

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 20****RIN 1018-AV12****Migratory Bird Hunting; Proposed 2007-08 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals and Requests for 2008 Spring/Summer Migratory Bird Subsistence Harvest Proposals in Alaska**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2007-08 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule, describes the proposed regulatory alternatives for the 2007-08 duck hunting seasons, requests proposals from Indian tribes that wish to establish special migratory game bird hunting regulations on Federal Indian reservations and ceded lands, and requests proposals for the 2008 spring/summer migratory bird subsistence season in Alaska. Migratory game bird hunting seasons provide hunting opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory game bird population status and habitat conditions.

DATES: You must submit comments on the proposed regulatory alternatives for the 2007-08 duck hunting seasons and the draft environmental assessment for the take of Lower Colorado River Valley Population of sandhill cranes by May 15, 2007. Following later **Federal Register** documents, you will be given an opportunity to submit comments for proposed early-season frameworks by July 31, 2007, and for proposed late-season frameworks and subsistence migratory bird seasons in Alaska by August 31, 2007. Tribes must submit proposals and related comments by June 1, 2007. Proposals from the Co-management Council for the 2008 spring/summer migratory bird subsistence harvest season must be submitted to the Flyway Councils and the Service by June 15, 2007.

ADDRESSES: Send your comments on the proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP-4107-ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 4107, Arlington Square Building, 4501 North Fairfax Drive, Arlington, Virginia. Proposals for the 2008 spring/summer migratory bird subsistence season in Alaska should be sent to the Executive Director of the Co-management Council, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503, or fax to (907) 786-3306 or email to ambcc@fws.gov.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, at: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP-4107-ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358-1714. For information on the migratory bird subsistence season in Alaska, contact Fred Armstrong, (907) 786-3887, or Donna Dewhurst, (907) 786-3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

SUPPLEMENTARY INFORMATION:**Background and Overview**

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

The Service develops migratory game bird hunting regulations by establishing the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting.

Acknowledging regional differences in hunting conditions, the Service has administratively divided the nation into four Flyways for the primary purpose of managing migratory game birds. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State and Province in that Flyway. The Flyway Councils, established through the International Association of Fish and Wildlife Agencies (IAFWA), also assist in researching and providing migratory game bird management information for Federal, State, and Provincial Governments, as well as private conservation agencies and the general public.

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

The process includes two separate regulations-development schedules, based on early and late hunting season regulations. Early hunting seasons pertain to all migratory game bird species in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; migratory game birds other than waterfowl (i.e., dove, woodcock, etc.); and special early waterfowl seasons, such as teal or resident Canada geese. Early hunting seasons generally begin prior to October 1. Late hunting seasons generally start on or after October 1 and include most waterfowl seasons not already established.

There are basically no differences in the processes for establishing either early or late hunting seasons. For each cycle, Service biologists gather, analyze, and interpret biological survey data and provide this information to all those involved in the process through a series of published status reports and presentations to Flyway Councils and other interested parties. Because the Service is required to take abundance of migratory game birds and other factors into consideration, the Service undertakes a number of surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, and State and Provincial wildlife-management agencies. To determine the appropriate frameworks for each species, we consider factors such as population size and trend, geographical distribution,

annual breeding effort, the condition of breeding and wintering habitat, the number of hunters, and the anticipated harvest.

After frameworks, or outside limits, are established for season lengths, bag limits, and areas for migratory game bird hunting, migratory game bird management becomes a cooperative effort of State and Federal governments. After Service establishment of final frameworks for hunting seasons, the States may select season dates, bag limits, and other regulatory options for the hunting seasons. States may always be more conservative in their selections than the Federal frameworks but never more liberal.

Notice of Intent To Establish Open Seasons

This notice announces our intent to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 2007–08 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

For the 2007–08 migratory game bird hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). We describe these proposals under Proposed 2007–08 Migratory Game Bird Hunting Regulations (Preliminary) in this document. We published definitions of waterfowl flyways and mourning dove management units, as well as a description of the data used in and the factors affecting the regulatory process, in the March 14, 1990, *Federal Register* (55 FR 9618).

