

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 20**

RIN 1018-AD69

Migratory Bird Hunting; Final Rule on the Establishment of a Youth Waterfowl Hunting Day for the 1996-97 Migratory Game Bird Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposed in an earlier document (August 15, 1996, Federal Register 61 FR 42500) the establishment of a special youth waterfowl hunting day for the 1996-97 duck-hunting season. This final rule contains final frameworks for the special youth waterfowl hunting day from which States may select season dates, limits, and other options for the 1996-97 duck-hunting seasons. The effect of this final rule is to facilitate the selection of a youth hunting day by the States to further the annual establishment of the migratory bird hunting regulations. State selections will be published in the Federal Register as amendments to § 20.105 of title 50 CFR part 20.

EFFECTIVE DATE: This rule takes effect on September 18, 1996.

ADDRESSES: States should send their season selections to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634-ARLSQ, 1849 C Street, NW., Washington, DC 20240. The public may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358-1714.

SUPPLEMENTARY INFORMATION:**Regulations Schedule for 1996**

On March 22, 1996, the Service published in the Federal Register (61 FR 11992) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 13, 1996, the Service published in the Federal Register (61 FR 30114) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks, detailing

information on the 1996-97 regulatory schedule, and announcing the Service Migratory Bird Regulations Committee and Flyway Council meetings. On June 14, 1996, the Service published in the Federal Register (61 FR 30490) a third document describing the Service's proposed regulatory alternatives for the 1996-97 duck hunting season and the Service's consideration of a proposed youth waterfowl hunting day. On August 15, 1996, the Service published in the Federal Register (61 FR 42500) a proposal for the establishment of a special youth waterfowl hunting day.

This rulemaking prescribes the final framework for establishing a youth waterfowl hunting day for the 1996-97 migratory bird hunting season. The Service considered all comments received to date.

Written Comments Received

The Service's June 14 Federal Register contained a notice of consideration and preliminary guidelines for establishing a special youth waterfowl hunting day and opened a public comment period. The Service received 145 comments specifically addressing the establishment of a youth waterfowl hunting day. Comments, responses to comments, and modifications to the preliminary guidelines were announced in the August 15 Federal Register proposed rulemaking. The public comment period on the proposed rule closed on August 26, 1996. As of August 30, 1996, the Service had received an additional 15 comments on the proposed youth waterfowl hunting day. Comments and modifications to the proposed guidelines announced in the August 15 Federal Register are discussed below. The headings correspond to the numbered items in the March 22 Federal Register.

1. Ducks**G. Special Seasons/Species Management**

Written Comments: The Ohio Division of Wildlife commended the Service for its proposal to provide a special day of hunting for young hunters.

The Pennsylvania Game Commission (Pennsylvania) fully supported the concept of a youth waterfowl hunting day. They believed a day devoted for youth to experience and learn about waterfowl hunting would serve to foster involvement and support for waterfowl conservation. They further believed that youth should be encouraged to participate in these activities and that the continued conservation of all migratory birds depends on the future

attitudes and actions of youth. While they supported the Service's proposed guidelines, Pennsylvania requested that licensing requirements for the accompanying adult be left to the discretion of the individual State. They also requested the Service thoroughly evaluate harvest and hunter activity resulting from the special youth hunt.

The Arkansas Game and Fish Commission (Arkansas) was pleased that the Service had proceeded with the youth hunting day initiative for the 1996-97 season and expected that the experiences shared by the participants would increase the appreciation for natural resources. However, Arkansas requested that the guidelines for selecting a youth hunting day include primary and secondary school vacation days as well as weekends and holidays.

The Georgia Wildlife Resources Division (Georgia) and the South Carolina Department of Natural Resources (South Carolina) also supported the special youth hunt concept, but were concerned about the Service's proposed age limitation. While both States understood the age requirements imposed by the Federal migratory waterfowl hunting stamp, Georgia believed that the Service's proposed youth participation age of 15 or younger would serve to complicate an already complex issue. Both States recommended final frameworks that allow States to select the most appropriate participation age.

An individual from Wisconsin supported the proposal for a special youth waterfowl hunting day, citing the educational opportunities for young people to experience safe, high-quality waterfowl hunting.

An individual from Minnesota expressed concern about youth hunters scaring birds, which would then not be available for the opening day of the regular duck season. Further, he supported allowing the accompanying adult to carry a gun to facilitate the pursuit of crippled birds.

Another individual from Minnesota opposed establishing a special youth hunt because of the special status granted youth, the disruption of the regular season opening, and the potential abuses of the special hunt by accompanying adults.

