

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 20

RIN 1018-AF24

**Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1999-2000 Season****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (hereinafter Service or we) proposes special migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 1999-2000 migratory bird hunting season.

**DATES:** To comment on these proposed regulations, you must do so by August 23, 1999.

**ADDRESSES:** Send your comments to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, ms 634-ARLSQ, 1849 C St., NW., Washington, DC 20240. You may inspect comments during normal business hours in Room 634-Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** Ron W. Kokel, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703/358-1714).

**SUPPLEMENTARY INFORMATION:** In the May 3, 1999, *Federal Register* (64 FR 23742), we requested proposals from Indian tribes wishing to establish special migratory bird hunting regulations for the 1999-2000 hunting season, under the guidelines described in the June 4, 1985, *Federal Register* (50 FR 23467). We developed guidelines in response to tribal requests for recognition of their reserved hunting rights and, for some tribes, recognition of their authority to regulate hunting by both tribal and non-tribal members on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and non-tribal members, with hunting by non-tribal 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, the regulations established under the guidelines must be consistent with the March 10 to September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. The guidelines apply to those tribes having recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for non-tribal 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 non-tribal members on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service 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 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 wish to establish special hunting regulations for tribal members on ceded lands.

Because of past questions regarding interpretation of what events trigger the consultation process, as well as who initiates it, we provide the following clarification. We routinely provide copies of *Federal Register* publications to all State Directors, tribes and others interested parties. It is the responsibility of the States, tribes and others to notify us of any concern regarding any feature(s) of any regulations. When we receive such notification, we will initiate consultation.

Our guidelines provide for the continued harvest of waterfowl and other migratory game birds by tribal members on reservations where it has been a customary practice. We do not oppose this harvest, provided it does not take place during the closed season defined by the 1916 Migratory Bird Convention with Canada, and does not

adversely affect the status of the migratory bird resource.

Before developing the guidelines, we reviewed available information on the current status of migratory bird populations; reviewed the current status of migratory bird hunting on Federal Indian reservations; and evaluated the potential impact of such guidelines on migratory birds. We concluded that the impact of migratory bird harvest by tribal members hunting on their reservations is minimal.

One area of interest in Indian migratory bird hunting regulations relates to hunting seasons for non-tribal members on dates that are within Federal frameworks, but which are different from those established by the State(s) where the reservation is located. A large influx of non-tribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse population impacts on one or more migratory bird species. The guidelines make this unlikely, however, because tribal proposals must include:

(a) Harvest anticipated under the requested regulations;

(b) Methods that will be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(c) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations.

We may modify or establish regulations experimentally, after evaluation and confirmation of harvest information obtained by the tribes.

We believe the guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. The guidelines should not be viewed as inflexible. In this regard, we note that they have been employed successfully since 1985. We believe they have been tested adequately and therefore, made them final beginning with the 1988-89 hunting season. It should be stressed here, however, that use of the guidelines is not mandatory and no action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

## Population Status

### *May Breeding Waterfowl and Habitat Survey*

In the Western or Traditional survey area, breeding habitat conditions were generally good to excellent, and overall better than conditions in 1998. An early warm spring and plenty of precipitation resulted in abundant ponds and excellent nesting cover in most of the Dakotas, northern Saskatchewan, the Northwest Territories, and western Ontario. The exceptions to these good conditions were southern and central Alberta, central Saskatchewan, and western Montana, where a dry early spring limited nesting habitat; and Alaska, where spring was as much as 2 weeks late. The estimated number of May ponds in the traditional survey area (6.7 million) was 46% greater than that of 1998, and 37% greater than the 1974–98 average. Overall, the traditional survey area was in good to excellent condition this spring and good to excellent waterfowl production is expected this year.

An expanded area of Eastern habitat conditions was included this year in the East. Although these additional areas have been surveyed since 1996, information from them is included this year for the first time. Unlike the Western survey area, habitat conditions in the east were generally poorer this year than last year. Much of the eastern survey area was relatively dry, especially Maine, the Maritimes, southern Quebec, and southern Ontario. Conditions resulted in few temporary ponds and low water levels in permanent water bodies. The northern portions of the east were in good to excellent condition, but lack of brood rearing habitat is expected to also limit production from this area. Overall, the eastern survey area was in fair to good condition, with fair to good production expected this year.

The 1999 total duck population estimate for the traditional survey area was 43.4 million birds, an increase of 11% over that of 1998, and 32% higher than the 1955–98 average. Mallard abundance was 10.8 million, an increase of 12% over last year and 47% greater than the long term average. Blue-winged teal abundance was 7.1 million, similar to 1998, but 65% greater than the long term average. Northern pintail (3.0, +21%), scaup (4.4 million, +27%), green-winged teal (2.6, +26%), and northern shoveler (3.9 million, +22%) increased from 1998 estimates. Gadwall (3.2 million, +110%), green-winged teal (+51%), northern shoveler (+95%), redheads (0.9 million, +60%), and canvasbacks (0.7 million, +29%) were

above their respective long term averages, while pintails (–30%) and scaup (–18%) were below their long term averages. In the eastern areas of Canada and the U.S., the total number of ducks (1.3 million) remained unchanged from last year and the 1995–98 average. Abundances of individual species in the east were similar to those of last year, except for increased estimates of goldeneye (+196%). Goldeneye was above its long term average (+287%), while blue-winged teal (–95%) and scaup (–90%) were below theirs.

### *Sandhill Cranes*

The Mid-Continent Population of Sandhill Cranes appears to have stabilized following dramatic increases in the early 1980's. The Central Platte River Valley 1999 preliminary spring index, uncorrected for visibility, was 222,500. The photo-corrected 3-year average for the 1996–98 period was 477,911, which was 3% above the established population-objective range of 343,000–465,000 cranes. All Central Flyway States, except Nebraska, elected to allow crane hunting in portions of their respective States in 1998–99. About 8,700 hunters participated in these seasons, which was 8% higher than the previous year's seasons. About 21,849 cranes were harvested in 1998–99 in the Central Flyway, a 5% increase from the previous year's high estimate. Harvests from Pacific Flyway, Canada and Mexico are estimated to be about 13,700 for 1998–99 sport-hunting seasons. The total North American sport harvest, including crippling losses, was estimated to be about 41,414 for the Mid-Continent Population.

The fall 1998 pre-migration survey estimate for the Rocky Mountain Population was 18,202, which is similar to the 1997 estimate. Limited special seasons were held during 1998 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming, resulting in an estimated harvest of 538 cranes.

