

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

RIN: 1018-AE14

**Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations; Notice of Meetings****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule; supplemental.

**SUMMARY:** The U.S. Fish and Wildlife Service (hereinafter the Service) proposed in an earlier document to establish annual hunting regulations for certain migratory game birds for the 1997–98 hunting season. This supplement to the proposed rule provides the regulatory schedule; announces a special meeting to discuss and review Adaptive Harvest Management; announces the Service Migratory Bird Regulations Committee and Flyway Councils meetings; and describes the proposed regulatory alternatives for the 1997–98 duck hunting seasons and other proposed changes from the 1996–97 hunting regulations.

**DATES:** The Service will hold a special open meeting at 9:00 a.m. on June 24, 1997, to review the concepts and process of Adaptive Harvest Management. The Service Migratory Bird Regulations Committee will consider and develop proposed regulations for early-season migratory bird hunting at 8:30 a.m. on June 25 and 26, and for late-season migratory bird hunting on August 5 and 6. The Service will hold public hearings on proposed early- and late-season frameworks at 9:00 a.m. on June 27 and August 7, 1997, respectively. The comment period for the proposed regulatory alternatives for the 1997–98 duck hunting seasons will end on July 3, 1997. The comment period for proposed migratory bird hunting-season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons will end on July 25, 1997. The comment period for late-season proposals will end on September 4, 1997.

**ADDRESSES:** The Adaptive Harvest Management Meeting and 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 Drive, Arlington, Virginia. The Service will hold public hearings in the Auditorium of the Department of the Interior

Building, 1849 C Street, NW., Washington, DC. Parties should submit written comments on the proposals and/or a notice of intent to participate in either hearing to the 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, ARLSQ 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 1997**

On March 13, 1997, the Service published in the **Federal Register** (62 FR 12054) 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. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. The Service will propose early-season frameworks in late June and late-season frameworks in early August. The Service will publish final regulatory alternatives for the 1997–98 duck hunting seasons in mid-July and final regulatory frameworks for early seasons on or about August 20, 1997, and those for late seasons on or about September 25, 1997.

On June 27, 1997, the Service will hold a public hearing in Washington, DC, to review the status of migratory shore and upland game birds and waterfowl hunted during early seasons and the recommended hunting regulations for these species.

On August 7, 1997, the Service will hold a public hearing in Washington, DC, to review the status of waterfowl and recommended hunting regulations for regular waterfowl seasons, and other species and seasons not previously discussed at the June 27 public hearing.

**Announcement of Adaptive Harvest Management Meeting**

The June 24 meeting will review the concepts and process of Adaptive Harvest Management. Representatives from the Service, the Service Migratory Bird Regulations Committee, and Flyway Council Consultants will attend.

**Announcement of Service Migratory Bird Regulations Committee Meetings**

The June 25 meeting will review information on the current status of migratory shore and upland game birds and develop 1997–98 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, the Service will review and discuss preliminary information on the status of waterfowl as it relates to the development of the final regulatory packages for the 1997–98 regular waterfowl seasons. The June 26 meeting will ensure that the Service develops its regulations recommendations in full consultation.

The August 5 meeting will review information on the current status of waterfowl and develop 1997–98 migratory game bird regulations recommendations for regular waterfowl seasons and other species and seasons not previously discussed at the early season meetings. The August 6 meeting will ensure that the Service develops its regulations recommendations in full consultation.

In accordance with Departmental policy, these meetings are open to public observation. Members of the public may submit written comments on the matters discussed to the Director.

**Announcement of Flyway Council Meetings**

Service representatives will be present at the following meetings of the Flyway Councils:

Atlantic Flyway—July 31–August 1, Savannah Georgia (Savannah Marriott River Front)

Central Flyway—July 30–31, Cypress Hills, Saskatoon, Saskatchewan

Mississippi Flyway—July 30–31, Hot Springs, Arkansas

Pacific Flyway—July 30–31, Reno, Nevada (Peppermill Hotel)

Although agendas are not yet available, these meetings usually commence at 8:30 a.m. on the days indicated.

**Review of Public Comments**

This supplemental rulemaking contains the proposed regulatory alternatives for the 1997–98 duck hunting seasons. All comments and recommendations received through May 1, 1997, relating to the development of these alternatives are included and addressed herein.

This supplemental rulemaking also describes other recommended changes based on the preliminary proposals published in the March 13, 1997, **Federal Register**. Only those recommendations requiring either new proposals or substantial modification of the preliminary proposals are included here. This supplement does not include recommendations that support or oppose but do not recommend alternatives to the preliminary proposals. The Service will consider these comments later in the regulations-development process. The Service will publish responses to all proposals, written comments, and public-hearing testimony when it develops final frameworks.

The Service seeks additional information and comments on the recommendations in this supplemental proposed rule. The Service will consider all recommendations and associated comments during development of the final frameworks.

New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the March 13, 1997, **Federal Register**.

## General

*Written Comments:* Several individuals from Tennessee and Mississippi recommended either a noon or 1:00 p.m. closing time for duck hunting, citing positive benefits to the duck population and law enforcement.

An individual from Minnesota urged elimination of the 4:00 p.m. closing time in Minnesota.