The Animal Care and Welfare (ACW), two individuals from Virginia, one person from New York, one individual from Wisconsin, and one person from California opposed the establishment of a special youth hunting day. Collectively, they believed the Service should represent the views of both hunters and nonhunters. The ACW and two of the commenters believed the

Service was acting as a public relations recruiting firm for hunters. They believed the Service should encourage youths to participate in nonconsumptive wildlife recreation, such as wildlife photography, rather than hunting. Several commenters also noted that the mallard population slightly decreased last year and as such, believed it biologically reckless of the Service to increase hunting pressure.

The Fund for Animals, Inc. (FFA) opposed the establishment of a youth waterfowl hunting day and protested the public and regulatory process under which the Service was considering the proposal. FFA objected to the short public comment period and believed the Service had already decided to implement the proposal and was merely going through the motions of public comment to satisfy legal requirements. Further, FFA believed the Service lumped comments together and did not adequately discuss or respond to comments of opposition in the August 15 proposed rule. Such action, FFA argued, suggests the Service does not consider ethical and moral concerns deserving of serious consideration. The FFA also questioned States actions of setting season dates and bag limits based on the Service's proposed frameworks and urged the Service to issue regulations prohibiting States from anticipating Service actions. The FFA stated that this practice reflected adversely on the integrity and credibility of the Service's rulemaking process. The FFA urged the Service to extend the comment period and to hold public hearings specifically on this initiative.

The FFA also objected to the Service's proposed youth hunt for social, moral, and ethical reasons. FFA believed the promotion of youth hunting was not an appropriate endeavor for the Federal government. FFA argued the Service should not encourage violence and killing, but should teach children to be kind to animals. As an alternative, the FFA proposed the Service sponsor a youth waterfowl photography day, arguing that such a day would have broader public support. Further, FFA commented that inexperienced youth hunters would result in a higher bird wounding rate and that the Service should establish a minimum participation age of 14 or 15. Lastly, FFA noted that since the recovery of the duck population was still questionable, there should be no increase in harvest.

Service Response: The Service appreciates the comments and suggestions of the various States, organizations, and individuals regarding the establishment of a youth waterfowl

hunting day. While the Service recognizes there are organizations and individuals opposed to this proposal on the basis of general opposition to hunting, the Service believes recreational sport hunting is a wise and compatible use of our nation's renewable natural resources. As the Service previously stated, we recognize the valuable contributions of both hunters and non-hunters to natural resource conservation. However, the Service is mandated by various legislation to provide for the long-term conservation of migratory birds and, to regulate the hunting of migratory birds, including waterfowl. The Service encourages youth participation in all wildlife-oriented recreational activity, non-consumptive as well as consumptive.

Traditionally, the Service has viewed its role as including the permitting of recreational harvest opportunities consistent with long-term resource conservation for all Americans. To meet this objective, the Service believes a well-educated and properly trained hunting constituency is in the best interest of long-term resource conservation. Thus, the Service views the establishment of a youth hunting day as a unique educational opportunity which will help ensure safe, high-quality hunting for future generations of Americans. The Service's intent is not to recruit youth hunters, but to provide the best and safest learning environment for our youth who are interested in hunting.

Further, the Service believes establishing such a day is consistent with our responsibility to provide general education and training in the wise use of our nation's valuable wildlife resources. The Service believes the long-term conservation of North America's migratory bird resources depends on the future attitudes and actions of today's youth and that the special youth day will assist in the formation and development of a conservation ethic in future generations. The Service's intent in establishing this special day is to introduce youth to the concepts of ethical utilization and stewardship of waterfowl and other natural resources, encourage youngsters and adults to experience the outdoors together, and contribute to the long-term conservation of the migratory bird resource.

While the Service understands the various comments from the States regarding the age requirements of the participating youth and FFA's request to establish a minimum participating age, we continue to believe that any age criteria should be consistent with previous definitions of youth hunters

established in other Federal legislation. Under the Migratory Bird Conservation Act of 1934, a youth is defined as a person less than 16 years of age. To maintain consistency and to avoid confusion in this initial trial year, the Service believes that this definition should be employed for the youth hunting day. However, the Service is committed to working with the States and the Flyway Councils on this criterion prior to any proposed youth hunt next year.

Regarding Arkansas' request that guidelines for selecting a youth day include school vacation days, the inclusion of primary and secondary school vacation days seems logical and meets the Service's original intent of affording the maximum opportunity for participation by youth hunters. Thus, the Service has revised the final guidelines accordingly to reflect this modification.