### *Woodcock*

Wing-collection and Singing-ground surveys were conducted to assess the population status of the American woodcock (*Scolopax minor*). The 1998 recruitment index for the Eastern Region (1.7 immatures per adult female) equaled the long-term regional average; the recruitment index for the Central Region (1.6 immatures per adult female) was 6% below the long-term regional average. The index of daily hunting success in the Eastern Region increased from 1.8 woodcock per successful hunt in 1997 to 1.9 woodcock per successful

hunt in 1998, but seasonal hunting success declined 4%, from 6.9 to 6.6 woodcock per successful hunter in 1997 and 1998, respectively. In the Central Region, the daily success index in 1998 was unchanged from the 1997 index (2.1 woodcock per successful hunt) but the seasonal success index increased from 10.0 to 11.0 (10%) woodcock per successful hunter. Singing-ground Survey data indicated that the number of displaying woodcock in the Eastern Region was unchanged ( $P>0.1$ ) from 1998 levels. In the Central Region, there was a 13.4% decrease in the number of woodcock heard displaying ( $P<0.01$ ) compared to 1998 levels. Trends from the Singing-ground Survey during 1989–99 were negative (–3.3 and –3.7% per year for the Eastern and Central regions, respectively;  $P<0.01$ ). There were long-term (1968–99) declines ( $P<0.01$ ) of 2.4% per year in the Eastern Region and 1.6% per year in the Central Region.

### *Doves and Band-tailed Pigeons*

Analyses of Mourning Dove Call-count Survey data indicated significant declines in doves heard over the most recent 10 years and the entire 34 years of the survey in all 3 management units. White-winged doves in Arizona are maintaining a fairly stable population since the late 1970's. A low harvest is being maintained compared with birds taken several decades ago. In Texas, the phenomenon of the white-winged dove range expansion continues. Birds are now seen in most large cities in north and central Texas. White-tipped doves in Texas are maintaining their population with a relatively low harvest level. For band-tailed pigeons, the Coastal population continues to show a significant decline as indicated by the Breeding Bird Survey (BBS) for the 10 and 32-year periods. In contrast, mineral spring counts at 10 selected sites in Oregon indicate an overall stable population in the state with an increasing trend since 1986. Call-count survey results in Washington show no significant trends in the bandtail population between 1975–98. Washington has not opted to select a hunting season for band-tail pigeons since 1991. The harvest of coastal pigeons is estimated to be less than 20,000 birds out of a population of about 3 million. The Interior band-tailed pigeon population is stable with no trend indicated by the BBS over the short or long-term time periods. Harvest is less than 1,000 birds.

### Hunting Season Proposals From Indian Tribes and Organizations

For the 1999–2000 hunting season, we received requests from twenty-three tribes and Indian organizations appropriate for **Federal Register** publication. We actively solicit regulatory proposals from other tribal groups that are interested in working cooperatively for the benefit of waterfowl and other migratory game birds. We encourage tribes to work with us to develop agreements for management of migratory bird resources on tribal lands. It should be noted that this proposed rule includes generalized regulations for both early- and late-season hunting. A final rule will be published in a late-August 1999 **Federal Register** that will include tribal regulations for the early-hunting season. The early season begins on September 1 each year and most commonly includes such species as mourning doves and white-winged doves. A final rule will also be published in a September 1999 **Federal Register** that will include regulations for late-season hunting. The late season begins on or around October 1 and most commonly includes waterfowl species.

In this current rulemaking, because of the compressed time frame for establishing regulations for Indian tribes and because final frameworks dates and other specific information are not available, the regulations for many tribal hunting seasons are described in relation to the season dates, season length and limits that will be permitted when final Federal frameworks are announced for early- and late-season regulations. For example, daily bag and possession limits for ducks on some areas are shown as “Same as permitted Pacific Flyway States under final Federal frameworks,” and limits for geese will be shown as the same permitted by the State(s) in which the tribal hunting area is located.

The proposed frameworks for early-season regulations were published in the **Federal Register** on July 22, 1999 (64 FR 38700); early-season final frameworks will be published in mid-August. Proposed late-season frameworks for waterfowl and coots will be published in mid-August, and the final frameworks for the late seasons will be published in mid-September. We will notify affected tribes of season dates, bag limits, etc., as soon as final frameworks are established. As previously discussed, no action is required by tribes wishing to observe migratory bird hunting regulations established by the State(s) where they are located. The proposed regulations

for the twenty tribes with proposals that meet the established criteria are shown below.

(a) Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Non-tribal Hunters)

The Colorado River Indian Reservation is located in Arizona and California. The tribes own almost all lands on the reservation, and have full wildlife management authority.

In their 1999–2000 proposal, dated June 17, 1999, the Colorado River Indian Tribes requested split dove seasons. They propose their early season begin September 1 and end September 15, 1999. Daily bag limits would be 10 mourning or 10 white-winged doves either singly or in the aggregate. The late season for doves is proposed to open November 19, 1999, and close January 3, 2000. A daily bag limit would be 10 mourning doves. The possession limit would be twice the daily bag limit. Shooting hours would be from one-half hour before sunrise to noon in the early season and until sunset in the late season. Other special tribally set regulations would apply.

The tribes also propose duck hunting seasons. The season would likely open October 2, 1999, or on a Saturday and run for the maximum number of days allowed under the Pacific Flyway frameworks. The tribes propose the same season dates for coots and common moorhens. The daily bag limit for ducks, including mergansers, would be the same as that allowed in the Pacific Flyway. The possession limit would be twice the daily bag limit. The daily bag limit for coots and common moorhens would be 25, singly or in the aggregate. The possession limit for coots and common moorhens would be twice the daily bag limit. For geese, the Colorado River Indian Tribes propose a season of November 20, 1999, through January 16, 2000. The daily bag and possession limits for geese would be 4, but could include no more than 3 light geese or 2 dark geese.

In 1996, the tribe conducted a detailed assessment of dove hunting. Results showed approximately 16,100 mourning doves and 13,600 white-winged doves were harvested by approximately 2,660 hunters who averaged 1.45 hunter-days. Field observations and permit sales indicate that fewer than 200 hunters participate in waterfowl seasons. Under the proposed regulations described here and, based upon past seasons, we and the tribes estimate harvest will be similar.

Hunters must have a valid Colorado River Indian Reservation hunting permit

in their possession while hunting. As in the past, the regulations would apply both to tribal and non-tribal hunters, and non-toxic shot is required for waterfowl hunting.

We propose to approve the Colorado River Indian Tribes regulations for the 1999–2000 hunting season.

(b) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Non-tribal Hunters)

For the past several years, the Confederated Salish and Kootenai Tribes and the State of Montana have entered into cooperative agreements for the regulation of hunting on the Flathead Indian Reservation. The State and the tribes are currently operating under a cooperative agreement signed in 1990 that addresses fishing and hunting management and regulation issues of mutual concern. This agreement enables all hunters to utilize waterfowl hunting opportunities on the reservation. The tribes proposed special regulations for waterfowl hunting were submitted in a June 8, 1999, proposal.

As in the past, tribal regulations for non-tribal members would be at least as restrictive as those established for the Pacific Flyway portion of Montana. Goose season dates would also be at least as restrictive as those established for the Pacific Flyway portion of Montana. Shooting hours for waterfowl hunting on the Flathead Reservation are sunrise to sunset. Steel, bismuth-tin, or other Federally-approved non-toxic shots are the only legal shotgun loads on the reservation for waterfowl or other game birds.

The requested season dates and bag limits are generally similar to past regulations. Harvest levels are not expected to change significantly. Standardized check station data from the 1993–94 and 1994–95 hunting seasons indicated no significant changes in harvest levels and that the large majority of the harvest is by non-tribal hunters.

