

Decadal Oscillation. We also found the evidence in our files inadequate to corroborate the petitioner's assertion that the MBTA may not be an effective regulatory mechanism, because under the MBTA, the harvest of long-tailed ducks is regulated and monitored.

After reviewing and evaluating the petition and information available in our files, we find that the petition does not present substantial scientific or commercial information to indicate that listing the long-tailed duck as endangered may be warranted at this time. Although we will not commence a status review in response to this petition, we will continue to monitor the long-tailed duck population status and trends, potential threats, and ongoing management actions that might be important with regard to the conservation of the long-tailed duck. If you wish to provide information regarding the long-tailed duck, you may submit your information and materials to the Anchorage Fish and Wildlife Field Office (see **ADDRESSES**).

#### References Cited

A complete list of all references cited in this document is available, upon request, from the Anchorage Fish and Wildlife Field Office (see **ADDRESSES**).

#### Author

The primary author of this document is staff of the Anchorage Fish and Wildlife Field Office (see **ADDRESSES**).

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: June 12, 2008.

**Kenneth Stansell,**

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

[FR Doc. E8-13840 Filed 6-17-08; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

[FWS-R9-MB-2008-0032;91200-1231-9BPP-L2]

**RIN 1018-AV62**

#### **Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations for the 2008-09 Hunting Season; Notice of Meetings**

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

**ACTION:** Proposed rule; supplemental.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), proposed in an earlier document to establish annual hunting regulations for certain migratory game birds for the 2008-09 hunting season. This supplement to the proposed rule provides the regulatory schedule, announces the Service Migratory Bird Regulations Committee and Flyway Council meetings, provides Flyway Council recommendations resulting from their March meetings, and provides regulatory alternatives for the 2008-09 duck hunting seasons.

**DATES:** You must submit comments on the proposed regulatory alternatives for the 2008-09 duck hunting seasons and the updated cost/benefit analysis by June 27, 2008. Following later **Federal Register** documents, you will be given an opportunity to submit comments for proposed early-season frameworks by July 31, 2008, and for proposed late-season frameworks and subsistence migratory bird seasons in Alaska by August 31, 2008. The Service Migratory Bird Regulations Committee will meet to consider and develop proposed regulations for early-season migratory bird hunting on June 25 and 26, 2008, and for late-season migratory bird hunting and the 2009 spring/summer migratory bird subsistence seasons in Alaska on July 30 and 31, 2008. All meetings 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.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: 1018-AV62; 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).

The Service Migratory Bird Regulations Committee will meet in room 200 of the U.S. Fish and Wildlife Service's Arlington Square Building, 4401 N. Fairfax Dr., Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP-4107-ARLSQ, 1849 C Street, NW., Washington, DC 20240; (703) 358-1714.

**SUPPLEMENTARY INFORMATION:**

#### Regulations Schedule for 2008

On May 28, 2008, we published in the **Federal Register** (73 FR 30712) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. We will publish proposed early-season frameworks in early July and late-season frameworks in early August. We will publish final regulatory frameworks for early seasons on or about August 17, 2008, and for late seasons on or about September 14, 2008.

#### Service Migratory Bird Regulations Committee Meetings

The Service Migratory Bird Regulations Committee will meet June 25-26, 2008, to review information on the current status of migratory shore and upland game birds and develop 2008-09 migratory game bird regulations recommendations for these species, plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands. The Committee will also develop regulations recommendations for September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, the Committee will review and discuss preliminary information on the status of waterfowl.

At the July 30-31, 2008, meetings, the Committee will review information on the current status of waterfowl and develop 2008-09 migratory game bird regulations recommendations for regular waterfowl seasons and other species and seasons not previously discussed at the early-season meetings. In addition, the Committee will develop recommendations for the 2009 spring/summer migratory bird subsistence season in Alaska. In accordance with Departmental policy, these meetings are open to public observation. You may submit written comments to the Service on the matters discussed.

#### Announcement of Flyway Council Meetings

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

*Atlantic Flyway Council:* July 24–25, Princeton Westin at Forrestal Village, Princeton, NJ.

*Mississippi Flyway Council:* July 24–25, Crown Plaza Hotel, Knoxville, TN.

*Central Flyway Council:* July 24–25, Holiday Inn, Overland Park, KS.

*Pacific Flyway Council:* July 25, Red Lion Hotel at the Park, Spokane, WA.

