require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has reviewed and approved the information collection requirements associated with migratory bird surveys and assigned the following OMB control numbers:

- 1018–0019—North American Woodcock Singing Ground Survey (expires 5/31/2018).
- 1018–0023—Migratory Bird Surveys (expires 6/30/2017). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.

The new reporting and recordkeeping requirements identified below must be approved by OMB:

(1) Tribes that wish to use the guidelines to establish special hunting regulations for the annual migratory game bird hunting season are required to submit a proposal that includes:

(a) The requested migratory game bird hunting season dates and other details regarding the proposed regulations;

(b) Harvest anticipated under the proposed regulations; and

(c) Tribal capabilities to enforce migratory game bird hunting regulations.

(2) State and U.S. territory governments that wish to establish annual migratory game bird hunting seasons are required to provide the requested dates and other details for hunting seasons in their respective States or Territories.

*Title:* Establishment of Annual Migratory Bird Hunting Seasons, 50 CFR part 20.

*OMB Control Number:* 1018–XXXX.

*Service Form Number:* None.

*Type of Request:* Request for a new OMB Control Number.

*Description of Respondents:* State and Tribal governments.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* Annually.

*Estimated Number of Annual Respondents:* 82 (52 State governments and Territories and 30 Tribal governments).

*Estimated Number of Annual Responses:* 82.

*Average Completion Time per Response:* 4 hours.

*Estimated Total Annual Burden Hours:* 328.

*Estimated Annual Non-hour Burden Cost:* None.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

Send your comments and suggestions on this information collection by the date indicated in the **DATES** section to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: BPHC, Falls Church, VA 22041–3803 (mail); or *info_coll@fws.gov* (email). Please reference OMB Control Number 1018–BB73 in the subject line of your comments.

**Unfunded Mandates Reform Act**

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this proposed rulemaking would not impose a cost of $100 million or more in any given year on local or State government or private

entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

**Civil Justice Reform—Executive Order 12988**

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

**Takings Implication Assessment**

In accordance with E.O. 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule would not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule would allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

**Energy Effects—Executive Order 13211**

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under E.O. 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), E.O. 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 this proposed rule, we solicit proposals for special migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2018–19 migratory bird hunting season. The resulting proposals will be contained in a separate proposed rule. 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 E.O. 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

**Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs**

This action is not subject to Executive Order 13771 (82 FR 9339, February 3, 2017) because it is issued with respect to routine hunting and fishing activities.

**List of Subjects in 50 CFR Part 20**

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

**Authority:** The rules that eventually will be promulgated for the 2018–19 hunting season are authorized under 16 U.S.C. 703–711, 712, and 742 a–j.

Dated: June 13, 2017.

**Virginia H. Johnson,**

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

**Proposed 2018–19 Migratory Game Bird Hunting Regulations (Preliminary)**

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific regulatory proposals. No changes from the 2017–18 frameworks are being proposed at this time. Other issues requiring early discussion, action, or the attention of the States or tribes are contained below:

**1. Ducks**

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. Only those categories containing substantial recommendations are discussed below.

*A. General Harvest Strategy*

We propose to continue using adaptive harvest management (AHM) to help determine appropriate duck-hunting regulations for the 2018–19 season. AHM permits sound resource decisions in the face of uncertain regulatory impacts and provides a mechanism for reducing that uncertainty over time. We use AHM to evaluate four alternative regulatory levels for duck hunting based on the population status of mallards. We have specific hunting strategies for species of special concern, such as black ducks, scaup, and pintails.

Atlantic, Mississippi, Central, and Pacific Flyways

The prescribed regulatory alternative for the Atlantic, Mississippi, Central, and Pacific Flyways is based on the status of mallard populations that contribute primarily to each Flyway. In the Atlantic Flyway, we set hunting regulations based on the population status of mallards breeding in eastern North America (Federal survey strata 51–54 and 56, and State surveys in the Northeast and the mid-Atlantic region). In the Central and Mississippi Flyways, we set hunting regulations based on the status and dynamics of mid-continent mallards. Mid-continent mallards are those breeding in central North America (Federal survey strata 13–18, 20–50, and 75–77, and State surveys in Minnesota, Wisconsin, and Michigan). In the Pacific Flyway, we set hunting regulations based on the status and dynamics of western mallards. Western mallards are those breeding in Alaska and the northern Yukon Territory (as based on Federal surveys in strata 1–12), and in California, Oregon, Washington, and British Columbia (as based on State- or Province-conducted surveys).

