

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AI30

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2002-03 Early Season**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: This rule prescribes special early season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on September 1, 2002.

ADDRESSES: You may inspect comments received on the proposed special hunting regulations and tribal proposals during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Tina Chouinard, Division of Migratory Bird Management, U.S. Fish and Wildlife Service (703/358-1714).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*) authorizes and directs the Secretary of the Department 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.

In the July 29, 2002, **Federal Register** (67 FR 49176), we proposed special migratory bird hunting regulations for the 2002-03 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by

both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, 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-September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the March 19, 2002, **Federal Register** (67 FR 12501), we requested that tribes desiring special hunting regulations in the 2002-03 hunting season submit a proposal including details on:

(a) Harvest anticipated under the requested regulations;

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

(c) Steps that would 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.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985-86 hunting season. We finalized the guidelines beginning with the 1988-89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

Although the proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the early-season proposals. Late-season hunting will be addressed in late-September. As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons begin about October 1 or later each year and have a primary emphasis on waterfowl.

Population Status and Harvest

The following paragraphs provide a brief summary of information on the status and harvest of waterfowl excerpted from various reports. For more detailed information on methodologies and results, complete copies of the various reports are available at the address indicated under the caption **ADDRESSES** or from our website at <http://migratorybirds.fws.gov>.

Status of Ducks

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft and encompass principal breeding areas of North America, and cover over 2.0 million square miles. The Traditional survey area is comprised of Alaska, Canada, and the northcentral United States, and includes approximately 1.3 million square miles. The Eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Breeding Ground Conditions

In summary, below-average winter and spring precipitation in the prairies and parklands and cold spring temperatures in eastern North America resulted in generally poorer habitat conditions for breeding waterfowl this year than in 2001. Dry conditions were reflected in the number of ponds counted this year. Total May ponds (United States prairies and Canadian prairies and parkland combined) were 2.7 ± 0.1 million, which is the second lowest count recorded since this estimate was first calculated in 1974, when this estimate was first recorded, 41% below last year's estimate of 4.6 ± 0.1 million, and 45% below the long-term average. This value was 41% below last year's estimate of 4.6 ± 0.1 million, and 45% below the long-term average (4.9 ± 0.1 million). May ponds in Canada (1.4 ± 0.1 million) and the U.S. (1.3 ± 0.1 million) were below 2001 estimates (-48% in Canada and -32% in the United States) and their long-term averages (-58% in Canada and -16% in the United States). Canadian ponds in May were the lowest recorded since surveys began in 1961.

In both the traditional (north-central United States, western Ontario, prairie Provinces and States, Yukon, Northwest Territories, and Alaska) and eastern survey areas (the northeastern United

States, eastern Ontario, Quebec, and the Canadian Maritimes), most regions entered into the spring of 2002 with a water deficit remaining from winter. Spring rains helped recharge wetlands in most of the Northeast, but conditions remained very dry in the West. Western Montana, southern Saskatchewan, and much of southern Manitoba and southern and central Alberta were hardest hit by drought. Fewer ponds available to nesting birds caused crowding on remaining ponds. Relative to other parts of the prairies, the Dakotas were fair. Permanent wetlands remained in good condition following the wet period of 1993–2001. However survey results suggest that many prairie-nesting species, such as mallards, shovelers, pintails, and blue-winged teal, flew over the prairies and parklands to the boreal forest, where wetland conditions are more stable. Cold spring temperatures also negatively affected nesting waterfowl this year. Winter-like conditions hit the entire surveyed area in early May, when snowstorms and cold temperatures caused birds to halt migration for several weeks. Snow and cold may have caused some nest loss in the prairies and parklands. Spring ice break-up was several weeks late over many of the northern survey areas. Break-up was so late in parts of the Northeast that biologists predicted little nesting activity in these areas. Conditions in northern Canada were generally good, but cold temperatures likely had a negative impact on early nesting species, such as mallards, green-winged teal, and pintails.

The only region where habitat conditions for breeding waterfowl improved over last year was Alaska, due to warmer post-thaw temperatures than last year. However, rapid ice melt may have caused flooding of nests in parts of Alaska as well as Labrador.