## Review of Public Comments

This supplemental rulemaking describes Flyway Council recommended changes based on the preliminary proposals published in the May 28, 2008, **Federal Register**. We have included only those recommendations requiring either new proposals or substantial modification of the preliminary proposals and do not include recommendations that simply support or oppose preliminary proposals and provide no recommended alternatives. We will publish responses to all proposals and written comments when we develop final frameworks. In addition, this supplemental rulemaking contains the regulatory alternatives for the 2008–09 duck hunting seasons. We have included all Flyway Council recommendations received relating to the development of these alternatives.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items identified in the May 28 proposed rule. Only those categories requiring your attention or for which we received Flyway Council recommendations are discussed below.

### 1. Ducks

Duck harvest management categories are: (A) General Harvest Strategy; (B) Regulatory Alternatives, including specification of framework dates, season length, and bag limits; (C) Zones and Split Seasons; and (D) Special Seasons/Species Management.

#### A. General Harvest Strategy

*Council Recommendations:* The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that regulations changes be restricted to one step per year, both when restricting as well as liberalizing hunting regulations. Both Committees further recommended not implementing the western mallard Adaptive Harvest Management (AHM) protocol.

The Central Flyway Council recommended not implementing the western mallard AHM protocol.

The Pacific Flyway Council recommended implementing the Service's proposal for a revised protocol for managing the harvest of mallards in Western North America. They further recommended inclusion of the following initial components:

(1) Regulation packages that are currently in place in the Pacific Flyway and generally described as Liberal, Moderate, Restrictive, and Closed, with associated target harvest rates of 12, 8, 4, and 0 percent, respectively;

(2) A harvest objective that corresponds to no more than 95 percent of the Maximum Sustained Yield (MSY) on the yield curve (they further note that current harvest estimates suggest that the current Pacific Flyway mallard harvest is at 80 percent of MSY);

(3) Consider use of a weighting factor within the decision matrix that would soften the knife-edge effect of optimal policies when regulation changes are warranted;

(4) No change in the duck regulation provisions for Alaska, except implementation through the western mallard AHM strategy;

(5) An optimization based only on western mallards; and

(6) Clarification of the impacts of removing Alaska from the mid-continent mallard strategy.

They also requested that the Service explore options of incorporating mallards and other waterfowl stocks derived from surveyed areas in Canada important to the Pacific Flyway (e.g., Alberta, Northwest Territories) into the decision process in the future.

*Service Response:* As we stated in the May 28 **Federal Register**, the final Adaptive Harvest Management protocol for the 2008–09 season will be detailed in the early-season proposed rule, which will be published in mid-July.

#### B. Regulatory Alternatives

*Council Recommendations:* The Atlantic Flyway Council recommended that the current restriction of two hens in the 4-bird mallard daily bag limit be removed from the “liberal” package in the Atlantic Flyway to allow the harvest of 4 mallards of any sex.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council and the Central Flyway Council recommended that regulatory alternatives for duck hunting seasons remain the same as those used in 2007.

*Service Response:* As we stated in the May 28 **Federal Register**, the final regulatory alternatives for the 2008–09

season will be detailed in the early-season proposed rule, which will be published in mid-July.

#### D. Special Seasons/Species Management

##### iii. Black Ducks

*Council Recommendations:* The Atlantic Flyway Council endorsed the interim international harvest strategy for black ducks, with the following modifications: (1) the original criteria of a 25 percent change in the 5-year running average from the long-term (1998–2007) breeding population (BPOP) should be changed to a 15 percent change measured by a 3-year running average, and (2) the original criteria of a 5-year running average to measure parity should be changed to a 3-year running average.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council endorsed the agreement in concept and the interim approach to the harvest management of black ducks as outlined by the Black Duck International Management Group.