## 1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special Seasons/Species Management. Categories containing substantial recommendations are discussed below.

### A. Harvest Strategy Considerations

On March 13, 1997, the Service published for public comment recommendations from the Adaptive Harvest Management (AHM) technical working group regarding modification of the regulatory alternatives for duck hunting (62 FR 12054). If adopted, significant changes from the alternatives utilized in 1996-97 would include: (1) addition of a "very restrictive" alternative; (2) additional days and a higher total-duck daily bag limit in the "moderate" and "liberal" alternatives;

and (3) an increase in the daily bag limit of hen mallards in the "moderate" and "liberal" alternatives.

*Council Recommendations:* All four Flyway Councils generally endorsed the regulatory alternatives recommended by the AHM technical working group that were identified in the March 13, 1997, **Federal Register**. However, some modifications were recommended and are identified below.

The Atlantic Flyway Council endorsed the four regulatory alternatives for the Atlantic Flyway, with the exception of the total duck bag limit and hen mallard bag limit restrictions (see further discussion in *E. Bag Limits*).

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council endorsed the regulatory packages for the Mississippi Flyway for the 1997-98 season, with the Lower-Region Regulations Committee also recommending an experimental framework closing date (see further discussion in *B. Framework Dates*).

The Central Flyway Council endorsed the regulatory packages with the exception of recommending a harvest strategy for pintails and an earlier framework opening date for northern states (see further discussions in *B. Framework Dates* and *G. Special Seasons/Species Management, ii. Pintails*).

The Pacific Flyway Council endorsed the working group's recommended alternatives with several modifications. The Council recommended minor changes in season length and the hen mallard bag limit and adoption of an interim pintail harvest strategy (see further discussion in *C. Season Length, E. Bag Limits* and *G. Special Seasons/Species Management, ii. Pintails*).

*Written Comments:* The Minnesota Department of Natural Resources (Minnesota) and the Wisconsin Department of Natural Resources supported the packages proposed by the AHM technical working group, although both stated that the packages provide little additional benefit to hunters in northern States. Minnesota noted that AHM brings more science, better decisions and less politics into the regulations-setting process. Minnesota also expressed support for the working group's recommended "liberal" alternative despite their belief that it essentially changes the allocation of harvest, providing additional opportunity to mid-latitude and southern States while limiting Minnesota hunter opportunities due to typical freeze-up dates.

The Missouri Department of Conservation (Missouri) supported the

working group's recommendations and further supported any change among the various options that provided a consistent, science-based approach to waterfowl management. Missouri further commented that the strengths of AHM are the shared objectives and improved use of available information and that State and region-specific proposals generated outside the AHM process jeopardize this improved waterfowl management decision-making process.

The North American Waterfowl Federation (NAWF) supported the development and implementation of AHM in setting waterfowl regulations but did not support the liberalizations proposed by the working group regarding increases in season lengths and bag limits. NAWF believed that extensive changes were premature and did not provide adequate consideration for population impacts. NAWF pointed out that several species of waterfowl had not yet reached population goals and that additional harvest did not appear justified. NAWF was also not aware of any initiative or substantial interest among the duck hunting public for an expansion of hunting opportunities and questioned whether the interests of hunters were being represented.

The Delta Wildlife Foundation and the Delta Outfitters Association of Mississippi and the Alabama Waterfowl Association expressed support for the recommendations of the Lower-Region Regulations Committee of the Mississippi Flyway Council.

The Louisiana Wildlife Federation supported the establishment of a "more" or "most" liberal alternative for those years when duck reproduction was high and the population could support additional harvest.

Several individuals from Louisiana fully supported the working group's recommendations.

Several individuals from Alabama expressed support for the recommendations of the Lower Region Regulations Committee of the Mississippi Flyway Council.

An individual from Minnesota questioned the AHM process, citing the fact that harvest had increased each year under AHM. He further questioned the need for a "super-liberal" alternative and believed that States would be unwilling to actually use the "conservative" alternative.

Individuals from Tennessee and Louisiana expressed support for the "liberal" alternative.

Several individuals from Minnesota and one individual from Louisiana suggested keeping the "liberal"

alternative at 50 days with a 5-bird daily bag limit. Another commenter requested longer (i.e., 60 to 70 days) seasons and 4-bird daily bag limits.

An individual from Minnesota urged support for a 30- to 40-day season and a 3- to 5-bird daily bag limit, depending on water conditions.

The California Waterfowl Association supported the addition of a "very restrictive" alternative and the working group's recommendation for extended season lengths under the "moderate" and "liberal" alternatives.

An individual from Kansas strongly supported the addition of a "very restrictive" alternative as a management tool.

An individual from Oregon was concerned about potential increases in mallard harvest given the population status of mallards and recent season liberalizations.

Several individuals from Ohio, California, and Pennsylvania opposed all increases in either daily bag limits or season lengths on moral grounds, with some calling for overall reductions in hunting opportunities.