We propose to approve the tribes' request for special migratory bird regulations for the 1999–2000 hunting season.

(c) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Non-tribal Hunters)

The Crow Creek Indian Reservation has a checkerboard pattern of land ownership, with much of the land owned by non-Indians. Since the 1993–94 season, the tribe has selected special waterfowl hunting regulations independent of the State of South Dakota. The tribe observes migratory

bird hunting regulations contained in 50 CFR part 20.

In their 1999 proposal, the tribe requested a duck and merganser season of October 9 to December 21, 1999, with a daily bag limit of 6 ducks, including no more than 5 mallards (1 hen mallard), 1 canvasback, 2 redheads, 2 wood ducks, 2 scaup, and 1 pintail. The merganser daily bag limit would be 5 and include no more than 1 hooded merganser. For Canada geese, the tribe proposes an October 9, 1999, to January 9, 2000, season with a 3 bird daily bag limit. For white-fronted geese, the tribe proposes an October 2 to December 12, 1999, season with a daily bag limit of 2. For snow geese, the tribe proposes an October 2 to December 25, 1999, and February 19 to March 10, 2000, season with a daily bag limit of 20. Similar to last year, the tribe also requests a sandhill crane season from September 18 to October 24, 1999, with a daily bag limit of 3. In all cases, except snow geese, the possession limits would be twice the daily bag limit. There would be no possession limit for snow geese. Shooting hours would be from one-half hour before sunrise to sunset.

The season and bag limits would be essentially the same as last year and as such the tribe expects similar harvest. In 1994–95, duck harvest was 48 birds, down from 67 in 1993–94. Goose harvest during recent past seasons has been less than 100 geese.

We propose to approve the tribe's requested seasons. We also remind the tribe that all sandhill crane hunters are required to obtain a Federal sandhill crane permit. As such, the tribe should contact us for further information on obtaining the needed permits. In addition, as with all other groups, we request the tribe continue to survey and report harvest.

(d) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only)

In 1996, for the first time, the Service and the Fond du Lac Band of Lake Superior Chippewa Indians cooperated to establish special migratory bird hunting regulations for tribal members. The Fond du Lac's June 4, 1999, proposal covers land set apart for the band under the Treaty of 1854 in northeast Minnesota.

The band's proposal for 1999–2000 is essentially the same as that approved last year. Specifically, the Fond du Lac Band proposes a September 11 to November 23, 1999, season on ducks, mergansers, coots and moorhens, and a September 1 to November 28, 1999, season for geese. For sora and Virginia rails, snipe, and woodcock, the Fond du

Lac Band proposes a September 1 to November 28, 1999, season. Proposed daily bag limits would consist of the following:

*Ducks:* 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks, 4 redheads, 4 pintails, and 2 canvasbacks.

*Mergansers:* 5 mergansers, including no more than 1 hooded merganser.

*Geese:* 10 geese.

*Coots and Common Moorhens (Common Gallinules):* 20 coots and common moorhens, singly or in the aggregate.

*Sora and Virginia Rails:* 25 sora and Virginia rails singly, or in the aggregate.

*Common Snipe:* 8 common snipe.

*Woodcock:* 3 woodcock.

The following general conditions apply:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

3. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

The Band anticipates harvest will be fewer than 500 ducks and geese and 150 coots.

We propose to approve the request for special migratory bird hunting regulations for the Fond du Lac Band of Lake Superior Chippewas.

(e) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

In the 1995–96 migratory bird seasons, the Grand Traverse Band of Ottawa and Chippewa Indians and the Service first cooperated to establish special regulations for waterfowl. The Grand Traverse Band is a self-governing, federally recognized tribe located on the west arm of Grand Traverse Bay in Leelanau County, Michigan. The Grand Traverse Band is a signatory tribe of the Treaty of 1836. We have approved special regulations for tribal members of the 1836 treaty's signatory tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 1999–2000 season, the Grand Traverse Band of Ottawa and Chippewa Indians proposes a tribal member duck season that would run from September 20, 1999, through January 20, 2000. A daily bag limit of 10 would include no more than 1 pintail, 1 canvasback, 1 hooded merganser, 2 black ducks, 2 wood ducks, 2 redheads, and 5 mallards (only 2 of which may be hens). For Canada geese, the tribe proposes a September 1 through November 30, 1999, and a January 1 through February 8, 2000, season. For white-fronted geese, brant, and snow geese, the tribe proposes an October 1 through November 30, 1999, season. The daily bag limit for all geese (including brant) would be 5 birds. Based on our information, it is unlikely that any Canada geese from the Southern James Bay Population would be harvested by the tribe.

For woodcock, snipe, and sora rail, the tribe proposes a September 1 to November 14, 1999, season. The daily bag limit shall not exceed 5 birds per species.

All other Federal regulations contained in 50 CFR part 20 would apply. The tribe proposes to closely monitor harvest through game bag checks, patrols, and mail surveys. In particular, the tribe proposes monitoring the harvest of Southern James Bay Canada geese to assess any impacts of tribal hunting on the population.

We propose to approve the Grand Traverse Band of Ottawa and Chippewa Indian's requested 1999–2000 special migratory bird hunting regulations.

(f) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Since 1985, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized off-reservation hunting rights for migratory birds in Wisconsin. The specific

regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wildlife Commission (GLIFWC, which represents the various bands). Beginning in 1986, a tribal season on ceded lands in the western portion of the State's Upper Peninsula was developed in coordination with the Michigan Department of Natural Resources, and we have approved special regulations for tribal members in both Michigan and Wisconsin since the 1986–87, hunting season. In 1987, the GLIFWC requested and we approved special regulations to permit tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The States of Michigan and Wisconsin concurred with the regulations, although Wisconsin has raised some concerns each year. Minnesota did not concur with the regulations, stressing that the State would not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. We acknowledge the State's concern, but pointed out that the United States Government has recognized the Indian hunting rights decided in the Voigt case, and that acceptable hunting regulations have been negotiated successfully in both Michigan and Wisconsin even though the Voigt decision did not specifically address ceded land outside Wisconsin. We believe this is appropriate because the treaties in question cover ceded lands in Michigan (and Minnesota), as well as in Wisconsin. Consequently, in view of the above, we have approved special regulations since the 1987–88 hunting season on ceded lands in all three States. In fact, this recognition of the principle of reserved treaty rights for band members to hunt and fish was pivotal in our decision to approve a special 1991–92 season for the 1836 ceded area in Michigan.

Recently, certain GLIFWC member bands have brought suit to resolve the issue of hunting, fishing and gathering rights in the Minnesota ceded areas covered under the 1837 and 1854 treaties. The Federal Government has intervened in support of the bands.