Weather and habitat conditions during the summer months can influence waterfowl production. Good wetland conditions increase re-nesting and brood survival. During late May and early June, many parts of the prairies, including Montana, the western Dakotas, and southern Saskatchewan and Alberta received substantial precipitation. Though this late rain and snow may have encouraged good reproductive effort by late-nesting species such as gadwall, many of the earlier nesting ducks likely bypassed the prairies altogether. For those ducks that did nest, this late water should improve brood-rearing conditions, as brood and duckling survival tends to increase with higher wetland densities. Results of the July Production Survey indicate that the number of ponds in Prairie Canada and

the north-central United States combined was 1.8 ± 0.1 million ponds. This was 36% below last year's estimate of 2.9 ± 0.1 million ponds, and 33% below the long-term average. July ponds in Prairie Canada were at 1.0 ± 0.1 million. This was 46% below last year's estimate of 1.8 ± 0.07 million and 43% below the long-term average. July ponds in the north-central United States were estimated at 0.84 ± 0.04 million. This was 19% below last year's estimate of 1.0 ± 0.06 million, but similar to the long-term average.

Breeding waterfowl habitat conditions in the eastern survey area were highly variable, but all areas experienced a warm, dry winter. In the New York, Eastern Ontario, and Southern Quebec survey area, the winter of 2001–02 was warm and dry, and drought conditions persisted throughout much of this region. Waterfowl returned early to this region, but early spring habitat conditions were poor. However, several weeks before and during surveys, cooler temperatures and increased precipitation were the rule, and wetland habitat conditions greatly improved. A similar weather pattern was reported for western Ontario. Maine and the southern Maritimes experienced a warm, dry winter, and above-normal temperatures and precipitation in early spring that produced good to excellent conditions for breeding ducks. By contrast, Newfoundland and Labrador experienced a late, cool spring. In Newfoundland, temperatures moderated and good waterfowl production was expected, but extended cold, stormy weather in Labrador made for poor nesting conditions.

Breeding Population Status

In the traditional survey area, total duck abundance was 31.2 ± 0.5 million birds. This was 14% below last year's estimate of 36.1 ± 0.6 million birds, and 6% below the long-term (1955–2001) average. Mallard abundance was 7.5 ± 0.2 million, similar to the 2001 estimate of 7.9 ± 0.2 million, and essentially identical to the long-term average. Blue-winged teal abundance was 4.2 ± 0.2 million, which was 27% below last year's estimate of 5.8 ± 0.3 million, but similar to the long-term average. Gadwall (2.2 ± 0.1 million, –17%), shovelers (2.3 ± 0.1 million, –30%), and pintails (1.8 ± 0.1 million, –46%) were below 2001 estimates. Wigeon (2.3 ± 0.1 million), green-winged teal (2.3 ± 0.1 million), redheads (0.6 ± 0.1 million), canvasbacks (0.5 ± 0.1 million), and scaup (3.5 ± 0.2 million) were unchanged from 2001 estimates. Gadwall (+37%), green-winged teal (+28%), and shovelers (+10%) all

remained above their long-term averages, whereas wigeon (–12%), pintail (–58%), canvasback (–14%), and scaup numbers (–34%) were below long-term averages. Northern pintails and scaup were the lowest and second lowest counts on record, respectively. The redhead estimate was similar to the long-term average.

In the eastern survey area, the 2002 total duck population estimate for this area was 4.4 ± 0.3 million birds, 32% higher than last year's (3.3 ± 0.3 million), and 41% higher than the 1996–2001 average. Numbers of most individual species were similar to those of last year, with the exception of mergansers (0.8 ± 0.1 million, +90%) and green-winged teal (0.7 ± 0.1 million, +174%), which increased compared to last year. Mergansers (+68%) and green-winged teal (+102%) were also above their 1996–2001 averages, as were scoters (0.3 ± 0.1 million, +178%). Estimates for all other species were similar to last year's estimates and to long-term averages.