*Service Response:* Comments received to date regarding the recommendations of the AHM technical working group generally have been favorable. Therefore, the Service is proposing to adopt most of the recommendations of the AHM working group. Minor differences between the working group's recommendations and the Service's proposal are noted under *C. Season Lengths*, *E. Bag Limits*, and *G. Special Seasons/Species Management*, ii. *Pintails*. The Service notes a number of comments suggesting some hunters may not be interested in more liberal regulations, even though they may be biologically acceptable.

For the 1997-98 regular duck hunting season, the Service proposes the four regulatory alternatives detailed in the accompanying table. Alternatives are specified for each Flyway and are designated as "VERY RES" for the very restrictive, "RES" for the restrictive, "MOD" for the moderate, and "LIB" for the liberal alternative. The Service will publish final regulatory alternatives in July and propose a specific regulatory alternative when survey data on waterfowl population and habitat status are available. Public comments will be accepted until June 27, 1997, and should be sent to the address under the caption **ADDRESSES**.

#### B. Framework Dates

*Council Recommendations:* The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended the Service allow an

experimental January 31 framework closing date, as long as it does not affect regulations/framework packages in non-participatory States.

The Central Flyway Council recommended a framework opening date of the Saturday nearest September 23 in North Dakota, South Dakota, Montana, Wyoming, Colorado, and Nebraska.

*Written Comments:* The State of North Dakota provided a concurrent resolution urging the Service to adopt a framework opening date of September 20.

The Alabama Department of Conservation and Natural Resources recommended a framework closing date of January 31 under the "liberal" and "moderate" alternatives. In lieu of this option, they suggested an experimental season of 3 to 5 years for a limited number of States in order to determine any resulting detrimental effects from the later framework closing date.

Senators Trent Lott and Thad Cochran of Mississippi urged support for extending the framework closing date to January 31 in Mississippi with the same number of days and bag limit as other States in the Mississippi Flyway.

The Mississippi State Senate provided a concurrent resolution urging the Mississippi U.S. Congressional delegation to express to the Service the need and support for a duck hunting framework closing date of January 31 for the Mississippi Flyway. The resolution stated that peak duck populations in Mississippi occur from late December through January, a January 31 framework closing date would not adversely impact the survival rate of ducks, and Mississippi hunters were denied the same opportunity to hunt ducks afforded to hunters in the northern and central portions of the Mississippi Flyway.

The City of Grenada, Mississippi, urged consideration of a season ending after the first week in February so as to allow Mississippi hunters the same hunting opportunities afforded other States in the Mississippi Flyway.

The Mississippi Wildlife Federation expressed support for a later framework closing date in January, citing the fact that Mississippi overwinters the third largest number of waterfowl in the Mississippi Flyway, but only ranks 11th out of 14 States in the Flyway in waterfowl harvest.

One hundred and twenty-six individual commenters and 107 petitioners from Mississippi recommended a framework closing date extension to January 31. Most commenters believed the majority of waterfowl do not arrive in Mississippi until mid- to late-January after the

current season closes. Further, many cited the opinion that due to the Service's unfair frameworks policy, southern waterfowlers are not given the same hunting opportunities as those given to hunters in northern States.

Twenty-two individuals and eleven petitioners from Mississippi recommended a framework closing date extension to February 9. One individual from Mississippi recommended a season running through the middle of February.

Three individuals from Alabama urged the Service to consider extending the framework closing date to at least January 31.

The Louisiana Wildlife Federation supported modifying the framework closing date to allow hunting through the last weekend in January, provided that the late-season disturbance was not shown to be an impediment to the overall population or to achieving the NAWMP goals.

Several individuals from Louisiana recommended a duck hunting season closing the end of January.

The Minnesota Department of Natural Resources (Minnesota) expressed serious concerns about the proposals to extend framework opening and closing dates stating that the proposed changes would alter the current distribution of duck harvest within and among Flyways. Minnesota commented that shifting hunting opportunity further to the south through a framework extension would be unacceptable to Minnesota and would allow a reallocation of harvest by default.

The Wisconsin Department of Natural Resources (Wisconsin) did not support modification of the frameworks at this time. Wisconsin stated, however, that if the Service were to seriously consider changing the framework closing date, it must also consider changes to the framework opening date. Wisconsin believed that extending the framework date to the end of January without modifying the opening framework dates would only serve to widen the gap in hunting opportunities currently offered in the Mississippi Flyway. Wisconsin further recommended that the Service establish a timetable and a process to allow a thorough discussion of the implications of framework modification for all Flyways.

Although supporting the working group's recommended packages, the Missouri Department of Conservation (Missouri) believed the 1996-97 regulations provided excellent hunting opportunity and would prefer retaining these options rather than any additional wholesale changes in frameworks. Missouri was concerned that the potential biological impacts of

framework extensions had not been adequately considered and that a rigorous evaluation would be necessary. Missouri further believed that this was not a high priority for AHM at this time and questioned whether issues of harvest allocation should even be a part of the AHM process, stating that these issues were largely social, not technical.

Several individuals from Tennessee and Louisiana expressed strong opposition to extending the framework closing date past January 20, citing concerns for the conditions of the ducks and the lack of hunting opportunity later in January.

The California Waterfowl Association expressed concerns about the impacts of either earlier framework opening dates or later framework closing dates.