Regulatory Schedule for 2007–08

This document is the first in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations. We will publish additional supplemental proposals for public comment in the *Federal Register* as population, habitat, harvest, and other information become available. Because of the late dates when certain portions of these data become available, we anticipate abbreviated comment periods on some proposals. Special circumstances limit the amount of time we can allow for public comment on these regulations.

Specifically, two considerations compress the time for the rulemaking

process: The need, on one hand, to establish final rules early enough in the summer to allow resource agencies to select and publish season dates and bag limits prior to the beginning of hunting seasons and, on the other hand, the lack of current status data on most migratory game birds until later in the summer. Because the regulatory process is strongly influenced by the times when information is available for consideration, we divide the regulatory process into two segments: Early seasons and late seasons (further described and discussed under the **Background and Overview** section).

Major steps in the 2007–08 regulatory cycle relating to open public meetings and *Federal Register* notifications are illustrated in the diagram at the end of this proposed rule. All publication dates of *Federal Register* documents are target dates.

All sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

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

23. Other

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

We will publish final regulatory alternatives for the 2007–08 duck hunting seasons in early June. We will publish proposed early season frameworks in mid-July and late season frameworks in mid-August. We will publish final regulatory frameworks for early seasons on or about August 17, 2007, and those for late seasons on or about September 14, 2007.

Request for 2008 Spring/Summer Migratory Bird Subsistence Harvest Proposals in Alaska

Background

The 1916 Convention for the Protection of Migratory Birds between the United States and Great Britain (for Canada) established a closed season for the taking of migratory birds between March 10 and September 1. Residents of northern Alaska and Canada traditionally harvested migratory birds for nutritional purposes during the spring and summer months. The governments of Canada, Mexico, and the United States recently amended the 1916 Convention and the subsequent 1936 Mexico Convention for the Protection of Migratory Birds and Game Mammals. The amended treaties provide for the legal subsistence harvest of migratory birds and their eggs in Alaska and Canada during the closed season.

On August 16, 2002, we published in the *Federal Register* (67 FR 53511) a final rule that established procedures for incorporating subsistence management into the continental migratory bird management program. These regulations, developed under a new co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives, established an annual procedure to develop harvest guidelines for implementation of a spring/summer migratory bird subsistence harvest. Eligibility and inclusion requirements necessary to participate in the spring/summer migratory bird subsistence season in Alaska are outlined in 50 CFR part 92.

This proposed rule calls for proposals for regulations that will expire on August 31, 2008, for the spring/summer subsistence harvest of migratory birds in Alaska. Each year, seasons will open on

or after March 11 and close prior to September 1.

Alaska Spring/Summer Subsistence Harvest Proposal Procedures

We will publish details of the Alaska spring/summer subsistence harvest proposals in later **Federal Register** documents under 50 CFR part 92. The general relationship to the process for developing national hunting regulations for migratory game birds is as follows:

(a) *Alaska Migratory Bird Co-Management Council*. Proposals may be submitted by the public to the Co-management Council during the period of November 1–December 15, 2007, to be acted upon for the 2008 migratory bird subsistence harvest season. Proposals should be submitted to the Executive Director of the Co-management Council, listed above under the caption **ADDRESSES**.

(b) *Flyway Councils*. (1) Proposed 2008 regulations recommended by the Co-management Council will be submitted to all Flyway Councils for review and comment. The Council's recommendations must be submitted prior to the Service Regulations Committee's last regular meeting of the calendar year in order to be approved for spring/summer harvest beginning March 11 of the following calendar year.

(2) Alaska Native representatives may be appointed by the Co-management Council to attend meetings of one or more of the four Flyway Councils to discuss recommended regulations or other proposed management actions.

(c) *Service regulations committee*. Proposed annual regulations recommended by the Co-management Council will be submitted to the Service Regulations Committee (SRC) for their review and recommendation to the Service Director. Following the Service Director's review and recommendation, the proposals will be forwarded to the Department of the Interior for approval. Proposed annual regulations will then be published in the **Federal Register** for public review and comment, similar to the annual migratory game bird hunting regulations. Final spring/summer regulations for Alaska will be published in the **Federal Register** in the preceding fall.