Breeding Activity and Production

The number of broods in the north-central United States and prairie Canada combined was 352,600, 35% lower than last year's estimate, and 25% below the long-term average. The number of broods in prairie Canada and the north-central United States were 54% and 37% below last year's estimates, respectively. Brood indices in prairie Canada were 69% below the long-term average, while brood counts were 12% above the long-term average in the north-central United States. The brood index in the Canadian boreal forest was 21% higher than last year's, but 16% below the long-term average. The late-nesting index, the number of pairs and lone drakes without broods seen during July surveys, was 9% higher than last year, but 43% lower than the long-term average, for all areas combined. The late-nesting index was down 12% and 33% relative to last year in boreal Canada and the north-central U.S., respectively, but up 32% in prairie Canada, perhaps reflecting late rains there. However, the late nesting index was below the long-term average by more than 60% in boreal Canada and the north-central United States, and by 24% in prairie Canada.

Fall Flight Estimate

The size of the mid-continent mallard population, which comprises mallards from the traditional survey area, plus Michigan, Minnesota, and Wisconsin, was 8.5 million birds. This is similar to that of 2001 (8.7 million). The 2002 mid-continent mallard fall-flight

estimate is 8.9 million birds, statistically similar to the 2001 estimate of 9.7 million birds. These estimates were based on revised mid-continent mallard population models and, therefore, differ from those previously published.

For further discussion on the implications of this information for this year's selection of the appropriate hunting regulations in the United States, see the August 16, 2002, **Federal Register**.

Status of Geese and Swans

We annually assess the population status and productivity of 30 populations of North American Canada geese (*Branta canadensis*), brant (*B. bernicla*), snow geese (*Chen caerulescens*), Ross's geese (*C. rossii*), emperor geese (*C. canagicus*), white-fronted geese (*Anser albifrons*) and tundra swans (*Cygnus columbianus*). Reproductive performance of several goose populations likely were impacted by colder and dryer than average conditions during spring migration in 2002. The timing of snowmelt in most areas of the Arctic was near average, but arrival to nesting areas and initiation of nesting for many goose populations were delayed by adverse migration conditions. In the Hudson Bay Lowlands and northern Quebec, a cold and snowy May delayed nesting and reduced production for several populations. Throughout most of Alaska, Wrangel Island, and the northwestern Canadian mainland, the timing of snowmelt was early and conditions for nesting geese and swans were very favorable. Of the 25 populations for which current primary population indices were available, 11 populations (Atlantic Population, Aleutian, and 4 resident populations of Canada geese; greater snow geese; Pacific and Mid-continent White-fronted Goose Populations; Atlantic brant; and Eastern Population tundra swans) displayed positive trends, and only short grass prairie population Canada geese displayed a significant negative trend over the most recent 10-year period. Forecasts for production of young across the Arctic and subarctic in 2002 varied regionally, but generally will be improved in western areas and reduced in eastern areas compared to 2001.

Comments and Issues Concerning Tribal Proposals

For the 2002–03 migratory bird hunting season, we proposed regulations for 29 tribes and/or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some

of the proposals submitted by the tribes had both early- and late-season elements. However, as noted earlier, only those with early-season proposals are included in this final rulemaking; 19 tribes have proposals with early seasons and 1 tribe has decided not to have a special migratory bird hunting season. Comments and revised proposals received to date are addressed in the following section. The comment period for the proposed rule, published on July 29, 2002, closed on August 8, 2002. Because of the necessary brief comment period, we will respond to any comments received on the proposed rule and/or these late-season regulations not responded to herein in the September late-season final rule.

We received one comment regarding the notice of intent published on March 19, 2002, which announced rulemaking on regulations for migratory bird hunting by American Indian tribal members. 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 1836 Treaty until such time as the issue of 1836 Treaty hunting rights are affirmed by a court of competent jurisdiction.

Service Response: We have addressed this issue several times in the last few years. 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

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, “The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act” (and) shall “insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *”. Consequently, we conducted consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. Our biological opinions resulting from its Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and MBM, 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 million and \$1.084 billion at small businesses in 1998. Copies of the Analysis are available upon request.