Regarding FFA's comment on the abbreviated comment period and their request for an extension, the Service reminds them that the rulemaking process for migratory game bird hunting operates under severe time constraints. However, the Service has repeatedly stated that it intends that the public be given the greatest possible opportunity to comment. Thus, when the Service announced its intent to consider establishing a youth waterfowl hunting day in the June 14 Federal Register and its proposal for a youth day in the August 15 Federal Register, the Service established what it believed were the longest periods possible for public comment and input. In light of the fact that the Service sought and received significant public comment in the development and establishment of this special youth hunt, we believe that allowing a comment period past the already established closing date is contrary to the public interest. Further, extending the comment period would not allow the States sufficient time to select season dates, to communicate those selections to the Service, and to establish and publicize the regulations and procedures necessary to implement their decisions. The Service has given every consideration to the comments and has decided to finalize the proposal for the reasons stated. Because it has provided the two comment periods referred to above, the Service believes it has provided adequate opportunity for public comment and has decided not to extend the comment period or hold public hearings. To do so would delay this beneficial resource-oriented educational opportunity.

Regarding FFA's belief that the Service lumped comments together and

did not provide adequate discussion or response, the Service indicates for the record that it considered all comments received on both the notice of consideration and the proposed rule. Time, space, and costs prevent us from providing an individual response to each commenter on duplicative issues.

With regard to FFA's comment on State adoption of its own regulations based on anticipated Federal final action, we note that States take those actions on their own with the risk that they may have to amend their regulations if the Federal final action differs from the proposal. The Service is in no way bound by or constrained by such State action.

Several commenters incorrectly noted that duck populations slightly decreased from last year, and as such, the Service should not increase hunting pressure. The Service notes that the 1996 estimate of total ducks in the traditional survey area was 37.5 million, an increase of 5 percent from that in 1995 and 16 percent higher than the long-term average. Further, the total duck fall flight forecast is approximately 89.5 million birds, compared to 77 million last year. This estimate is the highest recorded since calculations were initiated in 1970 and 16 percent higher than last year. Because the special 1-day hunt would be limited to youths, the Service believes that waterfowl populations can support the additional harvest.

The Service will continue to evaluate this opportunity annually, including an assessment of possible expansion and the need for additional criteria. The Service believes this opportunity should be offered during the 1996–97 hunting season and that further dialogue and refinements can be incorporated in future years.

Therefore, the Service is establishing the following guidelines for the 1996–97 season:

1. States may select 1 day per duck-hunting zone, designated as "Youth Waterfowl Hunting Day", in addition to their regular duck seasons.
2. The day must be held outside any regular duck season on either a weekend, holiday, or other non-school day when youth hunters would have the maximum opportunity to participate.
3. The day could be held up to 10 days before or after any regular duck-season frameworks or within any split of a regular duck season.
4. The daily bag limit may include ducks, mergansers, coots, moorhens, and gallinules and would be the same as that allowed in the regular season. Flyway species restrictions would remain in effect.
5. Youth hunters must be 15 years of age or younger.

6. An adult at least 18 years of age must accompany the youth hunter into the field. This adult could not duck hunt but may participate in other seasons that are open on the special youth day.

7. The special youth hunt day will be considered a trial for the 1996–97 season and will be evaluated by the Service.

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 EPA on June 9, 1988. The Service published a Notice of Availability in the June 16, 1988, Federal Register (53 FR 22582). The Service published its Record of Decision on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

As in the past, the Service designs hunting regulations to remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species. Consultations have been conducted to ensure that actions resulting from these regulations will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. The Service's biological opinions resulting from its Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and MBMO, at the address indicated under the caption **ADDRESSES**.

Regulatory Flexibility Act; Executive Order (E.O.) 12866 and the Paperwork Reduction Act

In the March 22, 1996, Federal Register, the Service reported measures it took to comply with requirements of the Regulatory Flexibility Act and E.O. 12866. One measure was to prepare a Small Entity Flexibility Analysis (Analysis) documenting the significant beneficial economic effect on a substantial number of small entities. The Analysis estimated that migratory bird hunters would spend between \$254 and \$592 million at small businesses in 1996. Copies of the Analysis are

available upon request from the Office of Migratory Bird Management. This rule was not subject to review by the Office of Management and Budget under E.O. 12866.

The Service examined these proposed regulations under the Paperwork Reduction Act of 1995 and found no information collection requirements.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the proposed rulemaking was published, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select season dates; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from these officials, the Service will publish in the Federal Register a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 1996–97 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Unfunded Mandates

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates 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.

Civil Justice Reform—Executive Order
12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

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 1996–97 hunting season are authorized under 16 U.S.C. 703–712, and 16 U.S.C. 742 a–j.

Dated: September 11, 1996.

George T. Frampton, Jr.,
*Assistant Secretary for Fish and Wildlife and
Parks.*

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