

do to make the rule easier to understand?

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

**Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)**

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and assigned Office of Management and Budget (OMB) control number 1018-0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**National Environmental Policy Act**

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

**References Cited**

A complete list of references cited in this rule is available upon request from the Field Supervisor, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

**Author(s)**

The primary authors of this document are Ms. Karen Marlowe, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**) and Jesse D'Elia, Pacific Regional Office, Portland, Oregon.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

**Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

**§ 17.11 [Amended]**

2. Amend § 17.11(h) by removing the entry for “Hawk, Hawaiian” under “BIRDS” from the List of Endangered and Threatened Wildlife.

Dated: July 14, 2008.

**H. Dale Hall,**

*Director, U.S. Fish and Wildlife Service.*

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 20**

**[FWS-R9-MB-2008-0090; 91200-1231-9BPP-L2]**

**RIN 1018-AW19**

**Migratory Bird Hunting; Hunting Methods for Resident Canada Geese**

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

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or “we”) proposes to amend the regulations on resident Canada goose management. This proposed rule clarifies the requirements for use of expanded hunting methods during special September hunting seasons. One requirement in the regulations has been misinterpreted, and we are taking this action to make sure that our regulations are clear for the States and the public.

**DATES:** Comments on this proposed rule must be received by September 5, 2008.

**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.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: 1018-XXXX; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

You may obtain copies of the Final Environmental Impact Statement (FEIS) on resident Canada goose management

from the above address or from the Division of Migratory Bird Management Web site at <http://fws.gov/migratorybirds/issues/cangeese/finaleis.htm>.

**FOR FURTHER INFORMATION CONTACT:**

Robert Blohm, Chief, Division of Migratory Bird Management, or Ron Kokel (703) 358-1714 (see **ADDRESSES**).

**SUPPLEMENTARY INFORMATION:**

**Authority and Responsibility**

Migratory birds are protected under four bilateral migratory bird treaties the United States entered into with Great Britain (for Canada in 1916 as amended in 1999), the United Mexican States (1936 as amended in 1972 and 1999), Japan (1972 as amended in 1974), and the Soviet Union (1978). Regulations allowing the take of migratory birds are authorized by the Migratory Bird Treaty Act (16 U.S.C. 703–711), and the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712). The Migratory Bird Treaty Act (Act), which implements the above-mentioned treaties, provides that, subject to and to carry out the purposes of the treaties, the Secretary of the Interior is authorized and directed to determine when, to what extent, and by what means allowing hunting, killing, and other forms of taking of migratory birds, their nests, and eggs is compatible with the conventions. The Act requires the Secretary to implement a determination by adopting regulations permitting and governing those activities.

Canada geese are Federally protected by the Act by reason of the fact that they are listed as migratory birds in all four treaties. Because Canada geese are covered by all four treaties, regulations must meet the requirements of the most restrictive of the four. For Canada geese, this is the treaty with Canada. All regulations concerning resident Canada geese are compatible with its terms, with particular reference to Articles VII, V, and II.

Each treaty not only permits sport hunting, but permits the take of migratory birds for other reasons, including scientific, educational, propagative, or other specific purposes consistent with the conservation principles of the various Conventions. More specifically, Article VII, Article II (paragraph 3), and Article V of “The Protocol Between the Government of the United States of America and the Government of Canada Amending the 1916 Convention between the United Kingdom and the United States of America for the Protection of Migratory Birds in Canada and the United States” provides specific limitations on

allowing the take of migratory birds for reasons other than sport hunting. Article VII authorizes permitting the take, kill, etc., of migratory birds that, under extraordinary conditions, become seriously injurious to agricultural or other interests. Article V relates to the taking of nests and eggs, and Article II, paragraph 3, states that, in order to ensure the long-term conservation of migratory birds, migratory bird populations shall be managed in accord with listed conservation principles.

The other treaties are less restrictive. The treaties with both Japan (Article III, paragraph 1, subparagraph (b)) and the Soviet Union (Article II, paragraph 1, subparagraph (d)) provide specific exceptions to migratory bird take prohibitions for the purpose of protecting persons and property. The treaty with Mexico requires, with regard to migratory game birds, only that there be a "closed season" on hunting and that hunting be limited to 4 months in each year.

Regulations governing the issuance of permits to take, capture, kill, possess, and transport migratory birds are promulgated in title 50, Code of Federal Regulations (CFR), parts 13 and 21, and issued by the Service. The Service annually promulgates regulations governing the take, possession, and transportation of migratory birds under sport hunting seasons in 50 CFR part 20.