Executive Order 12866

Collectively, the rules covering the overall frameworks for migratory bird hunting are economically significant and have been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. This rule is a small portion of the overall migratory bird hunting frameworks and was not individually submitted and reviewed by OMB under Executive Order 12866.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

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) and this rule will be effective immediately.

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 10/31/2004). 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 control number 1018–0023 (expires 07/31/2003). The information from this survey is used to estimate the magnitude and 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 Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not “significantly or uniquely” affect small governments, and will not produce a Federal mandate of \$100 million or more in any given year on local or State government or private entities. Therefore, this proposed rule is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings 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 13132, 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) Executive Order 13175 and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals received in response to the April 30, 2001, request for proposals and the August 14, 2001, proposed rule, we have consulted with all the tribes affected by this rule.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the tribes would have

insufficient time to communicate these seasons to their member and non-tribal hunters and to establish and publicize the necessary regulations and procedures to implement their decisions.

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

Therefore, under the authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703 *et seq.*), we prescribe final hunting regulations for certain tribes on Federal Indian reservations (including off-reservation trust lands), and ceded lands. The regulations specify the species to be hunted and establish season dates, bag and possession limits, season length, and shooting hours for migratory game birds.

List of Subjects in 50 CFR Part 20

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

Accordingly, part 20, subchapter B, chapter I of Title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j, Pub L. 106–108.

(**Note:** The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature).

2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

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

Doves

Season Dates: Open September 1, close September 15, 2002; then open November 16, 2002, close January 13, 2003.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or 10 white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits.

General Conditions: A valid Colorado River Indian Reservation hunting permit

is required for all persons 14 years and older and must be in possession before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona.

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

Sandhill Cranes

Season Dates: Open September 14, close October 20, 2002.

Daily Bag Limit: Three sandhill cranes.

Doves

Season Dates: Open September 1, close October 31, 2002

Daily Bag Limit: 15 mourning doves.

Permits: Each person participating in the sandhill crane season must have a valid Federal sandhill crane hunting permit in their possession while hunting.

General Conditions: The possession limit is twice the daily bag limit. The waterfowl hunting regulations established by this final rule apply only to tribal and trust lands within the external boundaries of the reservation. Tribal and non-tribal hunters must comply with basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding 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 stamp face. Special regulations established by the Crow Creek Sioux Tribe also apply on the reservation.

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

All seasons in Minnesota, 1854 Treaty Zone:

Ducks and Mergansers

Season Dates: Open September 14, close December 1, 2002.

Daily Bag Limit for Ducks: 18 ducks, including no more than 12 mallards (only 6 of which may be hens), 3 black ducks, 9 scaup, 6 wood ducks; 6 redheads, 3 pintails and 3 canvasbacks.

Daily Bag Limit for Mergansers: 15 mergansers, including no more than 3 hooded mergansers.

Geese (All species)

Season Dates: Open September 1, close December 15, 2002.

Daily Bag Limit: 12 geese.

Coots and Common Moorhens (Gallinule)

Season Dates: Open September 14, close December 1, 2002.

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

Sora and Virginia Rails

Season Dates: Open September 1, close December 1, 2002.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate. There is no possession limit.

Common Snipe and Woodcock

Season Dates: Open September 1, close December 1, 2002.

Daily Bag Limit: Eight snipe and three 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. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. There are no possession limits on any species, unless otherwise noted above. 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 that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

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

All seasons in Michigan, 1836 Treaty Zone:

Ducks

Season Dates: Open September 15, 2002, close January 15, 2003.

Daily Bag Limit: 12 ducks, which may include no more than 2 pintail, 2 canvasback, 3 black ducks, 1 hooded merganser, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens).

Canada Geese

Season Dates: Open September 1, close November 30, 2002, and open January 1, 2003, close February 8, 2003.
Daily Bag Limit: Five geese.

Other Geese (White-Fronted Geese, Snow Geese, and Brant)

Season Dates: Open September 20, close November 30, 2002.
Daily Bag Limit: Five geese.