Individuals in Pennsylvania and Iowa believed the season in their respective States closed too early.

Individuals in California and Oregon expressed support for extending the hunting season.

*Service Response:* In 1995, the Service established AHM framework opening and closing dates of the Saturday nearest October 1 to the Sunday nearest January 20 for the Pacific, Central, and Mississippi Flyways, and fixed dates of October 1 to January 20 for the Atlantic Flyway (60 FR 50045). In 1996, the Service denied requests for a January 31 closing date in Mississippi, but recognized that the suitability of all aspects of the regulatory alternatives, including framework dates, should be investigated by the AHM technical working group. All four Flyway Councils, in joint recommendations dated July 28, 1996, assigned a high priority to refining the AHM regulatory alternatives and asked the technical working group to draft recommendations prior to the 1997 regulatory cycle. In the fall of 1996, the technical working group circulated a questionnaire to all States seeking input regarding concerns with the current regulatory alternatives. Fifty-four percent of States nationwide believed the current framework dates of approximately October 1 to January 20 were satisfactory, while 32 percent believed the dates were too constrained. Overall, States ranked framework dates as the sixth most important regulatory issue, after issues involving season lengths, bag limits, and the number of regulatory alternatives. The Service recognizes that questionnaires received from Central and Mississippi Flyway States indicated a somewhat higher level of dissatisfaction with established framework dates than the national average.

After extensive deliberation and consideration of input by States and Flyway Councils, the AHM technical working group recommended no change in framework dates from those established in 1995 (62 FR 12054). The Service's Migratory Bird Regulations Committee reviewed the working group's recommendations with the Flyway Council Regulations Consultants at the January 23, 1997, meeting and there were no indications that framework dates of approximately October 1 to January 20 would not be satisfactory to most States. On April 22, 1997, representatives from the Service met with Flyway Council Chairmen and Regulations Consultants to consider the Flyway Councils recommendations for the AHM regulatory alternatives. Representatives from the Atlantic, Central, and Pacific Flyway Councils, and from the Upper-Region Regulations Committee of the Mississippi Flyway Council, agreed that framework dates should not be extended beyond those currently in use for the 1997-98 season; however, the representatives agreed the issue should be reviewed further by the AHM working group and all four Flyway Councils. Therefore, the Service has adopted the working group's recommendation for framework dates of approximately October 1 to January 20 for all AHM regulatory alternatives as its formal proposal.

In considering requests for either earlier or later framework dates, such as those described above, the Service will focus on the following issues:

(1) Possible changes in the size of the harvest. Experience with hunting seasons opening more than a few days before October 1 or closing similarly after January 20 is limited. Mississippi experimented with a January 31 closing date during 1979-84, and Iowa was permitted an opening date for a small portion of their regular duck season of approximately September 20 during 1979-87 and 1994-96 in lieu of an early teal season. In both States, harvests of mallards and total ducks were higher in years with a framework extension, relative to surrounding States where a framework extension was not available. If results from these States are representative, then proposals to extend framework dates in the Central and Mississippi Flyways would be expected to increase the harvest of midcontinent mallards by 13 percent (10% range of error). This increase would be in addition to the 20 percent increase in mallard harvest expected from the proposed increase in season length under the "liberal" alternative. The Service predicts that adoption of the Central and Mississippi Flyway

proposals would lead to a more conservative harvest strategy for all States, whether or not they could take advantage of the extended framework dates. The Service also predicts more frequent changes in regulations and more variability in population size of midcontinent mallards if the Central and Mississippi Flyway proposals were adopted.

(2) Re-allocation of hunting opportunity and harvest within and among Flyways. Based on the survey conducted by the AHM technical working group, most States are satisfied with the distribution of hunting opportunity within and among Flyways. Nationwide, concerns regarding allocation of hunting opportunity among States ranked last among those concerns with the current AHM regulatory alternatives. Also, all Flyway Councils passed a joint recommendation (July 28, 1996) asking the Service to maintain traditional allocations of hunting opportunity among Flyways when considering changes to the AHM regulatory alternatives. The Service agrees with the Flyway Councils that resolving outstanding disputes over allocation will require development of an appropriate framework for discussion and that progress is unlikely prior to the 1997 hunting season. (3) The potential for negative physiological impacts on ducks.

The Service reiterates its long-standing concerns that hunting disturbance in late winter may interfere with pair-bonding and inhibit nutrient acquisition necessary for successful migration and reproduction (61 FR 50664). Information from a recent study of late-winter mate loss among captive-reared mallards by Mississippi State University has not alleviated these concerns because these preliminary study results cannot necessarily be applied to free-ranging mallards or other species.

The Service does not wish to prejudice a discussion about allocation of duck hunting opportunity, but is confused about public comments that hunters in the southern Mississippi Flyway are not afforded the same hunting opportunities as their northern counterparts. States of the southern Mississippi Flyway collectively enjoy hunter success (as measured by seasonal duck harvest per hunter) that is higher than that in any region of the country. Moreover, hunter success in the Mississippi Flyway is about twice as high in southern States as in northern and mid-latitude States, and this discrepancy has been increasing steadily over time. The State of Mississippi has the fourth highest

hunter success in the country, after Louisiana, California, and Arkansas.