In a June 3, 1999, letter, the GLIFWC proposed off-reservation special migratory bird hunting regulations for the 1999–2000 seasons on behalf of the member tribes of the Voigt Intertribal Task Force of the GLIFWC (for the 1837 and 1842 Treaty areas) and the Bay Mills Indian Community (for the 1836 Treaty area). Member tribes of the Task Force are: the Bad River Band of Lake

Superior Tribe of Chippewa Indians, The Lake Oreilles Band of Lake Superior Tribe of Chippewa Indians, the Lac du Flambeau Band of Lake Superior Tribe of Chippewa Indians, the Red Cliff Band of Lake Superior Tribe of Chippewa Indians, the St. Croix Chippewa Indians of Wisconsin, the Sokaogon Chippewa Community (Mole Lake Band), the Mille Lacs Band of Chippewa Indians in Minnesota, the Lac Vieux Desert Band of Chippewa Indians, and the Keweenaw Bay Indian Community in Michigan. Details of the proposed regulations are shown below. In general, the proposal is essentially the same as the regulations approved for the 1998–99 season.

Results of the 1998–99 hunter survey show that 599 ducks and 177 geese were harvested under an anticipated harvest of 3,000 ducks and 900 geese. Under the proposed regulations, harvest is expected to be similar to last year and most likely would not exceed 2,500 ducks and 800 geese.

We believe that regulations advanced by the GLIFWC for the 1999–2000 hunting season are biologically acceptable and recommend approval. If the regulations are finalized as proposed, we would request that the GLIFWC closely monitor the member band duck harvest and take any actions necessary to reduce harvest if locally nesting populations are being significantly impacted.

The Commission and the Service are parties to a Memorandum of Agreement (MOA) designed to facilitate the ongoing enforcement of Service-approved tribal migratory bird regulations. Its intent is to provide long-term cooperative application.

Also, as in recent seasons, the proposal contains references to Chapter 10 of the Migratory Bird Harvesting Regulations of the Model Off-Reservation Conservation Code. Chapter 10 regulations parallel State and Federal regulations and, in effect, are not changed by this proposal.

The GLIFWC's proposed 1999–2000 waterfowl hunting season regulations are as follows:

#### **Ducks**

##### **A. Wisconsin and Minnesota 1837 and 1842 Zones**

*Season Dates:* Begin September 15 and end December 1, 1999.

*Daily Bag Limit:* 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks, 4 redheads, 4 pintails, and 2 canvasbacks.

##### **B. Michigan 1836 and 1842 Treaty Zones**

*Season Dates:* Begin September 15 and end December 1, 1999.

*Daily Bag Limit:* 10 ducks, including no more than 5 mallards (only 2 of which may be hens), 2 black ducks, 2 redheads, 2 pintails, and 1 canvasback.

#### **Mergansers**

##### **A. Wisconsin and Minnesota 1837 and 1842 Zones**

*Season Dates:* Begin September 15 and end December 1, 1999.

*Daily Bag Limit:* 5 mergansers.

##### **B. Michigan 1836 and 1842 Treaty Zones**

*Season Dates:* Begin September 15 and end December 1, 1999.

*Daily Bag Limit:* 5 mergansers, including no more than 1 hooded merganser.

*Geese:* All Ceded Areas:

*Season Dates:* Begin September 1 and end December 1, 1999.

*Daily Bag Limit:* 10 geese.

#### **Other Migratory Birds: All Ceded Areas**

##### **A. Coots and Common Moorhens (Common Gallinules)**

*Season Dates:* Begin September 15 and end December 1, 1999.

*Daily Bag Limit:* 20 coots and common moorhens (common gallinules), singly or in the aggregate.

##### **B. Sora and Virginia Rails**

*Season Dates:* Begin September 15 and end December 1, 1999.

*Daily Bag Limit:* 25 sora and Virginia rails singly, or in the aggregate.

##### **C. Common Snipe**

*Season Dates:* Begin September 15 and end December 1, 1999.

*Daily Bag Limit:* 8 common snipe.

##### **D. Woodcock**

*Season Dates:* Begin September 7 and end December 1, 1999.

*Daily Bag Limit:* 5 woodcock.

#### **General Conditions**

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR Part 20 as to hunting methods, transportation, sale, exportation and

other conditions generally applicable to migratory bird hunting.

3. Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with applicable State laws. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

5. Minnesota and Michigan—Duck Blinds and Decoys. Tribal members hunting in Michigan and Minnesota will comply with tribal codes that contain provisions that parallel applicable State laws concerning duck blinds and/or decoys.

(g) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Non-tribal Hunters)

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for tribal members and nonmembers since the 1986–87 hunting season. The tribe owns all lands on the reservation and has recognized full wildlife management authority. In general, the proposed seasons would be more conservative than allowed by the Federal frameworks of last season and by States in the Pacific Flyway.

In a May 17, 1999, proposal, the tribe proposed a 1999–2000 waterfowl season opening date of October 2 and a closing date of November 30, 1999. Daily bag and possession limits would be the same as Pacific Flyway States. The tribe proposes a season on Canada geese with a 2-bird daily bag limit. Other regulations specific to the Pacific Flyway guidelines for New Mexico would be in effect.

The Jicarilla Game and Fish Department's annual estimate of waterfowl harvest is relatively small. In the 1998–99 season, estimated duck harvest was 608, a significant decrease from 816 in 1997–98. The species composition in the past has included

mainly mallards, gadwall, wigeon, and teal. Northern pintail comprised only 3 percent of the total harvest in 1998.

The proposed regulations are essentially the same as were established last year. The tribe anticipates the maximum 1999–2000 waterfowl harvest would be around 600 to 1,000 ducks and 20 to 50 geese.

We propose to approve the tribe's requested 1999–2000 hunting seasons.

(h) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Non-tribal Hunters)

The Kalispel Reservation was established by Executive Order in 1914, and currently comprises approximately 4,600 acres. The tribe owns all Reservation land and has full management authority. The Kalispel Tribe has a fully developed wildlife program with hunting and fishing codes. The tribe enjoys excellent wildlife management relations with the State. The tribe and the State have an operational Memorandum of Understanding with emphasis on fisheries but also for wildlife. The non-tribal member seasons described below pertain to a 176-acre waterfowl management unit. The tribe is utilizing this opportunity to rehabilitate an area that needs protection because of past land use practices, as well as to provide additional waterfowl hunting in the area. Beginning in 1996, the requested regulations also included a proposal for Kalispel-member only migratory bird hunting on Kalispel-ceded lands within Washington, Montana, and Idaho.

For the 1999–2000 migratory bird hunting seasons, the Kalispel Tribe proposed, in a May 13, 1999, letter, tribal and non-tribal member waterfowl seasons. For non-tribal members, the tribe requests seasons which begin September 1, 1999 and end January 31, 2000. In that period, non-tribal hunters would be allowed to hunt on weekends, holidays and continuously in the month of December and January for a total of about 110 days. Hunters should obtain further information on days from the Kalispel Tribe. Daily bag and possession limits would be the same as those for the State of Washington.

The tribe reports a 1998–99 non-tribal harvest of 74 ducks and 0 geese. Under the proposal, the tribe expects harvest to be similar to last year and less than 100 geese and 200 ducks.

All other State and Federal regulations contained in 50 CFR part 20, such as use of steel shot and possession of a signed migratory bird hunting stamp, would be required.