For the 2018–19 season, we recommend continuing to use independent optimization to determine the optimal regulatory choice for each mallard stock. This means that we would develop regulations for eastern mallards, mid-continent mallards, and western mallards independently, based upon the breeding stock that contributes primarily to each Flyway. We detailed implementation of this AHM decision

framework for western and mid-continent mallards in the July 24, 2008, **Federal Register** (73 FR 43290) and for eastern mallards in the July 20, 2012, **Federal Register** (77 FR 42920).

Supplemental Environmental Impact Statement (SEIS) Changes to the AHM Process

Since 1995, the Service and Flyway Councils have applied the principles of adaptive management to inform harvest management decisions in the face of uncertainty while trying to learn about system (bird populations) responses to harvest regulations and environmental changes. Prior to the timing and process changes necessary for implementation of SEIS 2013, the annual AHM process began with the observation of the system's status each spring followed by an updating of model weights and the derivation of an optimal harvest policy that was then used to inform a regulatory decision (*i.e.,* breeding population estimates were used with a policy matrix to determine optimal regulatory decisions). The system then evolves over time in response to the decision and natural variation in population dynamics. The following spring, the monitoring programs observe the status of the system and the iterative decision-making process continues forward in time. However, with the changes in decision timing specified by the SEIS, the post-survey AHM process will not be possible because monitoring information describing the system will not be available at the time the decision must be made. As a result, the optimization framework used to derive the current harvest policy can no longer calculate current and future harvest values as a function of the current system and model weights. To address this issue, we adjusted the optimization procedures beginning with the 2016–17 seasons to calculate harvest values conditional on the last observation of the system and regulatory decision.

Results and analysis of our work is contained in a technical report that provides a summary of revised methods and assessment results based on updated AHM protocols developed in response to the preferred alternative specified in the SEIS. The report describes necessary changes to optimization procedures and decision processes for the implementation of AHM for midcontinent, eastern, and western mallards, northern pintails, and scaup decision frameworks.

Results indicate that the necessary adjustments to the optimization procedures and AHM protocols to account for changes in decision timing are not expected to result in major changes to expected management performance for mallard, pintail, and scaup AHM. In general, pre-survey (or pre-SEIS necessary changes) harvest policies were similar to harvest policies based on new post-survey (or post-SEIS necessary changes) AHM protocols. We found some subtle differences in the degree to which strategies prescribed regulatory changes in the pre-survey policies with a reduction in the number of cells indicating moderate regulations. In addition, pre-survey policies became more liberal when the previous regulatory decisions were more conservative. These patterns were consistent for each AHM decision-making framework. Overall, a comparison of simulation results of the pre- and post-survey protocols did not suggest substantive changes in the frequency of regulations or in the expected average population size. These results suggest that the additional form of uncertainty that the change in decision timing introduces is not expected to limit our expected harvest management performance with the adoption of the pre-survey AHM protocols.

Since 2000, we have relied on an adaptive harvest management strategy for eastern mallards as the basis for setting the season lengths and total bag limits for duck hunting in the Atlantic Flyway. A drawback of this strategy is that the primary breeding range of eastern mallards is the northeastern United States, whereas eastern Canada is the origin of most other ducks (except wood ducks) that are harvested in the Atlantic Flyway. Due to the differences in their ranges, factors that affect the population status of eastern mallards do not necessarily have the same influence on those other duck species, potentially resulting in differing population trajectories. Poor performance by our eastern mallard population models is another drawback; they have consistently over-predicted the population size since 2009.

Consequently, we are working with the Atlantic Flyway Council to develop a new decision framework for determining annual duck hunting regulations in the Atlantic Flyway that will be based on the collective status of five representative duck species: mallard, wood duck, green-winged teal, ring-necked duck, and common goldeneye. These species represent the suite of waterfowl habitats that Atlantic Flyway agencies and partners are trying to conserve and protect, and together they comprise about 60 percent of the ducks harvested annually in the Atlantic Flyway. We plan to implement the new decision framework for the 2019–20 hunting season. If our current eastern mallard harvest strategy indicates that mallard harvest should be restricted before the new framework is adopted, we will implement appropriate restrictions (*e.g.,* adjust the Atlantic Flyway's daily bag limit for mallards accordingly).