In summary, the Service is not proposing at this time to extend framework dates beyond those currently in use. However, the Service seeks further clarification from the Flyway Councils, States, and the public regarding the relative importance of this issue and requests comments concerning the three issues described above. The Service believes strongly that potential changes to framework dates must be approached in a methodical and comprehensive manner, and with due consideration of both biological and sociological impacts.

### C. Season Length

**Council Recommendations:** The Pacific Flyway Council recommended the "restrictive" regulatory package for their Flyway be modified from 59 days to 60 days.

**Written Comments:** The Alabama Department of Conservation and Natural Resources recommended the "very restrictive" alternative be 23 days rather than 20 days to allow for 4 full weekends of hunting.

The California Waterfowl Association supported the addition of 1 day to the "restrictive" alternative in the Pacific Flyway.

Several individuals from Minnesota opposed increases in the season length under the "liberal" alternative, arguing that it would only benefit the southern States in the Mississippi Flyway.

An individual from Louisiana believed that seasons should be lengthened by 5 to 10 days.

Individuals from Kansas and Washington believed that season lengths should be extended as opposed to additional birds in the daily bag limit.

An individual from Oregon believed that season lengths did not need to be any longer.

An individual from Oregon expressed support for lengthening the seasons.

**Service Response:** The Service agrees with the Pacific Flyway Council's recommendation to modify the "restrictive" alternative to 60 days rather than 59 days in the Pacific Flyway. This modification would allow those States opting to split their seasons into 2 segments to open on a Saturday and close on a Sunday in each segment as has been traditional in the Pacific Flyway. The Service notes that this option becomes increasingly important to States as season length decreases and would not be a primary consideration under more liberal seasons.

### E. Bag Limits

**Council Recommendations:** The Mississippi, Central, and Pacific Flyway Councils endorsed the AHM working group's recommendations for total duck bag limits. The Atlantic Flyway Council recommended a uniform total duck bag limit of 4 in all Atlantic Flyway regulatory packages to minimize the frequency of changes.

All Flyway Councils supported the basic mallard daily bag limits as recommended by the working group in each of the regulatory packages. However, the Atlantic and Pacific Flyway Councils recommended modifications to the hen mallard daily bag limit in the "liberal" package. The Atlantic Flyway Council recommended that there be no hen mallard restrictions and the Pacific Flyway Council recommended a daily bag limit of 3 hen mallards instead of 2.

**Written Comments:** The South Carolina Department of Natural Resources recommended the Service adopt the 6-bird daily bag limit recommended by the working group and retain hen mallard restrictions outlined in the "liberal" regulations package.

The California Waterfowl Association supported the working group's recommendation of adding a second hen mallard to the daily bag limits under the "moderate" and "liberal" alternatives. They further recommended adding a third hen mallard under the Pacific Flyway's "liberal" alternative.

The Save Hens Alliance did not support an increase in the hen mallard daily bag limit, indicating that hen restrictions have had a positive effect on yearly breeding stocks. They further pointed out that a high percentage of hens surviving until the last few weeks of the season could be expected to return to breeding areas. As an alternative, they recommended that an extra drake mallard be added to the mallard daily bag limit.

The Great Outdoors, L.L.C., urged the Service to not tease the dedicated duck hunter with regulations that are not sustainable. They stated that the rebound in duck populations is due to a reversal in weather patterns, habitat improvements like the Conservation Reserve Program, and restrictions on season length and bag limits. They further pointed out that hunters are not requesting these liberalizations in seasons and believed that liberalizations in the shooting of hens was not ethical. They also believed that the increased use of zone/split seasons by States has increased the potential for higher harvests. Finally, they encouraged the Service to exercise common sense,

restraint, and ethics, which are the foundations upon which sportsmanship is based.

Several individuals from Louisiana preferred additional birds in the daily bag limit rather than additional days of season length.

Several individuals from Louisiana and individuals from Kansas, Minnesota, and California supported the working group's recommendation of additional days in the "moderate" and "liberal" alternatives, but recommended daily bag limits of no more than 5 birds.

Several individuals from Oregon and Louisiana believed that current bag limits provided plenty of hunter opportunity.

Several individuals from Louisiana recommended a daily bag limit of 1 hen mallard under the "liberal" alternative rather than the working group's recommendation of 2, while another individual supported any increase in the overall daily bag limit.

An individual from California expressed support for no internal bag-limit restrictions, while an individual from Oregon recommended holding bag limits at the "restrictive" alternative level.

**Service Response:** As indicated above, the Service concurs with the recommendations for regulatory packages drafted by the AHM working group. The Service supports the Atlantic Flyway Council's request to have more restrictive bag limits of 4 rather than 6 in the "moderate" and "liberal" packages, but does not support having a 4-bird daily bag limit instead of 3 in the "restrictive" and "very restrictive" packages. Maintaining a 4-bird daily bag limit during restrictive seasons has the potential to increase harvests at a time when attempts are being made to reduce harvest.