Because of the time required for review by us and the public, proposals from the Co-management Council for the 2008 spring/summer migratory bird subsistence harvest season must be submitted to the Flyway Councils and the Service by June 15, 2007, for Council comments and Service action at the late-season SRC meeting.

Review of Public Comments

This proposed rulemaking contains the proposed regulatory alternatives for the 2007–08 duck hunting seasons. This proposed rulemaking also describes other recommended changes or specific preliminary proposals that vary from the 2006–07 final frameworks (see August 29, 2006, **Federal Register** (71 FR 51406) for early seasons and September 22, 2006, **Federal Register** (71 FR 55654) for late seasons) and issues requiring early discussion, action, or the attention of the States or tribes. We will publish responses to all proposals and written comments when we develop final frameworks for the 2007–08 season. We seek additional information and comments on the recommendations in this proposed rule.

Consolidation of Notices

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

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

Region 2 (Arizona, New Mexico, Oklahoma, and Texas)—Jeff Haskins, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103; (505) 248–7885.

Region 3 (Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin)—Steve Wilds, U.S. Fish and Wildlife Service, Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056; (612) 713–5432.

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

Region 5 (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia)—Diane Pence, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley,

Massachusetts 01035–9589; (413) 253–8576.

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

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

Requests for Tribal Proposals

Background

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

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

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

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

In all cases, tribal regulations established under the guidelines must be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Convention). The guidelines are applicable to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also may be applied to the establishment of migratory game bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such

hunting, or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

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

One of the guidelines provides for the continuation of tribal members' harvest of migratory game birds on reservations where such harvest is a customary practice. We do not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory game bird resource. Since the inception of these guidelines, we have reached annual agreement with tribes for migratory game bird hunting by tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

Tribes should not view the guidelines as inflexible. We believe that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while also ensuring that the migratory game bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 2007–08 migratory game bird hunting season should submit a proposal that includes:

- (1) The requested migratory game bird hunting season dates and other details regarding the proposed regulations;
- (2) Harvest anticipated under the proposed regulations;
- (3) Methods that will be employed to measure or monitor harvest (mail-questionnaire survey, bag checks, etc.);
- (4) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory game bird resource; and
- (5) Tribal capabilities to establish and enforce migratory game bird hunting regulations.

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

Tribal Proposal Procedures

We will publish details of tribal proposals for public review in later **Federal Register** documents. Because of the time required for review by us and the public, Indian tribes that desire special migratory game bird hunting regulations for the 2007–08 hunting season should submit their proposals as soon as possible, but no later than June 1, 2007.

Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed above under the caption *Consolidation of Notices*. Tribes that request special migratory game bird hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments 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 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. We invite interested persons to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES**.

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.

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's Division of Migratory Bird Management office in room 4107, 4501 North Fairfax Drive, Arlington, Virginia. 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 **ADDRESSES**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March

9, 2006, **Federal Register** (71 FR 12216). 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 **ADDRESSES** or by viewing on our Web site at <http://fws.gov/migratorybirds>.

Endangered Species Act Consideration

Prior to issuance of the 2007–08 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 proposed rulemaking documents.

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, updated in 1998 and updated again in 2004. It is further discussed below under the heading **Regulatory Flexibility Act**. Results from the 2004 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of \$734 to \$1,064 million, with a mid-point estimate of \$899 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at <http://www.fws.gov/migratorybirds/reports/SpecialTopics/EconomicAnalysis-Final-2004.pdf>.

Executive Order 12866 also requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following:

- (1) Are the requirements in the rule clearly stated?
- (2) Does the rule contain technical language or jargon that interferes with its clarity?
- (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?
- (4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the “Supplementary Information” section of the preamble helpful in understanding the rule?

(6) What else could we 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 may also e-mail the comments to this address: Exsec@ios.doi.gov.

Regulatory Flexibility Act

These 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, and 2004. 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 2004 Analysis was based on the 2001 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 between \$481 million and \$1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at <http://www.fws.gov/migratorybirds/reports/SpecialTopics/EconomicAnalysis-Final-2004.pdf>.