*Service Response:* For several years we have consulted with the Atlantic and Mississippi Flyway Councils, the Canadian Wildlife Service, and provincial wildlife agencies in eastern Canada concerning the development of an international harvest strategy for black ducks. In 2008, U.S. and Canadian waterfowl managers developed a draft interim harvest strategy that was designed to be employed by both countries over the next three seasons (2008–09 to 2010–11), allowing time for the development of a formal strategy based on the principles of Adaptive Harvest Management. The interim harvest strategy is prescriptive, in that it would call for no substantive changes in hunting regulations unless the black duck breeding population, averaged over the most recent 3 years, exceeds or falls below the long-term average breeding population by 15 percent or more. It would allow additional harvest opportunity (commensurate with the population increase) if the 3-year average breeding population exceeds the long-term average by 15 percent or more, and would require reduction of harvest opportunity if the 3-year average falls below the long-term average by 15 percent or more. The strategy is designed to share the black duck harvest equally between the two countries; however, recognizing incomplete control of harvest through regulations, it will allow realized harvest in either country to vary between 40 and 60 percent. We propose to adopt this

interim international black duck harvest strategy for the 2008–09, 2009–10, and 2010–11 seasons. To expedite development of a formal Adaptive Harvest Management strategy, we seek input from the Atlantic and Mississippi Flyway Councils on an appropriate long-term harvest management objective.

#### iv. Canvasbacks

*Council Recommendations:* The Atlantic Flyway Council recommended that the canvasback harvest strategy be modified to include a provision to allow a daily bag limit of 2 canvasbacks when the predicted breeding population is greater than 750,000 birds.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended an alternative canvasback harvest management strategy that uses threshold levels based on breeding population size in order to determine bag limits. These threshold levels would allow 2 canvasbacks per day when the population is above 800,000, 1 canvasback per day when the population is between 400,000 and 800,000, and close the season when the population drops below 400,000.

The Central Flyway Council recommended maintaining the current canvasback harvest strategy and updating harvest predictions in the current model.

The Pacific Flyway Council requested revision of the canvasback harvest strategy to include a harvest management prescription for a two-bird, full season option when the canvasback breeding population and predicted harvest will sustain the population at or above 600,000.

*Service Response:* We support modification of the existing canvasback strategy to allow for a 2-bird daily bag limit when the projected breeding population in the next year exceeds an established threshold level. This support is contingent on receiving Flyway Council and public input regarding the exact threshold level to be employed for the bag limit increase. Based on our recent biological assessment this threshold should fall between 600,000 and 750,000 canvasbacks projected as the next year's breeding population. If the input received fails to indicate a reasonable consensus on the appropriate value, we propose to continue using the current canvasback harvest management strategy for the 2008–2009 hunting season.

#### v. Pintails

*Council Recommendations:* The Atlantic Flyway Council recommended several modifications and considerations for the proposed pintail derived harvest strategy. They recommended we continue exploration of a derived strategy versus a prescribed strategy and consider a closure constraint. They also commented that Flyway-specific bag limits may not be needed to maintain the desired harvest distribution.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended continued use of the current prescribed northern pintail harvest management strategy until they can see further modeling results of emphasizing a management objective that minimizes the frequency of closed and partial seasons.

The Central Flyway Council recommended that the proposed derived pintail harvest strategy not be adopted and recommended continued use of the current prescribed strategy.

The Pacific Flyway Council recommended that the current prescribed harvest management protocol for pintail be continued in 2008.

*Service Response:* Based on Flyway Council comments and recommendations, we propose to continue the use of the current pintail harvest strategy for the 2008–09 season. We will continue to work with the Flyway Councils to address their concerns on a derived strategy over the next year.

#### vi. Scaup

*Council Recommendations:* The Atlantic Flyway Council recommended implementation of the proposed scaup harvest strategy in the 2008 conditional upon several modifications:

(1) A harvest management objective that achieves 95 percent of the long-term cumulative harvest when the breeding population is less than 4.0 million birds;

(2) Seasons remain open when the breeding population is at or above 2 million scaup;

(3) Agreement to use alternative methodology developed by the Atlantic Flyway Technical Section to predict scaup harvests in the Atlantic Flyway;

(4) Allow a “hybrid” season option for the Atlantic Flyway that allows for at least 20 days of the general duck season to have a daily bag limit of at least 2 while the remaining days would have a daily bag limit of 1;

(5) A “restrictive” harvest package in the Atlantic Flyway consisting of a 20-

day season with a daily bag limit of 2, and a 40-day season with a daily bag limit of 1;

(6) A “moderate” harvest package in the Atlantic Flyway consisting of a 60-day season with a daily bag limit of 2;

(7) A “liberal” harvest package in the Atlantic Flyway consisting of a 60-day season with a daily bag limit of 3;

(8) Designation of the proposed strategy as “interim” and subject to immediate reconsideration if alternative/competing scaup population models are available that will inform management decisions; and

(9) Reconsideration of the model elements after 3 years.