Regarding mallard hen restrictions, the Service does not support the changes in hen restrictions recommended by the Atlantic and Pacific Flyway Councils. Although the role of sex-specific bag limits in regulating mallard harvests, total mortality, and recruitment is uncertain, sex-specific bag limits for mallards have been used since the early 1970's. Lower female (relative to male) bag limits (hen restrictions) have been used during 1972-96 in the Central Flyway, since 1976 in the Mississippi Flyway, and beginning in 1985 in the Atlantic and Pacific Flyways. These differential regulations were intended to direct harvest pressure away from females and thus increase annual survival of females relative to males in the population.

Recent analysis of the effects of mallard hen restrictions have shown

these restrictions to have been effective in increasing the harvest of males relative to females. However, the effects of changes in female mallard bag limits on overall mallard population status and on species that are similar in appearance to mallards are unknown.

The Service supports the AHM working group's recommendation of a moderate increase in the female mallard bag limits in the "moderate" and "liberal" alternatives, but does not support the larger increases recommended by the Atlantic and Pacific Flyway Councils. The Service continues to support the use of regulations for mallards that emphasize protection of females while allowing optimum recreational opportunity on males. Therefore, the Service believes that it would be premature to remove hen restrictions without further investigation of the potential biological and social consequences of such changes. Further, the Service is concerned about the potential of synergistic effects of removing hen restrictions on the harvest of similar appearing species like mottled or black ducks.

#### *F. Zones and Split Seasons*

**Council Recommendations:** The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended the Service allow "3 zones and 2-way splits in one or more zones" as an additional option to the current zoning process. The Committee also requested that the Service allow States up to 1 year to choose this option, based on the public-input process States undertake, before they provide the Service with their proposal (prior to the 1998–99 regular-duck season).

**Written Comments:** The Louisiana Wildlife Federation urged the Service to consider allowing Louisiana to split into north and south zones for duck hunting.

#### *G. Special Seasons/Species Management*

##### *i. Canvasback*

**Council Recommendations:** The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended the Service continue its use of the Office of Migratory Bird Management's January 1994 "Draft—Canvasback Harvest Management: An Interim Strategy" to guide the 1997–98 regulatory decisions on canvasback.

##### *ii. Pintails*

**Council Recommendations:** The Atlantic Flyway Council, the Upper-Region Regulations Committee of the Mississippi Flyway Council, and the Central Flyway Council did not endorse

the Pacific Flyway Council's "Proposed Interim Strategy for Northern Pintail Harvest Regulations" as circulated for Councils' review in February of this year.

The Central Flyway Council recommended an interim, prescriptive method for determining pintail daily bag limits based on the breeding population size. The pintail limit would be 1 with a breeding population below 3.0 million; 2 with a breeding population between 3.0 and 4.5 million; 3 with a breeding population between 4.5 and 5.6 million; and equal to the overall daily bag limit with a breeding population above 5.6 million.

The Pacific Flyway Council recommended adoption of a revised "Proposed Interim Harvest Strategy." The Council's revised interim strategy included several modifications intended to address the concerns expressed by the other Flyway Councils and by the Service technical review. The revised interim strategy was presented to the Service and the other three Flyways at the April 22, 1997, AHM meeting in Arlington, VA.

The revised strategy is based on a mathematical model of the continental pintail population, which assumes that:

- (1) the size of the continental population can be effectively monitored through spring surveys in the northcentral U.S., Central Canada, and Alaska,
- (2) mortality due to hunting is additive to natural mortality,
- (3) harvest in Canada and Alaska is relatively constant from one year to the next,
- (4) crippling loss is constant and proportional to the size of the retrieved harvest,
- (5) recruitment of young birds can be reasonably predicted based on the distribution of breeding pintails, and
- (6) harvest of pintails can be reasonably predicted based on the length of the season and pintail bag limit in each Flyway.

The model predicts allowable harvest of pintails in the lower 48 States based on the current size of the pintail breeding population, anticipated recruitment, anticipated natural mortality, anticipated mortality due to hunting, and the desired size of the population in the following spring.

**Written Comments:** The California Waterfowl Association urged adoption of a pintail interim AHM model for determining alternative daily bag limits for the 1997–98 hunting season.

An individual from Louisiana recommended a daily bag limit of 2 pintails, only 1 of which could be a hen, under the "liberal" alternative.

An individual from Oregon was concerned about potential increases in pintail harvest given the population status of pintails.

An individual in Louisiana believed that the pintail season should be closed since the population had not recovered despite good breeding conditions.

**Service Response:** The Service remains concerned about the overall status of the continental population of northern pintails. The breeding population of northern pintails was an estimated 2,735,900 in 1996, which was 38 percent below the 1955–95 average and more than 50 percent below the population objective established in the North American Waterfowl Management Plan.

The Service recognizes the value of developing a strategy for determining pintail hunting regulations that is technically sound and explicitly promotes growth of the pintail population. The Service believes that ultimately pintail hunting regulations should be guided by a formal AHM process. This year, a cooperative effort began to develop the needed technical foundation for a more formal incorporation of pintails into the AHM process. The Service recognizes and greatly appreciates the support for this effort provided by the Flyway Councils and participating non-governmental organizations. However, since it likely will require about three more years to complete the development and implementation of this new process, the Service believes there is merit in adopting an interim prescriptive strategy for the management of pintail harvest until the species can be fully addressed by the AHM process.