For tribal members on Kalispel-ceded lands, the Kalispel proposes outside

frameworks for ducks and geese of September 1, 1999, through January 31, 2000. However, during that period, the tribe proposes that the season run continuously. Daily bag and possession limits would be the same as those for the States of Washington and Idaho.

The tribe reports that there was no 1998–99 tribal harvest. Under the proposal, the tribe expects harvest to be less than 200 geese and 300 ducks. Tribal members would be required to possess a signed Federal migratory bird stamp and a tribal ceded lands permit.

We propose to approve the regulations requested by the Kalispel Tribe provided that the non-tribal seasons conform to final Federal frameworks for the Pacific Flyway. For the 1999–2000 season, outside Federal frameworks in the Pacific Flyway are October 2, 1999, through January 23, 2000 for ducks and geese with a 107-day maximum season length.

(i) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only)

The Klamath Tribe currently has no reservation, per se. However, the Klamath Tribe has reserved hunting, fishing and gathering rights within its former reservation boundary. This area of former reservation, granted to the Klamaths by the Treaty of 1864, is over 1 million acres. Tribal natural resource management authority is derived from the Treaty of 1864, and carried out cooperatively under the judicially enforced Consent Decree of 1981. The parties to this Consent Decree are the Federal Government, the State of Oregon and the Klamaths. The Klamath Indian Game Commission sets the seasons. The tribal biological staff and tribal Regulatory Enforcement Officers monitor tribal harvest by frequent bag checks and hunter interviews.

In a July 26, 1999, communication, the Klamath Tribe proposed season dates of October 1, 1999, through January 31, 2000. Daily bag limits would be 9 for ducks and 6 for geese with possession limits twice the daily bag limit. The daily bag and possession limit for coots would be 25. Shooting hours would be one-half hour before sunrise to one-half hour after sunset.

Based on the number of birds produced in the Klamath Basin, the tribe expects that this year's harvest will be similar to last year's. Information on tribal harvest suggests that more than 70 percent of the annual goose harvest is local birds produced in the Klamath basin.

We propose to approve the Klamath Tribe's requested regulations.

(j) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only)

The Leech Lake Band of Ojibwe is a federally recognized tribe located in Cass Lake, Minnesota. The reservation employs conservation officers to enforce conservation regulations.

For the 1999–2000 season, the tribe proposed in a May 20, 1999 letter a tribal member duck and goose season that would run from September 25 through November 28, 1999. Daily bag limits for both ducks and geese would be 10. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

Based on past harvest surveys, the tribe expects less than 200 tribal hunters to participate and a harvest of less than 2,000 birds.

We propose to approve the Leech Lake Band of Ojibwe's requested 1999–2000 special migratory bird hunting regulations.

(k) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Non-tribal Hunters)

The Lower Brule Sioux Tribe first established tribal migratory bird hunting regulations for the Lower Brule Reservation in 1994. The Lower Brule Reservation is about 214,000 acres in size and is located on and adjacent to the Missouri River, south of Pierre. Land ownership on the reservation is mixed, and until recently, the Lower Brule Tribe had full management authority over fish and wildlife via a MOA with the State of South Dakota. The MOA provided the tribe jurisdiction over fish and wildlife on reservation lands, including deeded and Corps of Engineers taken lands. For the 1999–2000 season, the two parties have come to a tentative agreement and meetings between the Lower Brule Sioux Tribe and the South Dakota Department of Game, Fish and Parks are continuing. It is anticipated that an agreement will be established and management authority clarified to allow the public a clear understanding of the Lower Brule Sioux Wildlife Department license requirements and hunting season regulations. The Lower Brule Reservation waterfowl season is open to tribal and non-tribal hunters.

For the 1999–2000 migratory bird hunting season, the Lower Brule Sioux Tribe proposes a duck and coot season length of 97 days, the same number of days tentatively allowed in the High Plains Management Unit for this season. The tribe's proposed season would run from October 2, 1999, through January 6, 2000. The daily bag limit would be

6 birds, including no more than 5 mallards (only 1 of which may be a hen), 1 pintail, 2 redheads, 2 wood ducks, 1 canvasback, 1 hooded merganser, and 1 mottled duck. The daily bag limit for coots would be 15. Possession limits would be twice the daily bag limits. The tribe also proposes a youth waterfowl hunt on September 25, 1999.

The tribe's proposed Canada goose season would run from October 16, 1999, through January 16, 2000, with a daily bag limit of 3 Canada geese. The tribe's proposed white-fronted goose season would run from October 16 through December 26, 1999, with a daily bag limit of 2 white-fronted geese. The tribe's proposed light goose season would run from October 16, 1999, through January 16, 2000, and February 25 through March 10, 2000. The light goose daily bag limit would be 20. Possession limits would be twice the daily bag limits.

In the 1998–99 season, hunters harvested an estimated 1,971 geese and 355 ducks. In 1994, duck harvest species composition was primarily mallard (57 percent), gadwall (10 percent), and green-winged teal (10 percent). Goose harvest is traditionally 98% Canada geese.

The tribe anticipates a duck harvest similar to last year and a goose harvest below the target harvest level of 3,000 to 4,000 geese. All basic Federal regulations contained in 50 CFR part 20, including the use of steel shot, Migratory Waterfowl Hunting and Conservation Stamp, etc., would be observed by the tribe's proposed regulations. In addition, the Lower Brule Sioux Tribe has an official Conservation Code that was established by Tribal Council Resolution in June 1982 and updated in 1996.

We propose to approve the tribe's requested regulations for the Lower Brule Reservation.

(l) Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Non-tribal Hunters)

Since 1985, we have established uniform migratory bird hunting regulations for tribal members and nonmembers on the Navajo Indian Reservation (in parts of Arizona, New Mexico, and Utah). The nation owns almost all lands on the reservation and has full wildlife management authority.

In a May 28, 1999 proposal, the tribe proposed special migratory bird hunting regulations on the reservation for both tribal and non-tribal members for the 1999–2000 hunting season for ducks (including mergansers), Canada geese,

coots, band-tailed pigeons, and mourning doves. For waterfowl, the Navajo Nation requests the earliest opening dates and longest seasons, and the same daily bag and possession limits, permitted Pacific Flyway States under final Federal frameworks.

For both mourning dove and band-tailed pigeons, the Navajo Nation proposes seasons of September 1 through 30. The Navajo Nation also proposes daily bag limits of 10 and 5 for mourning dove and band-tailed pigeon, respectively. Possession limits would be twice the daily bag limits.

In addition, the nation proposes to require tribal members and non-members to comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

The tribe anticipates a total harvest of less than 300 mourning doves, 100 band-tail pigeons, 500 ducks, coots, and mergansers, and 300 Canada geese.

We propose to approve the Navajo Nation request for these special regulations for the 1999–2000 migratory bird hunting seasons.

(m) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)

Since 1991–92, the Oneida Tribe of Indians of Wisconsin and the Service have cooperated to establish uniform regulations for migratory bird hunting by tribal and non-tribal hunters within the original Oneida Reservation boundaries. Since 1985, the Oneida Tribe's Conservation Department has enforced their own hunting regulations within those original reservation limits. The Oneida Tribe also has a good working relationship with the State of Wisconsin and the majority of the seasons and limits are the same for the tribe and Wisconsin.