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. 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 the surveys associated with the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 2/29/2008). 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 Sandhill Crane Harvest Survey and assigned clearance number 1018–0023 (expires 11/30/2007). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of the harvest, and the portion it constitutes of the total population. Lastly, OMB has 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. The OMB control number for the information collection is 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 2007–08 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: March 21, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Proposed 2007–08 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific regulatory proposals. At this time, we are proposing no changes from the final 2006–07 frameworks established on August 29 and September 22, 2006 (71 FR 51406 and 71 FR 55654). Other issues requiring early discussion, action, or the attention of the States or tribes are contained below:

1. Ducks

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

A. General Harvest Strategy

We propose to continue use of adaptive harvest management (AHM) to help determine appropriate duck-hunting regulations for the 2007–08 season. AHM is a tool that permits sound resource decisions in the face of uncertain regulatory impacts, as well as providing a mechanism for reducing that uncertainty over time. The current AHM protocol is used to evaluate four alternative regulatory levels based on the population status of mallards (special hunting restrictions are enacted for species of special concern, such as canvasbacks, scaup, and pintails).

In recent years, the prescribed regulatory alternative for the Pacific, Central, and Mississippi Flyways has been based on the status of mallards and breeding-habitat conditions in central North America (Federal survey strata 1–18, 20–50, and 75–77, and State surveys in Minnesota, Wisconsin, and Michigan). For the 2007 hunting season, however, we are considering setting hunting regulations in the Pacific Flyway based on the status and dynamics of a newly defined stock of “western” mallards. For now, western mallards would be defined as those breeding in Alaska (as based on federal surveys in strata 1–12), and in California and Oregon (as based on state-conducted surveys). Efforts to improve survey designs in Washington State and British Columbia are ongoing, and mallards breeding in these areas would

be included in regulatory assessments when a sufficient time-series of abundance estimates is available for analysis. Predicting changes in the abundance of western mallards due to harvest and uncontrolled environmental factors would be based on a model of density-dependent growth, with appropriate allowances for model uncertainty and the impact of hunting. Various harvest-management objective(s) for western mallards are being considered but, in any case, would not allow for a harvest higher than the estimated maximum sustainable yield. More specifics concerning this proposed change in AHM protocol are available on our website at <http://www.fws.gov/migratorybirds/mgmt/AHM/AHM-intro.htm> and will be provided in a supplemental proposed rule in May along with Flyway Council recommendations and comments. The final AHM protocol for the 2007–08 season will be detailed in the early-season proposed rule, which will be published in July (see **Schedule of Regulations Meetings and Federal Register Publications** at the end of this proposed rule for further information). Finally, since 2000, we have prescribed a regulatory alternative for the Atlantic Flyway based on the population status of mallards breeding in eastern North America (Federal survey strata 51–54 and 56, and State surveys in New England and the mid-Atlantic region). We are recommending a continuation of this protocol for the 2007–08 season.

We will propose a specific regulatory alternative for each of the Flyways during the 2007–08 season after survey information becomes available in late summer. More information on AHM is located at <http://www.fws.gov/migratorybirds/mgmt/AHM/AHM-intro.htm>.

B. Regulatory Alternatives

The basic structure of the current regulatory alternatives for AHM was adopted in 1997. The alternatives remained largely unchanged until 2002, when we (based on recommendations from the Flyway Councils) extended framework dates in the “moderate” and “liberal” regulatory alternatives by changing the opening date from the Saturday nearest October 1 to the Saturday nearest September 24, and changing the closing date from the Sunday nearest January 20 to the last Sunday in January. These extended dates were made available with no associated penalty in season length or bag limits. At that time we stated our desire to keep these changes in place for 3 years to allow for a reasonable

opportunity to monitor the impacts of framework-date extensions on harvest distribution and rates of harvest prior to considering any subsequent use (67 FR 12501).

For 2007–08, we are proposing to maintain the same regulatory alternatives that were in effect last year (see accompanying table for specifics of the proposed regulatory alternatives). Alternatives are specified for each Flyway and are designated as “RES” for the restrictive, “MOD” for the moderate, and “LIB” for the liberal alternative. We will announce final regulatory alternatives in early June. Public comments will be accepted until May 15, 2007, and should be sent to the address under the caption **ADDRESSES**.