A complete copy of the AHM report can be found on *http://www.regulations.gov* or at *http://www.fws.gov/migratorybirds/pdf/management/AHM/SEIS&AHMReportFinal.pdf.*

Final 2018–19 AHM Protocol

We will detail the final AHM protocol for the 2018–19 season in the supplemental proposed rule, which we will publish in late July (see Schedule of Biological Information Availability, Regulations Meetings and **Federal Register** Publications for the 2018–19 Seasons at the end of this proposed rule for further information). We will propose a specific regulatory alternative in December for each of the Flyways to use for their 2018–19 seasons after status information becomes available in late August 2017.

*B. Regulatory Alternatives*

The basic structure of the current regulatory alternatives for AHM was adopted in 1997. In 2002, based upon recommendations from the Flyway Councils, we extended framework dates in the ''moderate'' and ''liberal'' regulatory alternatives by changing the opening date from the Saturday nearest October 1 to the Saturday nearest September 24, and by changing the closing date from the Sunday nearest January 20 to the last Sunday in January. These extended dates were made available with no associated penalty in season length or bag limits. At that time we stated our desire to keep these changes in place for 3 years to allow for a reasonable opportunity to monitor the impacts of framework-date extensions on harvest distribution and rates of harvest before considering any subsequent use (67 FR 12501; March 19, 2002).

For 2018–19, we propose to utilize the same regulatory alternatives that are in effect for the 2017–18 season (see accompanying table for specifics of the regulatory alternatives). Alternatives are specified for each Flyway and are designated as ''RES'' for the restrictive, ''MOD'' for the moderate, and ''LIB'' for the liberal alternative. Comments on the proposed alternatives will be accepted until July 15, 2017. Following receipt of public input, we will finalize the regulatory alternatives for each of the

Flyways for the 2018–19 seasons in mid-August 2017.

*D. Special Seasons/Species Management*

iv. Canvasbacks

From 1994–2015, we followed a canvasback harvest strategy whereby if canvasback population status and production are sufficient to permit a harvest of one canvasback per day nationwide for the entire length of the regular duck season, while still attaining an objective of 500,000 birds the following spring, the season on canvasbacks should be opened. A partial season would be allowed if the estimated allowable harvest was below that associated with a 1-bird daily bag limit for the entire season. If neither of these conditions can be met, the harvest strategy calls for a closed season on canvasbacks nationwide. In 2008 (73 FR 43290; July 24, 2008), we announced our decision to modify the canvasback harvest strategy to incorporate the option for a 2-bird daily bag limit for canvasbacks when the predicted breeding population the subsequent year exceeds 725,000 birds.

Since the existing harvest strategy relies on information that will not yet be available at the time we need to establish proposed frameworks under the new regulatory process, the canvasback harvest management strategy is not usable for the 2018–19 season and beyond. At this time we do not have a new harvest strategy to propose for use in the future. Thus, as we did for the 2016–17 and the 2017–18 seasons, we will review the most recent information on canvasback populations, habitat conditions, and harvests with the goal of compiling the best information available for use in making a harvest management decision. We will share these results with the Flyways during their fall meetings, with the intention of adopting a decision-making approach in October for the 2018–19 seasons. Over the next year, we will continue to work with the Flyway technical committees and councils to develop a new biologically based process for informing harvest management decisions for use in subsequent years.

8. Swans

Frameworks for swan hunting seasons in certain Atlantic and Central Flyway States (North Carolina, Virginia, Montana, North Dakota, and South Dakota) currently only allow the take of tundra swans. In recent years, some Interior Population (IP) trumpeter swans have been present during fall and winter in those States. This population has grown from 43 birds in 1968 to more than 27,000 in 2015, an annual growth rate of 14.4 percent. Given the rapid growth rate of the IP, it is likely that migrating and wintering trumpeter swan numbers will increase in the Atlantic, Mississippi, and Central Flyways. Tundra swans and trumpeter swans are very similar in appearance, particularly at a distance. At present, any hunter who mistakenly shoots a trumpeter swan during the tundra swan season is violating the law by taking a species for which no hunting season has been authorized. As their numbers continue to increase, more IP trumpeter swans will likely be present in tundra swan hunting areas during the hunting season; this situation would result in more hunters accidentally taking a trumpeter swan, making those hunters criminally liable for taking a protected species illegally. Thus, there is a need to address the potential for misidentification and accidental take of trumpeter swans that may arise with existing tundra swan hunting seasons.