In a May 6, 1999, letter, the tribe proposed special migratory bird hunting regulations. For ducks, the tribe described the general "outside dates" as being September 18 through November 19, 1999, inclusive. The tribe proposes a daily bag limit of 6 birds, which could include no more than 5 mallards (1 hen mallard), 5 wood ducks, 1 canvasback, 1 redhead, 2 pintails, and 1 hooded merganser.

For geese, the tribe recommends a season between September 1 and



December 31, 1999, with a daily bag limit of 5 brant, 3 Canada geese, and 5 snow geese. Hunters will be issued 8 tribal tags for geese in order to monitor goose harvest. Additional tags will be issued when birds are registered. The tribe will also close the season during the gun deer season of November 20 to 28, 1999. If a quota of 150 geese is attained before the season concludes, the tribe will recommend closing the season early.

For woodcock, the tribe proposes a season between September 11 and November 19, 1999, with a daily bag and possession limit of 5 and 10, respectively.

The tribe proposes shooting hours be one-half hour before sunrise to sunset. Tribal members and non-tribal members hunting on the Reservation or on lands under the jurisdiction of the tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR, with the following exceptions: Indian hunters would be exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity would not be limited to 3 shells.

The Service proposes to approve the request for special migratory bird hunting regulations for the Oneida Tribe of Indians of Wisconsin. We commend the tribe for their continuing efforts to closely monitor goose harvest and their other conservation efforts.

(n) Point No Point Treaty Tribes, Kingston, Washington (Tribal Members Only)

For the first time in 1996, the Service and the Point No Point Treaty Tribes, consisting of the Skokomish, Port Gamble S'klallam, Jamestown S'klallam, and Elwha S'klallam tribes, cooperated to establish special regulations for migratory bird hunting. The four tribes have reservations located on the Olympic Peninsula in Washington. All four tribes have successfully administered tribal hunting regulations since 1985 and each tribe has a comprehensive hunting ordinance.

The tribes' May 28, 1999, proposal requests seasons for ducks, geese, brant, coots, snipe, and mourning doves. For ducks, coots, geese, brant, and snipe, the tribes request a September 15, 1999, to January 15, 2000, season with a daily bag limit of 7 ducks, 25 coots, 4 geese (including no more than 3 light geese), 2 brant, and 8 snipe. The duck daily bag limit would include mergansers and could include no more than 2 hen mallards, 2 pintails, 1 canvasback, and 2 redheads. The season is closed on harlequin ducks and Aleutian Canada geese. All possession limits would be

twice the daily bag limit. For mourning doves, the tribes propose a September 1 to September 30, 1999, season with a daily bag limit of 10.

The tribes require that all hunters authorized to hunt migratory birds on the reservation obtain a tribal hunting permit from the respective tribe. Hunters are also required to adhere to a number of special regulations available at the tribal office. Tribal harvest last year under similar regulations was approximately 212 ducks, 27 geese and 22 coots.

We propose to approve the Point No Point Treaty Tribes requested 1999–2000 regulations.

(o) Seminole Tribe of Florida, Big Cypress Seminole Reservation, Clewiston, Florida (Tribal Members and Non-tribal Hunters)

The Seminole Tribe of Florida and the Service have cooperated since 1995 to establish regulations for the 70,000 acre Big Cypress Seminole Reservation. Located northwest of Miami, the Big Cypress Seminole Reservation is totally tribally owned and the tribe has full wildlife management authority.

For the 1999–2000 season, the Seminole Tribe proposes establishing a mourning dove season from September 18, 1999, through January 20, 2000. Hunting would be allowed for tribal and non-tribal members, but would be on Saturdays only. Daily bag limits would be the same as those allowed within the Federal frameworks for the State of Florida. All other Federal regulations contained in 50 CFR part 20 would apply. In 1997, under identical regulations, hunters harvested 2,078 doves on the reservation. The tribe controls all entry to the hunt area.

We propose to approve the Seminole Tribe's requested 1999–2000 special migratory bird hunting regulations.

(p) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Non-tribal Hunters)

Almost all of the Fort Hall Indian Reservation is tribally-owned. The tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially for hunting by non-tribal members on reservation lands owned by non-Indians. As a compromise, since 1985, we have established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation State zone. The regulations were requested by the tribes and provided for different season dates than in the remainder of the State. We agreed to the season dates because

they seemed to provide additional protection to mallards and pintails. The State of Idaho concurred with the zoning arrangement. We have no objection to the State's use of this zone again in the 1999–2000 hunting season, provided the duck and goose hunting season dates are the same as on the reservation.

In a May 14, 1999, proposal for the 1999–2000 hunting season, the Shoshone-Bannock Tribes requested a continuous duck (including mergansers) season with the maximum number of days and the same daily bag and possession limits permitted Pacific Flyway States, under final Federal frameworks. The tribes propose that, if the same number of hunting days are permitted as last year, the season would have an opening date of October 4, 1999, and a closing date of January 4, 2000.

Coot and snipe season dates would be the same as for ducks, with the same daily bag and possession limits permitted Pacific Flyway States. The tribes anticipate harvest will be between 2,000 and 5,000 ducks.

The tribes also requested a continuous goose season with the maximum number of days and the same daily bag and possession limits permitted Idaho under Federal frameworks. The tribes propose that, if the same number of hunting days are permitted as in previous years, the season would have an opening date of October 4, 1999, and a closing date of January 11, 2000. The tribes anticipate harvest will be between 4,000 and 6,000 geese.

Non-tribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, pertaining to shooting hours, use of steel shot, and manner of taking. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

We note that the requested regulations are nearly identical to those of last year and propose they be approved for the 1999–2000 hunting season.

(q) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only)

The Squaxin Island Tribe of Washington and the Service have cooperated since 1995 to establish special tribal migratory bird hunting regulations. These special regulations apply to tribal members on the Squaxin Island Reservation, located in western Washington near Olympia, and all lands within the traditional hunting grounds of the Squaxin Island Tribe.

The Squaxin Island Tribe usually outlines their migratory bird hunting



proposal through the Service's Region 1 Office, however, this year has not provided confirmatory information. The tribe would normally request establishing duck, coot, and snipe seasons that would run from September 15, 1999, through January 15, 2000. The daily bag limit for ducks would be 5 per day and could include only 1 canvasback. The season on harlequin ducks would be closed. For coots and snipe, the daily bag limit would be 25 and 8, respectively. For geese, the tribe would propose establishing a season that would run from September 15, 1999, through January 15, 2000. The daily bag limit for geese would be 4 per day and could include only 2 snow geese and 1 dusky Canada goose. The season on Aleutian and Cackling Canada geese would be closed. For brant, the tribe normally would propose establishing a September 15 to December 31, 1999, season with a daily bag limit of 2 birds per day. The tribe also would propose a September 15 to December 1, 1999, season for band-tailed pigeons with a daily bag limit of 2 per day.

In all cases, the possession limit would be twice the daily bag limit. Shooting hours would be from one-half hour before sunrise to one-half hour after sunset and steel shot would be required for migratory bird hunting. Further, the tribe requires all harvest be reported to their Natural Resources Office within 72 hours.