## Background

On August 10, 2006, we published in the **Federal Register** (71 FR 45964), a final rule establishing regulations in 50 CFR parts 20 and 21 authorizing State wildlife agencies, private landowners, and airports to conduct (or allow) indirect and/or direct population control management activities, including the take of birds, on resident Canada goose populations. On August 20, 2007, we published in the **Federal Register** (72 FR 46403), a final rule that clarified and slightly modified several program requirements in 50 CFR parts 20 and 21 regarding eligibility, definitions, methodologies, and dates. This proposed rule further seeks to clarify the use of expanded hunting methods during special September hunting seasons.

## Expanded Hunting Methods During September Special Seasons

One of the components in the resident Canada goose management program is to provide expanded hunting methods and opportunities to increase the sport harvest of resident Canada geese above that which results from existing September special Canada goose seasons. The regulatory changes in

§ 20.21(b) and (g) codified in the August 10, 2006, and August 20, 2007, final rules provide State wildlife management agencies and Tribal entities the option of authorizing the use of unplugged shotguns (paragraph (b)) and electronic calls (paragraph (g)) during the first portion of existing, operational September Canada goose seasons (*i.e.*, September 1–15, § 20.21(b)(2)(i) and § 20.21(g)(2)(i)). The final rules also stated that utilization of these additional hunting methods during any new special seasons or other existing, operational special seasons (*i.e.*, September 16–30, § 20.21(b)(2)(ii) and § 20.21(g)(2)(ii)) can be approved by the Service and require demonstration of a minimal impact to migrant Canada goose populations. Further, we will authorize these seasons (*i.e.*, those after September 15) on a case-by-case basis through the normal migratory bird hunting regulatory process.

All of these expanded hunting methods and opportunities must be conducted outside of any other open waterfowl season (*i.e.*, when all other waterfowl and crane hunting seasons are closed). Thus, any State listed in § 20.21(b)(2) and (g)(2) may select the use of these expanded hunting methods during September 1–15 without annual Service approval, and during September 16–30 with annual Service approval.

## This Proposed Rule

We have become aware of concerns that, as written, the regulations in § 20.21(b)(2) and (g)(2) do not require annual promulgation in the **Federal Register** of a State's decision to use these expanded hunting methods during the period September 1–15. Language in § 20.21(b)(2)(ii) and (g)(2)(ii) requires that any decision by the States to use these expanded hunting methods during the period of September 16–20 be incorporated in the annual migratory bird hunting regulations. The result is that the States are required to notify us of their decision. Because this same language does not appear in § 20.21(b)(2)(i) and (g)(2)(i), the existing regulations could be interpreted as requiring notification by a State only for the period September 16–20 and not for the period September 1–15. We codify all the other season dates, daily bag limits, area restrictions, shooting hours, etc., annually in late August, so this interpretation of the regulations was clearly not our intention.

Therefore, we propose to amend § 20.21(b)(2)(i) and (g)(2)(i) by adding the phrase "when approved in the annual regulatory schedule in subpart K of this part" to expressly require States to inform us of their annual selections

on the use of these expanded hunting methods during the period of September 1–15. This is the same language that currently exists in § 20.21(b)(2)(ii) and (g)(2)(ii) that requires such notification by the States for the period September 16–30. As a result of these proposed amendments, all State selections, or nonselections, of these expanded hunting methods during September would require publication in the annual regulatory schedule in subpart K of part 20.

## Public Comments Solicited

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

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. We will not accept anonymous comments; your comment must include your first and last name, city, State, country, and postal (zip) code. 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 the **DATES** section.

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you provide personal identifying information in addition to the required items specified in the previous paragraph, such as your street address, phone number, or e-mail address, you may request at the top of your document that we withhold this information from public review. However, 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, Room 4107, 4501 North Fairfax Drive, Arlington, VA 22203.

## NEPA Considerations

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we published the availability of a Draft Environmental Impact Statement (DEIS) on March 7, 2002 (67 FR 10431), followed by a 91-day comment period. We subsequently reopened the comment period for 60 additional days (68 FR 50546, August 21, 2003). On November 18, 2005, both the Service and the Environmental Protection Agency published notices of availability for the FEIS in the **Federal Register** (70 FR 69966 and 70 FR 69985). On August 10, 2006, we published our Record of Decision (ROD) in the **Federal Register** (71 FR 45964). The FEIS is available to the public (see **ADDRESSES**). The proposed changes to the resident Canada goose regulations fall within the scope of the FEIS.