In the July 22, 1996, **Federal Register** (61 FR 37994), the Service indicated that the adoption of any interim strategy would be dependent on how the strategy addressed three key concerns: (1) explicit harvest-management objectives, (2) comprehensive model development for continental pintails, and (3) a consideration of the regulatory constraints imposed by the adaptive harvest strategy for mid-continent mallards. We believe that the strategy recommended by the Pacific Flyway Council more satisfactorily addresses these elements than does the strategy recommended by the Central Flyway. Therefore, the Service proposes to adopt the revised interim harvest strategy proposed by the Pacific Flyway Council, with the following modifications: (1) the maximum pintail daily bag limit under any regulatory alternative in any Flyway would be limited to 3 pintails, and (2) that this interim strategy will be replaced by a more fully adaptive approach at the earliest opportunity. Further, we believe the interim pintail harvest strategy should be thoroughly reviewed in about 3 years, regardless of

whether a more adaptive approach is available at that time.

The technical details of the Pacific Flyway Proposal are available by writing directly to MBMO at the address indicated under the caption **ADDRESSES**.

iii. September Teal Seasons

*Council Recommendations:* The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended the continuance of the experimental September teal/wood duck seasons in Kentucky and Tennessee for the 1997-98 season with no change from the 1996-97 season frameworks.

The Central Flyway Council recommended a 3-year experimental teal harvest strategy in the Central Flyway based on the breeding population of blue-winged teal. When the 3-year running average breeding population of blue-winged teal is 4.7 million or greater, the Council's recommended harvest strategy would consist of two changes to the current September teal season frameworks. First, in those Central Flyway States currently allowed a September teal season, an additional 7 days of hunting (for a total of 16 days) and 1 additional teal (for a total of 5 teal) would be allowed. Second, for Central Flyway production States, the recommended harvest strategy would provide for a season of up to 7 days, beginning no earlier than September 20, and a daily bag limit of 4 ducks, 3 of which must be teal. The Council further recommended that the Service work with the States to cooperatively develop an experimental design and criteria to adequately evaluate the proposed expansion of teal harvest.

iv. September Duck Seasons

*Council Recommendations:* The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that Iowa be allowed to open the second segment of their split duck season no earlier than October 10, instead of October 15.

v. High Plains Mallard Management Unit

*Council Recommendations:* The Central Flyway Council recommended minor administrative changes to the High Plains Mallard Management Unit boundary in North Dakota and South Dakota for boundary clarification and wetland development.

vi. Youth Hunt

*Council Recommendations:* The Atlantic Flyway Council recommended the continuance of the youth waterfowl hunt day and requested the Service announce their intent in June. The Council further recommended that

ducks, coots, mergansers, moorhens, brant and snow geese be open to harvest on the special day and requested clarification of whether youth may participate in other open migratory bird hunting seasons on that day.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that youth waterfowl hunt day bag limits be the same as the regular-season bag limits and include ducks, geese, and coots, with framework dates 14 days outside the regular duck-season framework dates instead of 10.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended the inclusion of geese and coots in a 2-day youth waterfowl hunting season, with framework dates 14 days outside of the regular duck-season framework dates instead of 10.

The Pacific Flyway Council recommended the continuation of the youth hunt allowing States to select outside the general season and frameworks.

#### 4. Canada Geese

##### A. Special Seasons

*Council Recommendations:* The Atlantic Flyway Council recommended a 3-year experimental September Canada goose season in New Jersey with a framework closing date of the first Saturday in October.

The Atlantic Flyway Council recommended an experimental framework closing date of October 5 for the Long Island, New York, 1997 September Canada Goose Season.

The Pacific Flyway Council recommended expansion of the Washington September Canada goose hunt zone to include all of Washington for 7 consecutive days. The Council also recommended the establishment of a new 9-day season, with a 2-bird daily bag and possession limit, in Humboldt County, California. Harvest of up to 200 birds would be controlled through a regulated permit system.

##### B. Regular Seasons

*Council Recommendations:* The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended Iowa be allowed to open its regular Canada goose season on September 27, 1997, rather than on the Saturday nearest October 1 (October 4, 1997).

#### 7. Snow and Ross's (Light) Geese

*Council Recommendations:* The Lower-Region Regulations Committee of the Mississippi Flyway Council

recommended the Service follow the regulatory changes for snow goose harvest endorsed by the Arctic Goose Joint Venture Management Board.

The Central Flyway Council recommended the Service extend light goose hunting in the Rainwater Basin region of Nebraska to March 10.

#### 9. Sandhill Cranes

*Council Recommendations:* The Central Flyway and Pacific Flyway Councils recommended that in Montana, sandhill cranes in Wheatland County and that portion of Sweet Grass County north of I-90 be delineated as Rocky Mountain Population sandhill cranes. Thus, management of these cranes, including harvest, would be guided by the Rocky Mountain Population Sandhill Crane Management Plan, rather than the Mid-Continent Population Sandhill Crane Management Plan.