In 1995, the tribe reported that there was no harvest of any species. Tribal regulations are enforced by the tribe's Law Enforcement Department.

We propose to approve the Squaxin Island Tribe's 1999-2000 special migratory bird hunting regulations, provided the tribe provides the appropriate confirmation for the seasons.

(r) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)

In 1996, the Service and the Swinomish Indian Tribal Community began cooperating to establish special regulations for migratory bird hunting. The Swinomish Indian Tribal Community is a federally recognized Indian tribe consisting of the Suiattle, Skagit, and Kikialos tribes. The Swinomish Reservation was established by the Point Elliott Treaty of 1855 and lies in the Puget Sound area north of Seattle, Washington.

The Tribal Community usually outlines their migratory bird hunting proposal through the Service's Region 1 Office, however, this year has not provided confirmatory information. The

tribe would normally request establishing an off-reservation duck, merganser, Canada goose, brant, and coot season opening on the earliest possible date allowed by the final Federal frameworks for the Pacific Flyway and closing 30 days after the State of Washington closes. Daily bag and possession limits would be the same as those allowed by the State except that the Swinomish request an additional three birds of each species over that allowed by the State.

The Community normally anticipates that the regulations will result in the harvest of approximately 200 to 300 ducks, 25 to 50 Canada geese, 75 mergansers, 100 brant, and 50 coot. The Swinomish also utilize a tag and permit system to monitor harvest and will implement steps to limit harvest where conservation is needed. All tribal regulations will be enforced by tribal fish and game officers.

On reservation, the Tribal Community would propose a hunting season for the above mentioned species beginning on the earliest possible opening date and closing March 9, 1999. The Swinomish manage harvest by a tagging system and anticipate harvest will be similar to that expected off reservation.

We believe the estimated harvest by the Swinomish will be minimal and will not adversely effect migratory bird populations. We propose to approve the Tribal Community's regulations for the 1999-2000 season, provided the tribe provides the appropriate confirmation for the seasons.

(s) The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Non-tribal Hunters)

The Tulalip Tribes are the successors in interest to the tribes and bands signatory to the Treaty of Point Elliott of January 22, 1855. The Tulalip Tribes' government is located on the Tulalip Indian Reservation at Marysville, Washington. The tribes or individual tribal members own all of the land on the reservation, and they have full wildlife management authority. All lands within the boundaries of the Tulalip Tribes Reservation are closed to non-member hunting unless opened by Tulalip Tribal regulations.

In a June 1, 1999, letter, the Tulalip Tribes proposed tribal and non-tribal hunting regulations for the 1999-2000 seasons. For ducks and coot, the proposed season for tribal members would be from September 15, 1999, through February 1, 2000. In the case of non-tribal hunters hunting on the reservation, the season would be the latest closing date and the longest

period of time allowed for the State of Washington under final Pacific Flyway Federal frameworks. Daily bag and possession limits for Tulalip Tribal members would be 6 and 12 ducks, respectively, except that for blue-winged teal, canvasback, harlequin, pintail, and wood duck, the bag and possession limits would be the same as those established for the State of Washington in accordance with final Federal frameworks. For non-tribal hunters, bag and possession limits would be the same as those permitted the State of Washington under final Federal frameworks. Non-tribal members should check with the Tulalip tribal authorities regarding additional conservation measures which may apply to specific species managed within the region. For geese, tribal members are proposed to be allowed to hunt from September 15, 1999, through February 1, 2000. Non-tribal hunters would be allowed the longest season and the latest closing date permitted for the State of Washington under final Federal frameworks. For tribal hunters, the goose daily bag and possession limits would be 6 and 12, respectively, except that the bag limits for brant, cackling Canada geese and dusky Canada geese would be those established for the Pacific Flyway in accordance with final Federal frameworks. For non-tribal hunters hunting on reservation lands, the daily bag and possession limits would be those established in accordance with final Federal frameworks for the State of Washington. The Tulalip Tribes also set a maximum annual bag limit on ducks and geese for those tribal members who engage in subsistence hunting.

All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the tribe. Non-tribal hunters sixteen years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Both stamps must be validated by signing across the face.

Although the season length requested by the Tulalip Tribes appears to be quite liberal, harvest information indicates a total take by tribal and non-tribal hunters under 1,000 ducks and 500 geese, annually.

We propose approval of the Tulalip Tribes request for the above seasons. We request that harvest be monitored closely and regulations be reevaluated

for future years if harvest becomes too great in relation to population numbers.

(t) White Earth Band of Chippewa, White Earth, Minnesota (Tribal Members Only)

The White Earth Band of Chippewa is a federally recognized tribe located in northwest Minnesota and encompasses all of Mahnom County and parts of Becker and Clearwater Counties. The reservation employs conservation officers to enforce conservation regulations. For the first time in the 1999–2000 season, the tribe proposes to establish migratory bird hunting seasons on reservation lands.

In a July 28, 1999, letter, the tribe proposed a duck, merganser, and coot season of September 18 to November 30, 1999. The daily bag limit of 7 would include no more than 2 mallards and 1 canvasback through September 24 and no more than 2 hen mallards and 2 canvasbacks through the remainder of the season. The merganser daily bag limit would be 5 with no more than 2 hooded mergansers, and the coot daily bag limit would be 20. For geese, the tribe proposes a September 1 to November 30, 1999, season with a daily bag limit of 5 geese.

For dove, rail, woodcock, and snipe, the tribe proposes a September 11 to December 1, 1999, season with daily bag limits of 25 rails, 10 snipe, 10 woodcock, and 25 doves. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Non-toxic shot is required.

Based on past harvest surveys, the tribe expects a harvest of less than 500 Canada geese and 1000 ducks.

We propose to approve the White Earth Band of Chippewa's requested 1999–2000 special migratory bird hunting regulations.

(u) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Non-tribal Hunters)

The White Mountain Apache Tribe owns all reservation lands, and the tribe has recognized full wildlife management authority. The White Mountain Apache Tribe has requested regulations that are essentially unchanged from those agreed to since the 1997–98 hunting year.

The hunting zone for waterfowl is restricted and is described as: the entire length of the Black and Salt Rivers forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 6 and 7. Tanks located below

the Mogollon Rim, within Wildlife Management Units 2 and 3 will be open to waterfowl hunting during the 1999–2000 season. All other waters of the reservation would be closed to waterfowl hunting for the 1999–2000 season.

For non-tribal and tribal hunters, the tribe proposes a continuous duck, coot, merganser, gallinule and moorhen hunting season, with an opening date of October 23, 1999, and a closing date of January 17, 2000. The tribe proposes a daily duck (including mergansers) bag limit of 4, which may include no more than 2 redheads or 1 canvasback and 1 redhead, 1 pintail, and 3 mallards (including no more than 1 hen mallard). The daily bag limit for coots, gallinules and moorhens would be 25 singly, or in the aggregate. For geese, the season is proposing a season from October 23, 1999, through January 17, 2000. Hunting would be limited to Canada geese, and the daily bag limit would be 3.