## Endangered Species Act Consideration

Section 7(a)(2) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531–1543; 87 Stat. 884) provides that “Each Federal agency shall, in consultation with and with the assistance of the Secretary, 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 \* \* \*.” We completed a biological evaluation and informal consultation (both available upon request; see **ADDRESSES**) under Section 7 of the ESA for the action described in the August 10 final rule. In the letter of concurrence between the Division of Migratory Bird Management and the Division of Endangered Species, we concluded that the inclusion of specific conservation measures in the final rule satisfied concerns about certain species and that the action was not likely to adversely affect any threatened, endangered, or candidate species. This proposed change falls within the scope of that informal consultation.

## Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for actions that will have a significant economic impact on a substantial number of small entities, which includes small businesses, organizations, or governmental jurisdictions. We discussed these

impacts in the August 10 final rule. For the reasons detailed in that rule, we have determined that a Regulatory Flexibility Act analysis is not required.

## Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has reviewed this rule under Executive Order 12866. OMB bases its determination 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.

## Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not have an annual effect on the economy of \$100 million or more; nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

## Paperwork Reduction Act and Information Collection

This proposed rule does not contain any new information collection or recordkeeping requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). OMB has approved and assigned control number 1018–0133, which expires on 08/31/2009, to the regulations concerning the control and management of resident Canada geese.

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.

## Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments and

the private sector. The purpose of the act is to strengthen the partnership between the Federal Government and State, local, and tribal governments and to end the imposition, in the absence of full consideration by Congress, of Federal mandates on these governments without adequate Federal funding, in a manner that may displace other essential governmental priorities. We have determined, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this action will not “significantly or uniquely” affect small governments, and will not produce a Federal mandate of \$100 million or more in any given year on local or State government or private entities. Therefore, this action is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

## Civil Justice Reform—Executive Order 12988

We have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity, has been written to minimize litigation, provides a clear legal standard for affected conduct, and specifies in clear language the effect on existing Federal law or regulation. We do not anticipate that this rule will require any additional involvement of the justice system beyond enforcement of provisions of the Migratory Bird Treaty Act of 1918 that have already been implemented through previous rulemakings.

## Takings Implication Assessment

In accordance with Executive Order 12630, this action, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This action will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this action will help alleviate private and public property damage and concerns related to public health and safety and allow the exercise of otherwise unavailable privileges.

## Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given statutory responsibility over these species by the Migratory Bird Treaty Act. While legally this responsibility rests solely with the Federal Government, it is in the best interest of the migratory bird resource

for us to work cooperatively with the Flyway Councils and States to develop and implement the various migratory bird management plans and strategies.

The August 10 final rule and this proposed rule were developed following extensive input from the Flyway Councils, States, and Wildlife Services. Individual Flyway management plans were developed and approved by the four Flyway Councils, and States actively participated in the scoping process for the DEIS. This rule does 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. The rule allows States the latitude to develop and implement their own resident Canada goose management action plan within the frameworks of the selected alternative. Therefore, in accordance with Executive Order 13132, this rule does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### 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 determined that this rule has no effects on Federally-recognized Indian tribes.

#### Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is

not a significant regulatory action under Executive Order 12866 and 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.

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

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

For the reasons stated in the preamble, we hereby propose to amend part 20 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

#### 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; Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

2. Revise paragraphs (b)(2) and (g)(2) of § 20.21 to read as follows:

#### § 20.21 What hunting methods are illegal?

\* \* \* \* \*

(b) \* \* \*

(2) A Canada goose only season when all other waterfowl and crane hunting seasons, excluding falconry, are closed in the Atlantic, Central, and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming, as set forth below:

Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming, as set forth below:

(i) During the period of September 1 to September 15, when approved in the annual regulatory schedule in subpart K of this part; and

(ii) During the period of September 16 to September 30, when approved in the annual regulatory schedule in subpart K of this part.

\* \* \* \* \*

(g) \* \* \*

(2) A Canada goose only season when all other waterfowl and crane hunting seasons, excluding falconry, are closed in the Atlantic, Central, and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming, as set forth below:

(i) During the period of September 1 to September 15, when approved in the annual regulatory schedule in subpart K of this part; and

(ii) During the period of September 16 to September 30, when approved in the annual regulatory schedule in subpart K of this part.

\* \* \* \* \*

Dated: July 23, 2008.

**David M. Verhey,**

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

[FR Doc. E8–18003 Filed 8–5–08; 8:45 am]

**BILLING CODE 4310–55–P**