The Council also urged us to expedite the exploration of alternative/competing models describing scaup population dynamics that may be used to inform a harvest management strategy.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended we not adopt the proposed scaup harvest strategy and urged us to delay implementation until some alternative models can be developed.

The Central Flyway Council recommended that we delay implementation of the proposed scaup harvest strategy until alternative models are developed and evaluated.

The Pacific Flyway Council supported the implementation of a scaup harvest strategy in 2008, with the following conditions:

(1) A “shoulder” strategy objective that corresponds to 95 percent of MSY;

(2) Revision of harvest prediction models to provide a greater capacity to predict Pacific Flyway scaup harvest; and

(3) Revision of flyway harvest allocations to recognize proportions of greater scaup in flyway harvests.

They also urged us to continue to work on alternative models to incorporate into the decision framework as soon as possible.

*Service Response:* We propose to adopt the scaup harvest strategy as originally proposed last year (June 8 and July 23, 2007, **Federal Register**, 72 FR 31789 and 72 FR 40194). We believe that an informed, scientifically-based decision process is far preferable to any other possible approach. Further, we have been patient in allowing additional time for review by the Flyway Councils and general public of the proposed strategy. We note that no substantive criticisms suggesting that the proposed approach is not valid have been offered. We acknowledge and support the comments received that suggest additional models based on changing

carrying capacity should be investigated and used if they can be reasonably developed and are supported by existing scap population data. However, we note that we consider all strategies currently employed for species-specific harvest regulation to be subject to further analysis, review and improvement as new information becomes available, and we fully intend to pursue such improvements for the proposed scap strategy as well as all of the other species-specific strategies employed by the Service. We also note that we have requested specific input from the Councils and the public regarding the specific harvest management objective that should be employed for the scap harvest strategy. Based on input to date, we propose the harvest management objective be established as 95 percent of the expected MSY for scap on an annual basis and we solicit further review and comment on this objective from the Flyway Councils and public.

#### viii. Wood Ducks

*Council Recommendations:* The Atlantic Flyway Council provided the following comments on the proposed wood duck harvest strategy:

- (1) The Council endorses the use of the Potential Biological Removal method for calculating allowable harvest;
- (2) Adult males should be the cohort to monitor;
- (3) The management objective should be MSY, with the test criteria that the upper 95 percent confidence interval of the 3-year running average of both northern and region-wide adult male observed kill rates not exceed MSY based on their respective allowable kill rates;
- (4) Should monitoring show impact on northern males, the harvest strategy should revert to a 2-bird daily bag limit;
- (5) Bag limits should be allowed to differ between flyways; and
- (6) The strategy should be adopted in 2008.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council endorsed use of the Potential Biological Removal method to assess wood duck harvest potential and provided the following guidance on outstanding wood duck harvest management policy issues:

- (1) Monitor adult male kill rates from the Atlantic and Mississippi Flyways combined to determine whether actual kill rates exceed allowable kill rates;
- (2) Use the point of Maximum Sustained Yield ( $\frac{1}{2} r_{\max}$ ), combined with a test criteria requirement that the upper 95 percent confidence interval of

the observed kill rate be below the allowable kill rate, as the management objective;

- (3) Allow wood duck bag limits to differ between the Atlantic and Mississippi Flyways; and
- (4) Implement in the 2008–09 season.

The Central Flyway Council recommended that the Central Flyway be included in the development and implementation of the wood duck harvest strategy for the Atlantic and Mississippi Flyways.

*Service Response:* We support a wood duck harvest strategy based on the Potential Biological Removal method, with the management objective of 95 percent confidence that harvest will not exceed maximum sustained yield. Although we prefer a test criterion based on range-wide kill rates of adult males, we recognize the Atlantic Flyway Council's concerns about the potential impacts on northern wood ducks. We do not endorse implementing the proposed strategy until those concerns have been addressed to the satisfaction of the Atlantic, Mississippi, and Central Flyway Councils.