#### 17. White-Winged and White-Tipped Doves

*Council Recommendations:* The Central Flyway Council recommended removing the restriction of no more than 6 white-winged doves in the aggregate daily bag limit during the regular mourning dove season in Texas.

#### 18. Alaska

*Council Recommendations:* The Pacific Flyway Council recommended an experimental tundra swan season in the Kotzebue Sound region of Alaska's GMU 23, which would be consistent with the Pacific Flyway Management Plan's harvest and permit guidelines for Western Population of [Tundra] swans, and current guidelines for conductive experimental seasons (3-year evaluation). The recommended season framework would be September 1 - October 31 with a 3-swan per season limit (by sequential permit) and a maximum of 300 permits in the GMU.

The Pacific Flyway Council recommended an increase in Alaska's dark goose daily bag and possession limit from 4 and 8 to 6 and 12, respectively in GMU 9(D) and the Unimak Island portion of Unit 10.

The Pacific Flyway Council recommended an increase in Alaska's falconry bag limits to 6 daily and 12 in possession for migratory birds in the aggregate. Restrictive species limits would not be applied.

#### 22. Falconry

*Written Comments:* The North American Falconers Association urged the Service to examine all possible means by which falconers might be afforded safe access to the expanding



hunting potential reflected in the AHM working group's recommended alternatives. In particular, they were concerned that the potential "liberal" alternative (i.e., 107-day season) under consideration in the Pacific Flyway allows no opportunity for special falconry seasons under current regulations. Further, they can envision other similar season expansions in other Flyways.

**Service Response:** Under the Migratory Bird Treaty (1916), sport hunting seasons are set at a maximum of 107 days. However, most regular hunting seasons are much shorter than that permitted by the Treaty. Thus, the Service has utilized special "extended" falconry seasons which allow falconers the opportunity to hunt when gun hunters are not afield. The Service recognizes that as some regular hunting seasons become longer due to increases in certain migratory bird populations and overall decreasing hunter numbers, seasons approach, and in some cases, meet, the Treaty's mandated 107-day season limit. While the Service also recognizes the special concerns of falconers relative to the safety of their birds, we do not believe the provisions of the Treaty allow for any latitude regarding sport season length and methods of take.

### 23. Other

#### A. Compensatory Days

**Council Recommendations:** The Atlantic Flyway Council requested the Service grant compensatory days for States in their Flyway that are closed to waterfowl hunting statewide on Sunday by State law. The Council's requested compensatory days would apply to waterfowl seasons only and not to other migratory game birds. The compensatory request includes the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia.

#### Public Comment Invited

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, non-governmental organizations, and other private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations

which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

#### Comment Procedure

The policy of the Department of the Interior, whenever practical, affords the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the 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 at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. The Service will consider all relevant comments received. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

#### 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 (FSER 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, hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species. Consultations are presently under way

to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. It is possible that the findings from the consultations, which will be included in a biological opinion, may cause modification of some regulatory measures proposed in this document. The final frameworks will reflect any modifications. The Service's biological opinions resulting from its consultation under Section 7 are public documents and are available for public inspection in the Division of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

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

In the **Federal Register** dated March 13, 1997, the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Small Entity Flexibility Analysis (Analysis) in 1996 to document 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.

#### 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 1997-98 hunting season are authorized under 16 U.S.C. 703-712 and 16 U.S.C. 742 a-j.

Dated: May 30, 1997.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

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**PROPOSED REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 1997-98 SEASON**

	ATLANTIC FLYWAY				MISSISSIPPI FLYWAY				CENTRAL FLYWAY (a)				PACIFIC FLYWAY (b)(c)			
	VERY	RES	MOD	LIB	VERY	RES	MOD	LIB	VERY	RES	MOD	LIB	VERY	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	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	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1
Closing Date	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20
Season Length	20	30	45	60	20	30	45	60	25	39	60	74	38	60	86	107
Daily Bag Possession	3 6	3 6	4 8	4 8	3 6	3 6	6 12	6 12	3 6	3 6	6 12	6 12	4 8	4 8	7 14	7 14
Species/Bag Limits within the Overall Daily Bag Limit																
Mallard (Total/Female)	3/1 1	3/1 1	4/2 1	4/2 1	2/1 1	2/1 1	4/1 1	4/2 1	3/1 1	3/1 1	5/1 1	5/2 1	3/1 1	3/1 1	5/2 1	7/2 1
Black Duck	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
H. Merganser	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Canvasback	2	2	2	2	1	1	2	2	1	1	2	2	2	2	2	2
Redhead	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Wood Duck	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Whistling Ducks	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Harequin	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Mottled Duck	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

(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 options as follows:

very restrictive - 8, restrictive - 12, moderate and liberal - 23. Under all options, 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 options except the liberal option, an additional 7 days would be allowed

(c) In Alaska, framework dates, bag limits, and season length would be different than the remainder of the Pacific Flyway. The bag limit would be 5-7 under the very restrictive and restrictive options, and 8-10 under the moderate and liberal options

There would be no restrictions on pintails, and canvasback limits would follow those for the remainder of the Pacific Flyway. Under all options, season length would be 107 days and framework dates would be Sep 1 - Jan 26.