We have prepared a draft Environmental Assessment (DEA) to assess the impacts of establishing a framework for hunting regulations to govern the take of both trumpeter and tundra swans in the portions of the Atlantic, Mississippi, and Central Flyways that currently have operational hunting seasons on Eastern Population tundra swans or may have in the future. The proposed action identified in this DEA would allow limited take of trumpeter swans, but only during hunting seasons established to provide opportunities to hunt tundra swans. New swan hunting seasons (*i.e.,* seasons in areas that are currently closed to swan hunting) would not be approved unless the requesting State demonstrates that >90 percent of the swans in the proposed hunt area are tundra swans.

The DEA is available for public review and may be found at *http://www.regulations.gov* at Docket No. FWS–HQ–MB–2017–0028 or from the Division of Migratory Bird Management (see **FOR FURTHER INFORMATION CONTACT**). We prepared this DEA in carrying out our responsibility to conserve migratory bird populations and to fulfill our responsibilities under NEPA. Comments will be accepted until October 15, 2017. Following receipt of public input, we will prepare a final environment assessment, which will help inform future decisions regarding regulation of swan hunting.

16. Doves

Last season (82 FR 24786; May 30, 2017), we approved an earlier opening date (fixed date of September 14) in Texas's South Dove Zone, which is about one week earlier (on average) than was previously allowed, and allowed split seasons in the Western Management Unit (WMU) so that the WMU could be consistent with the other dove management units regarding zoning and split seasons. We also considered, but did not approve, a recommendation for the Eastern Management Unit (EMU) to have a closing framework date of January 31, versus the current closing date of January 15. While we proposed and ultimately approved the Texas and WMU changes last season, we requested more information on the rationale and biological impacts for the EMU request. Both of the approved framework changes and the still-pending EMU recommendation require changes to the National Dove Harvest Management Strategy (Strategy). The previously approved changes are designed to provide more flexibility in opportunities to hunt doves, and would not significantly increase harvest and we propose to revise the Strategy as such. Additional information on the EMU issue was provided at the June 21, 2017, SRC meeting. We are reviewing that information.