Season dates for band-tailed pigeons and mourning doves would run concurrently from September 1 through September 12, 1999, in Wildlife Management Units 7 and 10, only. Proposed daily bag limits for band-tailed pigeons and mourning doves would be 3 and 8, respectively.

Possession limits for the above species are twice the daily bag limits. Shooting hours would be from one-half hour before sunrise to sunset. There would be no open season for sandhill cranes, rails and snipe on the White Mountain Apache lands under this proposal. A number of special regulations apply to tribal and non-tribal hunters, which may be obtained from the White Mountain Apache Tribe Game and Fish Department.

We propose to approve the regulations requested by the tribe for the 1999–2000 seasons.

(v) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Non-tribal Hunters)

On May 25, 1999, the Yankton Sioux Tribe submitted a waterfowl hunting proposal for the 1999–2000 season. The Yankton Sioux tribal waterfowl hunting season would be open to both tribal members and non-tribal hunters. The waterfowl hunting regulations would apply to tribal and trust lands within the external boundaries of the reservation.

For duck (including mergansers) and coots, the Yankton Sioux Tribe proposes a season starting October 9, 1999, and running for the maximum amount of days allowed under the final Federal frameworks. Daily bag and possession limits would be the same as those

adopted by the State of South Dakota. For geese, the tribe has requested a dark geese (Canada geese, brant, white-fronts) season starting October 30, 1999, and running for the maximum amount of days allowed under the final Federal frameworks. The daily bag limit would be 3 geese (including no more than 1 whitefront or brant). Possession limits would be twice the daily bag limit. For snow geese, the proposed hunting season would start October 30, 1999, and running for the maximum amount of days allowed under the final Federal frameworks. Daily bag and possession limits would be the same as those adopted by the State of South Dakota.

All hunters would have to be in possession of a valid tribal license while hunting on Yankton Sioux trust lands. Tribal and non-tribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, pertaining to shooting hours and the manner of taking. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

During the 1998–99 hunting season, the tribe reported that 83 non-tribal hunters took 350 Canada geese, 40 snow geese, and 70 ducks. Tribal members harvested less than 75 geese and 40 ducks.

We concur with the Yankton Sioux proposal for the 1999–2000 hunting season.

#### Public Comment Invited

We intend that adopted final rules be as responsive as possible to all concerned interests, and therefore desire to obtain the comments and suggestions of the public, other governmental agencies, non-governmental organizations, and other private interests on these proposals. However, special circumstances are involved in the establishment of these regulations which limit the amount of time that we 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, we believe that to allow comment periods past the dates specified is contrary to the public interest.

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**. You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 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.

#### Public Comments Received

We received two comments regarding the Notice of Intent published on May 3, 1999, which announced rulemaking on regulations for migratory bird hunting by American Indian tribal members. The Wisconsin Department of Natural Resources (Wisconsin) commented on the GLIFWC's proposal. Wisconsin had no objections to the proposed duck or goose season dates and bag limits. Wisconsin requested that tribal members honor the noon opening for shooting hours for the first day of the State's duck season and comply with the State's open water hunting restrictions. The Michigan Department of Natural Resources commented on the establishment of tribal regulations on 1836 Treaty areas. Michigan believed it was premature of the Service to establish waterfowl regulations in areas covered by the 1835 Treaty until such time as the issue of 1836 Treaty hunting rights are affirmed by a court of competent jurisdiction.

**Service Response:** Our position is that the Federal Government does recognize the Treaty of 1836 as reserving to the affected tribes or bands hunting rights in the ceded territory. Further, the Federal courts have already confirmed the retention of reserved fishing rights in the territory ceded by the Treaty of 1836 in *United States v. Michigan*, 471 F.Supp. 192 (W.D. Mich. 1979), *remanded*, 623 F.2d 448 (6th Cir. 1980), *order modified*, 653 F.2d 277 (6th Cir. 1981), *cert. denied*, 454 U.S. 1124

(1981). That case and cases dealing with other treaty cessions, such as *Lac Courte Oreilles v. Wisconsin* (i.e., both the 1837 and the 1842 Treaties), provide persuasive precedent for the belief that hunting as well as fishing rights were reserved by the tribes in the Treaty of 1836. We have not altered our position on this matter.

#### NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES-75-74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975, (40 FR 25241). A supplement to the final environmental statement, the "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88-14)" was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). Copies of these documents are available from us at the address indicated under the caption **ADDRESSES**. In addition, an August 1985 Environmental Assessment titled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the same address.

#### Endangered Species Act Considerations

Prior to issuance of the 1999-2000 migratory game bird hunting regulations, we will consider 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 that the proposed action 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 rulemakings.

We will include findings from these consultations in a biological opinion and may cause modification of some regulatory measures proposed in this document. The final rule will reflect any modifications. Our biological opinion resulting from its Section 7 consultation are public documents available for public inspection in the Service's

Division of Endangered Species and Office of Migratory Bird Management, U.S. Fish and Wildlife Service, at the address indicated under the caption **ADDRESSES**.

#### 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 and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. 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 Analysis was based on the 1996 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 \$429 and \$1,084 million at small businesses in 1998. Copies of the Analysis are available upon request.

#### Executive Order (E.O.) 12866

While this individual supplemental rule was not reviewed by the Office of Management and Budget (OMB), the migratory bird hunting regulations are economically significant and are annually reviewed by OMB under E.O. 12866.

E.O. 12866 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? What else could we do to make the rule easier to understand?

#### 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. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018-0015 (expires 9/30/2001). 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 Questionnaire and assigned clearance number 1018-0023 (expires 9/30/2000). The information from this survey is used to estimate the magnitude, the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. 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 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.

#### **Taking Implication Assessment**

In accordance with Executive Order 12630, these rules, authorized by the

Migratory Bird Treaty Act, do not have significant takings implications and do not affect any constitutionally protected property rights. These rules 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 privileges that would be otherwise unavailable; and, therefore, reduce restrictions on the use of private and public property.

#### **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 and 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 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 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 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### **Government-to-Government Relationship With Tribes**

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. Thus, in accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there

are no effects on Indian trust resources. However, by virtue of the tribal proposals contained in this proposed rule, we have consulted with all the tribes affected by this rule.

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

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

Based on the results of soon to be completed migratory game bird studies, and having due consideration for any data or views submitted by interested parties, this proposed rulemaking may result in the adoption of special hunting regulations for migratory birds beginning as early as September 1, 1999, on certain Federal Indian reservations, off-reservation trust lands, and ceded lands. Taking into account both reserved hunting rights and the degree to which tribes have full wildlife management authority, the regulations only for tribal members or for both tribal and non-tribal members may differ from those established by States in which the reservations, off-reservation trust lands, and ceded lands are located. The regulations will specify open seasons, shooting hours, and bag and possession limits for rails, coot, gallinules (including moorhen), woodcock, common snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks (including mergansers) and geese.

The rules that eventually will be promulgated for the 1999-2000 hunting season are authorized under the Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), as amended. The MBTA authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

Dated: August 9, 1999.

**Donald Barry,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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