D. Special Seasons/Species Management

iii. Black Ducks

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 November 2006, a working group of Federal, provincial, and State technicians expressed a desire to move forward with development of a strategy this year, with implementation to occur in 2008. The strategy would consist of a maximum harvest rate for the continental black duck population, as well as criteria for maintaining approximate parity in harvest between the two countries. Further consultations are required, however, to determine an acceptable upper limit to the overall harvest rate, procedures for determining whether the realized harvest rate is below this limit, procedures for determining whether the distribution of harvest between the countries is acceptable, and rules for changing regulations if the harvest-rate and parity criteria are not met. Based on the outcome of those consultations, we are planning to propose the specifics of a joint harvest strategy with Canada in the early-season proposed rule, which will be published in July (see **Schedule of Regulations Meetings and Federal Register Publications** at the end of this proposed rule for further information).

v. Pintails

In collaboration with scientists from the U.S. Geological Survey, progress has been made in the development of a compensatory harvest-mortality model for pintails. The model predicts that pintail survival during the period following the hunting season is density-

dependent, and represents an alternative hypothesis about the effect of hunting mortality on pintail population change. We are considering the inclusion of a “strong” compensatory model as a competing model in the analytical framework used to prescribe harvest regulations under the current pintail harvest strategy. Presently, in the current pintail harvest strategy, hunting mortality is assumed to be “additive” to natural forms of mortality. Predictions of pintail population size derived from the additive and compensatory models will be compared to the results of past population surveys to determine the initial predictive reliability of each alternative model. These comparisons will be used to weight each model in a manner that reflects past predictive ability. Model weights determine the influence that the alternative harvest-mortality models will have on subsequent regulatory decisions. Model weights will be updated annually by comparing model predictions with survey results such that the model with greater predictive ability exerts greater influence in regulatory decisions over time. We remain committed to the development of a framework to inform pintail harvest management based on a formal, derived strategy and clearly articulated management objectives.

vi. Scaup

In 2006, we did not change scaup harvest regulations with the understanding that a draft harvest strategy would be available for Flyway Council review prior to the 2007 winter meetings (see September 22, 2007, **Federal Register**, 71 FR 55654). In response to this expectation, we have developed models to represent scaup population and harvest dynamics that rely on the available scaup monitoring information and account for uncertainties about factors affecting scaup population change. The details of the models and assessment methods used to derive a scaup harvest strategy were presented during the Winter Flyway Technical Section meetings and a summary is available at <http://www.fws.gov/migratorybirds/reports>. As part of the strategy-development process, we provide several example harvest strategies based on a range of potential harvest-management objectives in order to solicit feedback regarding the appropriate objective for scaup harvest management.

The final scaup harvest strategy will be detailed in the July early-season proposed rule (see **Schedule of Regulations Meetings and Federal Register Publications** at the end of this proposed rule for further information).

vii. Mottled Ducks

The Service and other agencies have been concerned about the status of mottled ducks since at least the late 1990’s. This concern stems from negative trends in population survey data, loss and degradation of habitat, interbreeding with captive-reared and feral mallards, and increased harvest rates as the result of longer hunting seasons since 1997. In the past, we have expressed our desire to work with the States to develop a harvest-management strategy for mottled ducks. Since 2005, several workshops have been convened with State agencies, the U.S. Geological Survey, and others to discuss the status of mottled ducks, population structure and delineation, and to evaluate current monitoring programs and plan for the development of new population surveys. Major conclusions from these workshops are that mottled ducks should be managed as two separate stocks, a Florida stock and a Western Gulf Coast stock, and that the lack of a range-wide population survey for Western Gulf Coast mottled ducks is a significant impediment to management.

Although progress has been made toward development of monitoring systems to improve assessment capabilities for mottled ducks, we remain concerned about the status of mottled ducks across their range, especially in the Western Gulf Coast. Reasons for these concerns were mentioned previously. We will provide the Flyway Councils with analyses of harvest data that examine potential harvest restrictions to reduce harvest rates, should that be deemed necessary. We encourage the Flyway Councils to examine the status of mottled ducks and assess the potential need for any regulatory actions for the 2007–08 season.