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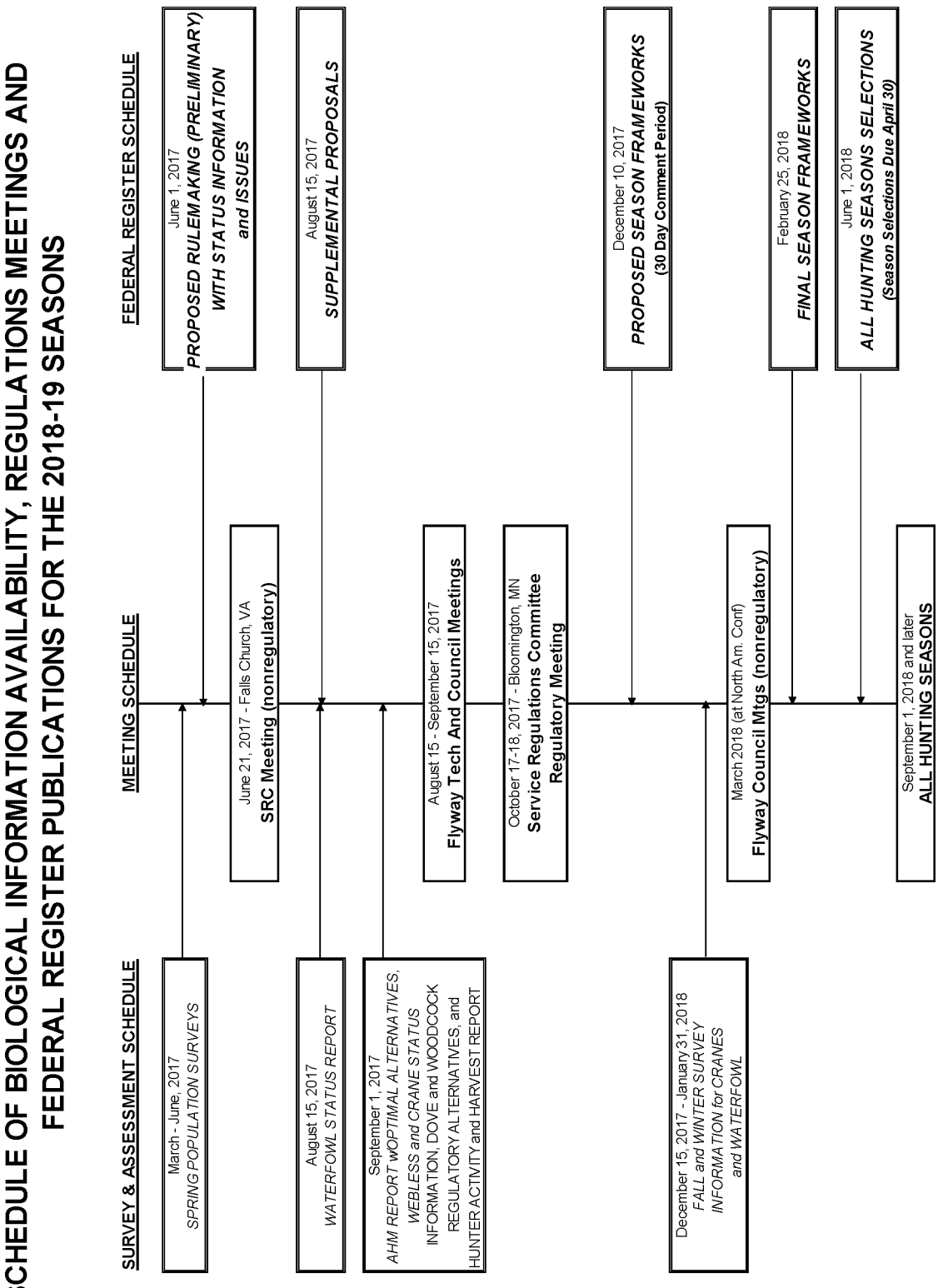
# PROPOSED REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2018-19 SEASON

| | ATLANTIC FLYWAY | | | MISSISSIPPI FLYWAY | | | CENTRAL FLYWAY (a) | | | PACIFIC FLYWAY (b)(c) | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | RES | MOD | LIB | RES | MOD | LIB | RES | MOD | LIB | RES | MOD | LIB |
| Beginning Shooting Time | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise | 1/2 hr. before sunrise |
| Ending Shooting Time | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset | Sunset |
| Opening Date | Oct. 1 | Sat. nearest Sept. 24 | Sat. nearest Sept. 24 | Sat. nearest Oct. 1 | Sat. nearest Sept. 24 | Sat. nearest Sept. 24 | Sat. nearest Oct. 1 | Sat. nearest Sept. 24 | Sat. nearest Sept. 24 | Sat. nearest Oct. 1 | Sat. nearest Sept. 24 | Sat. nearest Sept. 24 |
| Closing Date | Jan. 20 | Last Sunday in Jan. | Last Sunday in Jan. | Sun. nearest Jan. 20 | Last Sunday in Jan. | Last Sunday in Jan. | Sun. nearest Jan. 20 | Last Sunday in Jan. | Last Sunday in Jan. | Sun. nearest Jan. 20 | Last Sunday in Jan. | Last Sunday in Jan. |
| Season Length (in days) | 30 | 45 | 60 | 30 | 45 | 60 | 39 | 60 | 74 | 60 | 86 | 107 |
| Daily Bag | 3 | 6 | 6 | 3 | 6 | 6 | 3 | 6 | 6 | 4 | 7 | 7 |
| **Species/Sex Limits within the Overall Daily Bag Limit** | | | | | | | | | | | | |
| Mallard (Total/Female) | 3/1 | 4/2 | 4/2 | 2/1 | 4/1 | 4/2 | 3/1 | 5/1 | 5/2 | 3/1 | 5/2 | 7/2 |

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway, with the exception of season length. Additional days would be allowed under the various alternatives as follows: restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different from the remainder of the Pacific Flyway. The bag limit (depending on the area) would be 5-8 under the restrictive alternative, and 7-10 under the moderate and liberal alternatives. Under all alternatives, season length would be 107 days and framework dates would be Sep. 1 - Jan. 26.

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