

and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act section of this document.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION, CONTACT:**

John L. Conklin, Program Manager, Locomotive Engineer Certification, U.S. Department of Transportation, Federal Railroad Administration, Mail Stop 25, West Building 3rd Floor West, Room W38-208, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: 202-493-6318); or John Seguin, Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, RCC-10, Mail Stop 10, West Building 3rd Floor, Room W31-217, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: 202-493-6045).

**SUPPLEMENTARY INFORMATION:** On April 14, 2009, the comment period for the NPRM reopened for thirty (30) days so that FRA could make the public hearing transcript available for review and comment by the general public, interested parties could provide additional comments or documents, and so interested parties could respond to testimony provided at the public hearing. A request for an extension of that comment period, which closed on May 14, 2009, has been filed with the FRA. The request alleges that an interested party was unable to timely comment due to problems accessing the hearing transcript. In light of the request, FRA is reopening the comment period.

**Privacy Act**

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit

<http://www.regulations.gov/search/footer/privacyanduse.jsp>.

Issued in Washington, DC, on May 20, 2009.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 20**

**[FWS-R9-MB-2008-0124; 91200-1231-9BPP-L2]**

**RIN 1018-AW31**

**Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations for the 2009-10 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 2009-10 hunting season. This supplement to the proposed rule provides the regulatory schedule, announces the Service Migratory Bird Regulations Committee and Flyway Council meetings, and provides Flyway Council recommendations resulting from their March meetings.

**DATES:** You must submit comments on the proposed regulatory alternatives for the 2009-10 duck hunting seasons by June 26, 2009. Following subsequent **Federal Register** documents, you will be given an opportunity to submit comments for proposed early-season frameworks by July 31, 2009, and for proposed late-season frameworks and subsistence migratory bird seasons in Alaska by August 31, 2009. The Service Migratory Bird Regulations Committee will meet to consider and develop proposed regulations for early-season migratory bird hunting on June 24 and 25, 2009, and for late-season migratory bird hunting and the 2010 spring/summer migratory bird subsistence seasons in Alaska on July 29 and 30, 2009. 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-AW31; 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 2009**

On April 10, 2009, we published in the **Federal Register** (74 FR 16339) 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, 2009, and for late seasons on or about September 14, 2009.

**Service Migratory Bird Regulations Committee Meetings**

The Service Migratory Bird Regulations Committee will meet June 24-25, 2009, to review information on the current status of migratory shore and upland game birds and develop 2009-10 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 29-30, 2009, meetings, the Committee will review information on the current status of waterfowl and develop 2009–10 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 2010 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 23-24, Rodd Charlottetown, Charlottetown, Prince Edward Island, Canada.

*Mississippi Flyway Council:* July 23-24, Holiday Inn – Manitowoc, Manitowoc, WI.

*Central Flyway Council:* July 22-24, Radisson Hotel, Bismarck, ND.

*Pacific Flyway Council:* July 24, Ramada Portland Airport, Portland, OR.

#### Review of Public Comments

This supplemental rulemaking describes Flyway Council recommended changes based on the preliminary proposals published in the April 10, 2009, **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. Our responses to some Flyway Council recommendations, but not others, are merely a clarification aid to the reader on the overall regulatory process, not a definitive response to the issue. We will publish responses to all proposals and written comments when we develop final frameworks.

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 April 10 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 Mississippi Flyway Council recommended that regulations changes be restricted to one step per year, both when restricting as well as liberalizing hunting regulations.

*Service Response:* As we stated in the April 10 **Federal Register**, the final Adaptive Harvest Management protocol for the 2009–10 season will be detailed in the early-season proposed rule, which will be published in mid-July.

##### B. Regulatory Alternatives

*Council Recommendations:* The Mississippi and Central Flyway Councils recommended that regulatory alternatives for duck hunting seasons remain the same as those used in 2008.

*Service Response:* As we stated in the April 10 **Federal Register**, the final regulatory alternatives for the 2009–10 season will be detailed in the early-season proposed rule, which will be published in mid-July.