9. Cranes

Greater and lesser (and Canadian) sandhill cranes are presently hunted in parts of their range and have been divided into management populations based on their geographic distribution during Fall and Winter. The Flyway Management Plan for the Lower Colorado River Valley Population (LCRVP) of sandhill cranes (Pacific Flyway Council 1983, revised in 1989, 1995) allows for hunting of this population when the wintering population exceeds 2,500 cranes. This population level has now been exceeded. In 2005, the Pacific Flyway Council proposed a limited open season on this population. In response to the Pacific Flyway Council’s proposal, we stated in the August 29, 2006, **Federal**

Register (71 FR 51406) that while we were in general support of allowing a very limited, carefully controlled harvest of sandhill cranes from this population, we did not believe that this limited harvest was of immediate concern, and recommended that prior to initiating such a season, which would be the first time harvest from this population has been permitted, a more detailed harvest strategy be developed by the Flyway Council. We stated that this harvest strategy should be included as an appendix to the management plan prior to any hunting season being initiated. In further response to this proposal, we have now prepared a draft environmental assessment (DEA) considering the action to begin a limited harvest of sandhill cranes from the LCRVP by reviewing current management strategies and population objectives, and examining alternatives to current management programs.

Copies of the DEA can be obtained by writing Robert Trost, Pacific Flyway Representative, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 911 NE. 11th Avenue,

Portland, Oregon 97232-4181. The DEA may also be viewed via the Fish and Wildlife Service home page at <http://fws.gov/migratorybirds>. Written comments should be sent to the address above. You must submit comments on the Draft Environmental Assessment by May 15, 2007.

16. Mourning Doves

Last year, we approved guidelines that will be used to guide zone/split seasons for doves (see July 28, 2006, **Federal Register**, 71 FR 43008) with implementation beginning in the 2007-08 season. The initial period will be 4 years (2007-2010); beginning in 2011, zoning will conform to a 5-year period.

Guidelines for Dove Zones and Split Seasons in the Eastern and Central Mourning Dove Management Units

1. A zone is a geographic area or portion of a State, with a contiguous boundary, for which independent seasons may be selected for dove hunting.

2. States may select a zone/split option during an open season. It must

remain in place for the following 5 years except that States may make a one-time change and revert back to their previous zone/split configuration in any year of the 5-year period. Formal approval will not be required, but States must notify the Service prior to making the change.