Sora Rails, Common Snipe, and Woodcock

Season Dates: Open September 1, close November 14, 2002.
Daily Bag Limit: Five rails, five snipe, and five woodcock.

Mourning Doves

Season Dates: Open September 1, close November 14, 2002.
Daily Bag Limit: Ten mourning doves.
General Conditions: A valid Grand Traverse Band Tribal license is required and must be in possession before taking any wildlife. All other basic regulations contained in 50 CFR part 20 are valid. Other tribal regulations apply, and may be obtained at the tribal office in Suttons Bay, Michigan.

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

Ducks

A. Wisconsin and Minnesota 1837 and 1842 Zones:

Season Dates: Begin September 14 and end December 1, 2002.
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 14 and end December 1, 2002.
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: All Ceded Areas—
Season Dates: Begin September 14 and end December 1, 2002.
Daily Bag Limit: Five mergansers.
Geese: All Ceded Areas—
Season Dates: Begin September 1 and end December 1, 2002. In addition, any portion of the ceded territory which is open to State-licensed hunters for goose hunting after December 1 shall also be open concurrently for tribal members.

Daily Bag Limit: 10 geese in aggregate.
Other Migratory Birds: All Ceded Areas except where noted below.

A. Coots and Common Moorhens (Common Gallinules)

Season Dates: Begin September 14 and end December 1, 2002.
Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

B. Sora and Virginia Rails

Season Dates: Begin September 14 and end December 1, 2002.
Daily Bag Limit: 25 sora and Virginia rails singly, or in the aggregate.
Possession Limit: 25.

C. Common Snipe

Season Dates: Begin September 14 and end December 1, 2002.
Daily Bag Limit: Eight common snipe.

D. Woodcock

Season Dates: Begin September 3 and end December 1, 2002.
Daily Bag Limit: Five woodcock.

E. Mourning Doves: 1837 and 1842 Ceded Territories

Season Dates: Begin September 1 and end October 30, 2002.
Daily Bag Limit: Fifteen mourning doves.

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 model ceded territory conservation codes approved by Federal courts in the *Lac Courte Oreilles v. State of Wisconsin (Voigt)* and *Mille Lacs Band v. State of Minnesota* cases. The respective Chapter 10 of these Model Codes regulate territory migratory bird hunting. 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. Particular regulations of note include:

A. Nontoxic shot will be required for all waterfowl hunting.

B. Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

C. 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 that 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. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

D. The Tribe proposes that the baiting restrictions included in the respective sections 10.05(2)(h) of the model ceded territory conservation codes be amended to include language which parallels that in place for non-tribal members as published in 64 FR 29804, June 3, 1999.

E. They also propose to remove the shell limit restrictions included in the respective sections 10.05(2)(b) of the model ceded territory conservation codes.

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

(f) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)

Non-tribal Hunters on Reservation

Geese

Season Dates: Open September 1, 2002, close September 15, 2002.
Daily Bag and Possession Limits: 5 and 10, respectively.

Tribal Hunters Within Kalispel Ceded Lands

Ducks

Season Dates: Open September 20, 2002, close January 26, 2003.
Daily Bag Limit: 7 ducks, including no more than 2 female mallards, 4 scaup, and 2 redheads. The seasons on canvasbacks and pintail are closed.

Geese

Season Dates: Open September 1, 2002, close January 31, 2003.
Daily Bag Limit: 3 light geese and 4 dark geese. The daily bag limit is 2 brant and is in addition to dark goose limits.
General: Tribal members must possess a validated Migratory Bird Hunting and

Conservation Stamp and a tribal ceded lands permit.

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

Ducks

Season Dates: Open September 14, close December 31, 2002.

Daily Bag Limits: 10 birds. The season on canvasback is closed.

Geese

Season Dates: Open September 1, close December 31, 2002.

Daily Bag Limits: 10 geese.

General: Possession limits are twice the daily bag limits. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required. Use of live decoys, bait, and commercial use of migratory birds are prohibited.

(h) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only)

Canada Geese

Season Dates: Open September 1, close September 15, 2002, early season, then open September 28, close December 5, 2002, regular season, and open January 1, close February 8, 2003, late season.