#### 4. Canada Geese

##### A. Special Seasons

*Council Recommendations:* The Atlantic Flyway Council recommended allowing a 10-day experimental extension of the September Resident Canada goose season in Delaware from September 16 to September 25 consistent with September Canada goose seasons in Atlantic Population (AP) zones in the adjacent States of Pennsylvania and New Jersey and other States in the Atlantic Flyway. They requested that this experimental season be permitted for a 3-year period, at which time an analysis of direct band recoveries will be conducted to determine if the harvest of AP Canada geese exceeds 10 percent of the overall goose harvest during Delaware's 10-day extension of the early season. This extended season will not incorporate the "expanded hunting methods" and would be implemented in 2008.

The Pacific Flyway Council recommended allowing Wyoming to modify its current framework that allows 4 geese per season to a 4-bird possession limit.

##### B. Regular Seasons

*Council Recommendations:* The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the framework opening date for all species of geese for the regular goose seasons in Michigan and Wisconsin be September 16, 2008.

#### 9. Sandhill Cranes

*Council Recommendations:* The Central and Pacific Flyway Councils recommended using the 2008 Rocky Mountain Population (RMP) sandhill crane harvest allocation of 1,633 birds as proposed in the allocation formula using the 3-year running average. They further recommended that a new RMP greater sandhill crane hunt area be established in Uinta County, Wyoming.

The Pacific Flyway Council recommended modifying Wyoming's RMP hunt areas by: (1) expanding the hunt area in Lincoln County to include the Hams Fork drainage, and (2) expanding Area 6 in the Bighorn Basin to include all of Park, Bighorn, Hot Springs and Washakie Counties. The Council also recommended initiating a limited hunt for Lower Colorado River sandhill cranes in Arizona, with the goal of the hunt being a limited harvest of 6 cranes in January. To limit harvest, Arizona would issue permit tags to hunters and require mandatory checking of all harvested cranes. To limit disturbance of wintering cranes, Arizona would restrict the hunt to one 3-day period. Arizona would also coordinate with the National Wildlife Refuges where cranes occur.

#### 16. Mourning Doves

*Council Recommendations:* The Atlantic Flyway Council and the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that States within the Eastern Management Unit should be offered a 70-day season and 15-bird daily bag limit for the 2008–2009 mourning dove hunting season, and the dichotomous hunting season structure should be eliminated.

#### 18. Alaska

*Council Recommendations:* The Pacific Flyway Council recommended maintaining status quo in the Alaska early-season framework, except for increasing the daily bag limit for canvasbacks to 2 per day with 6 in possession, and increasing the daily bag limit for brant to 3 per day with 6 in possession.

#### 20. Puerto Rico

*Council Recommendations:* The Atlantic Flyway Council recommended that Puerto Rico be permitted to adopt a 20-bird bag limit for doves in the aggregate for the next three hunting seasons, 2008–2010. Legally hunted dove species in Puerto Rico are the Zenaida dove, the white-winged dove, and the mourning dove. They also recommended that the 20-bird aggregate bag limit should include no more than

10 Zenaida doves and no more than 3 mourning doves.

### 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 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 consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. 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 your comment, 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.

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

### 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 address indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

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). We have prepared a scoping report summarizing the scoping comments and scoping meetings.

The report is available by either writing to the address indicated under **FOR FURTHER INFORMATION CONTACT** or by viewing on our Web site at <http://www.fws.gov/migratorybirds>.

### Endangered Species Act Consideration

Prior to issuance of the 2008-09 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 this Act may cause us to change proposals in this and future supplemental rulemaking documents.

### 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 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.

### Clarity of the Rule

We are required by Executive Orders 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 the **ADDRESSES** section. 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.

### 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 discussed under Executive Order 12866. This analysis was revised annually from 1990-95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 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. To make our cost/benefit analysis as complete as possible, we seek additional information and comments. You must submit comments on the analysis by June 27, 2008. Copies of the Analysis are available upon request from the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web site at <http://www.fws.gov/migratorybirds/reports/>

reports.html 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, this rule has an annual effect on the economy of \$100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

### **Paperwork Reduction Act**

We examined these regulations under the Paperwork Reduction Act of 1995 (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 proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

### **Takings Implication Assessment**

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

### **Energy Effects—Executive Order 13211**

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

### **Federalism Effects**

Due to the migratory nature of certain species of birds, the Federal

Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

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

The rules that eventually will be promulgated for the 2008-09 hunting season are authorized under 16 U.S.C. 703-712 and 16 U.S.C. 742 a-j.

Dated: June 10, 2008.

**Mitchell Butler,**

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

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