3. Zoning periods for dove hunting will conform to those years used for ducks, e.g., 2006-2010.

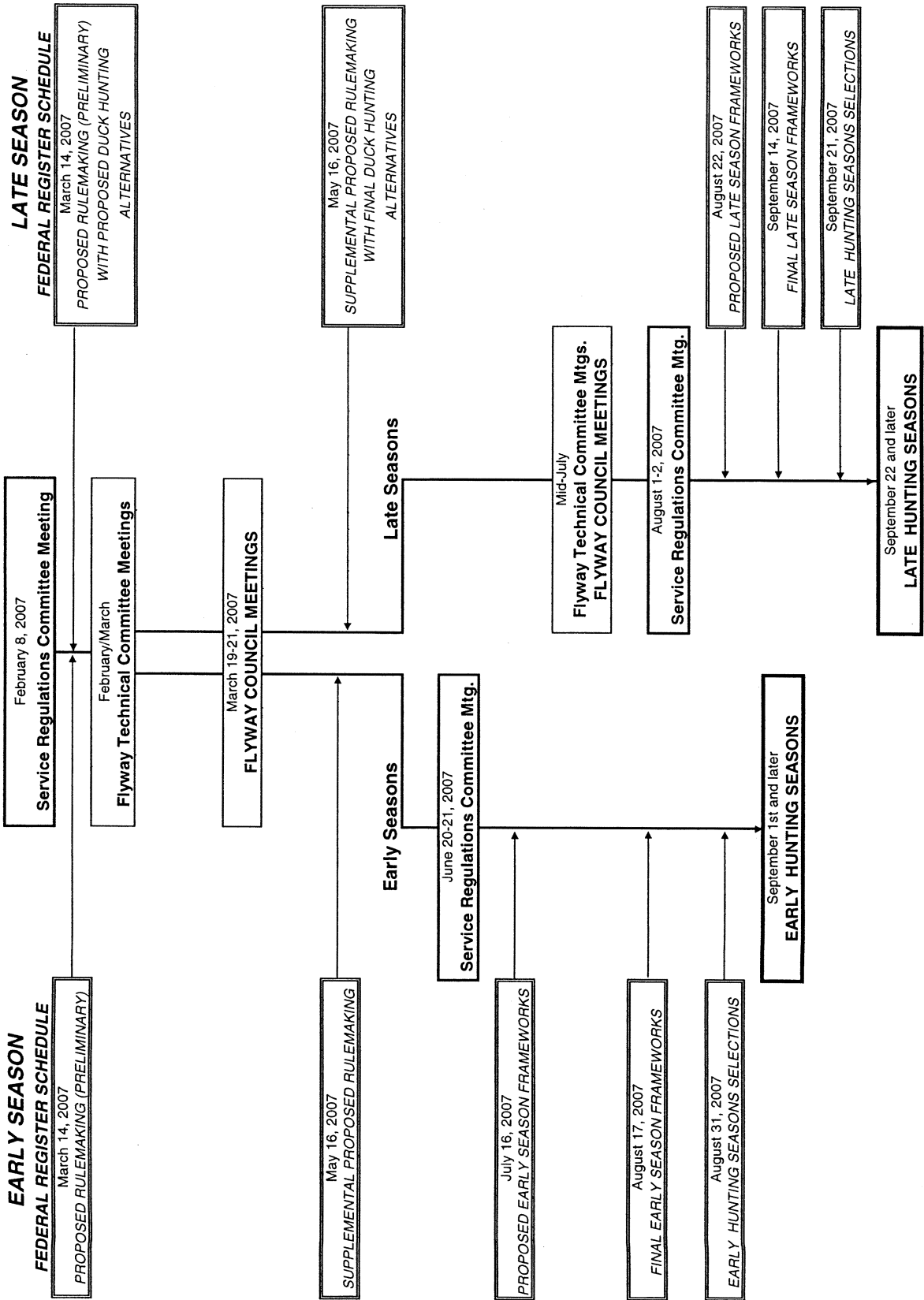
4. The zone/split configuration consists of two zones with the option for 3-way (3-segment) split seasons in one or both zones. As a grandfathered arrangement, Texas will have three zones with the option for 2-way (2-segment) split seasons in one, two, or all three zones.

5. States that do not wish to zone for dove hunting may split their seasons into no more than 3 segments.

We request that States notify us whether or not they plan to change their zone/split configurations for the upcoming 4-year period (2007-2010) by May 1, 2007.

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2007 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS



PROPOSED REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2007-08 SEASON

	ATLANTIC FLYWAY				MISSISSIPPI FLYWAY				CENTRAL FLYWAY (a)				PACIFIC FLYWAY (b)(c)			
	RES	MOD	LIB		RES	MOD	LIB		RES	MOD	LIB		RES	MOD	LIB	
Beginning Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise		1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise		1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise		1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	
Ending Shooting Time	Sunset	Sunset	Sunset		Sunset	Sunset	Sunset		Sunset	Sunset	Sunset		Sunset	Sunset	Sunset	
Opening Date	Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24		Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24		Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24		Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	
Closing Date	Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.		Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.		Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.		Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	
Season Length (in days)	30	45	60		30	45	60		39	60	74		60	86	107	
Daily Bag/Possession Limit	3 6	6 12	6 12		3 6	6 12	6 12		3 6	6 12	6 12		4 8	7 14	7 14	
Species/Sex Limits within the Overall Daily Bag Limit																
Mallard (Total/Female)	3/1	4/2	4/2		2/1	4/1	4/2		3/1	5/1	5/2		3/1	5/2	7/2	

- (a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway, with the exception of season length. Additional days would be allowed under the various alternatives as follows: restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.
- (b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.
- (c) In Alaska, framework dates, bag limits, and season length would be different from the remainder of the Pacific Flyway. The bag limit would be 5-7 under the restrictive alternative, and 8-10 under the moderate and liberal alternatives. Under all alternatives, season length would be 107 days and framework dates would be Sep. 1 - Jan. 26.