Daily Bag Limits: Five geese in the early and late seasons and two geese in the regular portion of the season.

Rails, Snipe, and Woodcock

Season Dates: Open September 15, close November 14, 2002.

Daily Bag Limit: 8 rails, 8 snipe, and 3 woodcock.

Mourning Doves

Season Dates: Open September 15, close November 14, 2002.

Daily Bag Limit: 10 doves.

General:

A. All tribal members will be required to obtain a valid tribal resource card and 2002–03 hunting license.

B. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20.

C. Particular regulations of note include:

(1) Nontoxic shot will be required for all waterfowl hunting by tribal members.

(2) Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

(3) 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.

D. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(i) The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only)

Ducks

Season Dates: Open September 20, 2002, close January 20, 2003.

Daily Bag Limits: 10 ducks, including no more than 5 mallards (only 2 of which may be hens), 2 black ducks, 2 redheads, 2 wood ducks, 1 pintail, 1 hooded merganser, and 1 canvasback.

Canada Geese

Season Dates: Open September 1, 2002, close January 20, 2003.

Daily Bag and Possession Limits: Five geese.

Sora Rails, Snipe, and Woodcock

Season Dates: Open September 1, close November 14, 2002.

Daily Bag Limit: Five rails, five snipe, and five woodcock.

General: Possession limits are twice the daily bag limits.

(j) Makah Indian Tribe, Neah Bay, Washington (Tribal Members)

Ducks and Coots

Season Dates: Open September 15, 2002, close January 13, 2003.

Daily Bag Limit: Seven ducks including no more than one redhead. The season on canvasback is closed.

Geese

Season Dates: Open September 15, 2002, close January 13, 2003.

Daily Bag Limit: Four.

General

All other Federal regulations contained in 50 CFR part 20 would apply. The following restrictions are also proposed by the Tribe: (1) As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 0.25 miles of an occupied area; (2) Hunters must be eligible, enrolled Makah tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl; (3) The Cape Flattery area is open to waterfowl hunting, except in designated

wilderness areas, or within one mile of Cape Flattery Trail, or in any area that is closed to hunting by another ordinance or regulation; (4) The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited; (5) Steel or bismuth shot only for waterfowl is allowed; the use of lead shot is prohibited; (6) The use of dogs is permitted to hunt waterfowl.

(k) Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers)

Band-tailed Pigeons

Season Dates: Open September 1, close September 30, 2002.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, close September 30, 2002.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal and non-tribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20, regarding 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.

(l) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only).

Geese

Season Dates: Open September 1, close December 31, 2002.

Daily Bag and Limits: Three Canada geese. Hunters will be issued three tribal tags for geese in order to monitor goose harvest. An additional three tags will be issued each time birds are registered. A season quota of 150 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Woodcock

Season Dates: Open September 14, close November 15, 2002.

Daily Bag and Possession Limits: 5 and 10 woodcock, respectively.

General Conditions: The Tribe proposes shooting hours be one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations. Tribal members and

nontribal 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 part 20, 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 is not limited to three shells.

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

Ducks and Mergansers

Season Dates: Open September 15, 2002, close March 10, 2003.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, one harlequin, and two redheads. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 2002, close March 10, 2003.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The season on Aleutian Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 1, 2002, close March 10, 2003.

Daily Bag and Possession Limits: Two brant. Possession limit is twice the daily bag limit.

Coots

Season Dates: Open September 15, 2002, close March 10, 2003.

Daily Bag Limits: 25 coots.

Mourning Doves

Season Dates: Open September 1, 2002, close January 15, 2003.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 15, 2002, close March 10, 2003.

Daily Bag and Possession Limits: 10 and 20 snipe, respectively.

Band-tailed Pigeon

Season Dates: Open September 1, 2002, close January 15, 2003.

Daily Bag and Possession Limits: 5 and 10, respectively.

General Conditions: All hunters authorized to hunt migratory birds on the reservation must 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.

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

Ducks

Season Dates: Open September 15, 2002, close January 15, 2003.