##### D. Special Seasons/Species Management

###### i. Special Teal Seasons

*Council Recommendations:* The Atlantic Flyway Council recommended that the number of hunting days during the special September teal season in the Atlantic Flyway be increased from 9 consecutive days to 16 consecutive days whenever the blue-winged teal breeding population exceeds 4.7 million birds.

###### vi. Scaup

*Council Recommendations:* The Mississippi Flyway Council recommended that the “restrictive” regulatory alternative for scaup in the Mississippi Flyway be a 45–day season with a 2-bird daily bag limit and a 15–day season with 1-bird daily bag limit.

The Central Flyway Council recommended modifying the “restrictive” regulatory alternative for scaup in the Central Flyway to an option of a 74–day season with a 1-bird daily bag limit, or a 39–day season with a 3-bird daily bag limit, or a 39–day season with a 2-bird daily bag limit and

a 35 day season with 1-bird daily bag limit. The Council further recommended that the “moderate” and the “liberal” alternatives remain unchanged from last year.

*Service Response:* As we detailed in the April 10 **Federal Register**, potential changes to the configuration of the regulatory packages for scaup for the 2009–10 season will be discussed at the early-season SRC meeting in June 2008 (see **Service Migratory Bird Regulations Committee Meetings** section above) and finalized in the early-season proposed rule, which will be published in mid-July.

#### 4. Canada Geese

##### B. Regular Seasons

*Council Recommendations:* 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, 2009.

#### 9. Sandhill Cranes

*Council Recommendations:* The Mississippi, Central, and Pacific Flyway Councils recommended expanding the area open to Mid-continent population (MCP) sandhill crane hunting in Wyoming to include Johnson and Sheridan Counties.

The Central and Pacific Flyway Councils recommended using the 2009 Rocky Mountain Population (RMP) sandhill crane harvest allocation of 1,939 birds as proposed in the allocation formula using the 3–year running average.

The Pacific Flyway Council recommended extending the experimental, limited hunt for Lower Colorado River sandhill cranes in Arizona for an additional 3 years. The extension is necessary due to difficulties initiating the new hunt, which was approved by the Service in 2007.

#### 16. Mourning Doves

*Council Recommendations:* The Atlantic and Mississippi Flyway Councils recommended use of the “moderate” season framework for States within the Eastern Management Unit population of mourning doves resulting in a 70–day season and 15-bird daily bag limit. The daily bag limit could be composed of mourning doves and white-winged doves, singly or in combination.

The Mississippi and Central Flyway Councils recommend the use of the standard (or “moderate”) season package of a 15-bird daily bag limit and a 70–day season for the 2009–10 mourning dove season in the States within the Central Management Unit.

The Councils also recommended reducing the boundary for the Special White-winged Dove Area (SSWDA) in Texas by removing portions of Jim Hogg and northern Starr Counties and changing the opening date for dove hunting in the South Zone in Texas to the Friday nearest September 20, but not earlier than September 17.

The Pacific Flyway Council recommended use of the “moderate” season framework for States in the Western Management Unit (WMU) population of mourning doves, which represents no change from last year’s frameworks.

#### 18. Alaska

*Council Recommendations:* The Pacific Flyway Council recommended reducing the daily bag limits for brant in Alaska from 3 per day with 6 in possession to 2 per day with 4 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, 2009–2011. 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>. Before including your address, phone number, e-mail 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, 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 website at <http://www.fws.gov/migratorybirds>.

#### Endangered Species Act Consideration

Prior to issuance of the 2009–10 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. A regulatory cost-benefit analysis has been prepared and is available at <http://www.fws.gov/migratorybirds/reports/reports.html> or at <http://www.regulations.gov>. OMB bases its determination of regulatory significance upon the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies’ actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

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

#### 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. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately \$1.2 billion at small businesses in 2008.

Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our website 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.

### 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

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.

### Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in 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 2009–10 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 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 2009–10 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: May 16, 2009

**Will Shafroth,**

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

[FR Doc. E9-12150 Filed 5-26-09; 8:45 am]

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