Daily Bag and Possession Limits: Five ducks. The seasons on harlequin ducks and canvasback are closed. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 2002, close January 15, 2003.

Daily Bag and Possession Limits: Four geese, and may include no more than two snow geese and one dusky Canada goose. The season on Aleutian and Cackling Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 15, close December 31, 2003.

Daily Bag and Possession Limits: Two and four brant, respectively.

Coots

Season Dates: Open September 15, 2002, close January 15, 2003.

Daily Bag Limits: 25 coots.

Snipe

Season Dates: Open September 15, 2002, and close January 15, 2003.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-tailed Pigeons

Season Dates: Open September 1, close December 31, 2002.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

General Conditions: All tribal hunters must obtain a Tribal Hunting Tag and Permit from the Tribe's Natural Resources Department and must have the permit, along with the member's treaty enrollment card, on his or her person while hunting. Shooting hours are one-half hour before sunrise to one-half hour after sunset and steel shot is required for all migratory bird hunting. Other special regulations are available at the tribal office in Shelton, Washington.

(o) Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members Only)

Ducks (Including Coots and Mergansers)

Season Dates: Open September 15, 2002, and close February 28, 2003.

Daily Bag and Possession Limits: 6 and 12 ducks, respectively per species

for all species except that bag and possession limits may include no more than 2 female mallards, 1 pintail, 4 scaup, 2 redheads. The season on canvasbacks is closed.

Geese

Season Dates: Open September 15, 2002, and close February 28, 2003.

Daily Bag and Possession Limits: 6 and 12 geese, respectively; except that the bag limits may not include more than 2 brant and 1 cackling Canada goose. The Tribes also set a maximum annual bag limit on ducks and geese for those tribal members who engage in subsistence hunting of 365 ducks and 365 geese.

Snipe

Season Dates: Open September 15, 2002, through February 28, 2003.

Daily Bag and Possession Limits: 8 and 16, respectively.

General Conditions: 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. Nontribal hunters 16 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 of the stamp. Other tribal regulations apply, and may be obtained at the tribal office in Marysville, Washington.

(p) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only)

Mourning Dove

Season Dates: Open September 1, end December 31, 2002.

Daily Bag Limit: 12 mourning dove.

Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR.

(q) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)

Geese

Season Dates: Open September 14, 2002, and close September 21, 2002, and open November 1, 2002, close February 28, 2003.

Daily Bag and Possession Limits: 5 Canada geese during the first period, 3 during the second, and 15 snow geese.

General Conditions: Shooting hours are one-half hour before sunrise to sunset. Nontoxic shot is required. Tribal members will observe all basic Federal migratory bird hunting regulations contained in 50 CFR.

(r) White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only)

Ducks and Mergansers

Season Dates: Open September 14, close December 16, 2002.

Daily Bag Limit for Ducks: 10 ducks, including no more than 2 mallards. The season on canvasback is closed.

Daily Bag Limit for Mergansers: Five mergansers, including no more than two hooded mergansers.

Geese

Season Dates: Open September 1, close December 15, 2002.

Daily Bag Limit: Five geese.

Coots

Season Dates: Open September 14, close December 16, 2002.

Daily Bag Limit: 20 coots.

Sora and Virginia Rails

Season Dates: Open September 7, close December 31, 2002.

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

Common Snipe and Woodcock

Season Dates: Open September 7, close December 31, 2002.

Daily Bag Limit: 10 snipe and 10 woodcock.

Mourning Dove

Season Dates: Open September 7, close December 31, 2002.

Daily Bag Limit: 25 doves.

General Conditions: Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required.

(s) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)

Band-tailed Pigeons (Wildlife Management Unit 10 and areas south of Y-70 in Wildlife Management Unit 7, only)

Season Dates: Open September 4, close September 18, 2002.

Daily Bag and Possession Limits: Three and six pigeons, respectively.

Mourning Doves (Wildlife Management Unit 10 and areas south of Y-70 in Wildlife Management Unit 7, only)

Season Dates: Open September 4, close September 18, 2002.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: All non-tribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all non-tribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and non-tribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking.

Dated: August 22, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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