

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 20****RIN 1018-AT53****Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2004-05 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 2004-05 migratory bird hunting season.

**DATES:** We will accept all comments on the proposed regulations that are postmarked or received in our office by August 27, 2004.

**ADDRESSES:** Send your comments on these proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms MBSP-4107-ARLSQ, 1849 C Street, NW., Washington, DC 20240 or fax comments to (703) 358-2272. All comments received will become part of the public record. You may inspect comments during normal business hours in room 4107, 4501 N. Fairfax Drive, Arlington, Virginia.

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

**SUPPLEMENTARY INFORMATION:** In the March 22, 2004, *Federal Register* (69 FR 13440), we requested proposals from Indian Tribes wishing to establish special migratory bird hunting regulations for the 2004-05 hunting season, under the guidelines described in the June 4, 1985, *Federal Register* (50 FR 23467). In this supplemental proposed rule, we propose special migratory bird hunting regulations for 28 Indian Tribes, based on the input we received in response to the March 22, 2004, proposed rule. As described in that rule, the promulgation of annual migratory bird hunting regulations involves a series of rulemaking actions each year. This proposed rule is part of that series.

We developed the guidelines for establishing special migratory bird hunting regulations for Indian Tribes 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 nontribal members on their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of the 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 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Treaty). 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 nontribal members on all lands within the exterior boundaries of reservations where Tribes have full wildlife management authority over such hunting or where the Tribes and affected States otherwise have reached agreement over hunting by nontribal members on 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 pertaining to migratory bird management to all State Directors, Tribes, and other 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 such harvest has been a customary practice. We do not oppose this harvest, provided it does not take place during the closed season defined by the Treaty, 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 nontribal 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 nontribal 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 regulations or establish experimental special hunts, 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. We should stress 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

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds.

#### *May Breeding Waterfowl and Habitat Survey*

Most of the U.S. and Canadian prairies were much drier in May of 2004 than they were in May of 2003. The return of water to short-grass prairies of southern Alberta and Saskatchewan we saw last year did not continue, and habitat in these areas went from good last year to fair or poor this year. The Manitoba survey area ranges from poor in the east to good in the west, similar to conditions observed last year. The Dakotas have continued the slow drying trend that we have seen over the past few years, and much of eastern South Dakota is in poor condition. Conditions in the Dakotas improve to the north. Eastern Montana is a mosaic of habitat conditions ranging from poor to good, and production potential is thought to be only fair in this region. Although many areas received considerable moisture in the form of over-winter snow, with even a late snowstorm in the southern portions in middle May, the snow melted and went right into the parched ground. Snow and cold during the May storm probably adversely impacted early nesters and young broods. Water received after the May surveys likely did not alleviate dry conditions, because much of it soaked into the grounds. Therefore, waterfowl production in the prairies is only poor to fair this year.

When there are dry conditions in the prairies, many prairie nesting ducks will typically over-fly these areas into the bush. This year, the Canadian Bush (Northwest Territories, Northern Alberta, Northern Saskatchewan and Northern Manitoba) was exceptionally late in thawing so the birds that did over-fly the dry prairies encountered winter-like conditions and will be even

less successful than in a normal over-flight year. This is especially true for mallard and pintails; late nesters will have better success. Overall, the bush, including the parklands and boreal forest, will be only fair to marginally good for production because of the latest spring thaw in at least 20 years. However, Alaska birds should produce well because of excellent habitat conditions. Areas south of Alaska's Brooks Range experienced a widespread, record-setting early spring breakup, and flooding due to rapid thaw was minor.

Breeding habitat conditions were generally good to excellent in the eastern U.S. and Canada. Although spring was late in most areas, it is thought that nesting was not significantly affected because of abundant spring rain and mild temperatures. Production in the East is expected to be better this year than last year.

We will have no traditional July Production Survey this year to verify the early predictions of our biologists in the field. However, the pilot-biologists responsible for several survey areas (Southern Alberta, Southern Saskatchewan, the Dakotas, and Montana) will return in early July for a brief over-flight of a representative portion of their areas to assess significant habitat changes since May and provide a snapshot of production. This information and reports from local biologists in the field will help us with our overall perspective on duck production this year.

#### *Status of Teal*

The preliminary estimate of blue-winged teal numbers from the Traditional Survey Area is 4.07 million. This represents a 26.2 percent decline from 2003 and 9.6 percent below the long-term average. A population size in this range suggests that a 9-day September teal season is appropriate in 2004.

#### *Sandhill Cranes*

The Mid-Continent Population of Sandhill Cranes has generally stabilized at comparatively high levels, following increases in the 1970s. The Central Platte River Valley, Nebraska, spring index for 2004, uncorrected for visibility, was 356,850 cranes. The most recent photo-corrected 3-year average (for 2001–2003) was 370,300, which is within the established population-objective range of 343,000–465,000 cranes. All Central Flyway States, except Nebraska, allowed crane hunting in portions of their respective States in 2003–04. About 7,700 hunters

participated in these seasons, which is similar to the number that participated during the previous year. An estimated 18,527 cranes were harvested in the Central Flyway during 2003–04 seasons, which was 42% higher than the previous year's estimate. Retrieved harvests in the Pacific Flyway, Canada, and Mexico were estimated to be about 13,109 cranes for the 2003–04 period. The total North American sport harvest, including crippling losses, was estimated at 35,706, which is similar to the previous year's estimate. The long-term trend analysis for the Mid-Continent Population during 1982–2000 indicates that harvests have been increasing at a higher rate than the trend in population growth over the same period.

The fall 2003 pre-migration survey estimate for the Rocky Mountain Population of sandhill cranes was 19,523, which was similar to the previous year's estimate of 18,803. Limited special seasons were held during 2003 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming, resulting in a harvest of 528 cranes, which was 17% below the previous year's harvest of 639 cranes.

#### *Woodcock*

Singing-ground and Wing-collection Surveys were conducted to assess the population status of the American woodcock (*Scolopax minor*). Singing-ground Survey data for 2004 indicate that the numbers of displaying woodcock in the Eastern and Central Regions were unchanged from 2003 ( $P>0.10$ ). There was no significant trend in woodcock heard on the Singing-ground Survey in either the Eastern or Central Regions during the 10 years between 1995 and 2004 ( $P>0.10$ ). This represents the first time since 1992 that the 10-year trend estimate for either region was not a significant decline. There were long-term (1968–2004) declines ( $P<0.01$ ) of 2.1 percent per year in the Eastern Region and 1.8 percent per year in the Central Region. Wing-collection survey data indicate that the 2003 recruitment index for the U.S. portion of the Eastern Region (1.5 immatures per adult female) was slightly higher than the 2002 index, but was 12 percent below the long-term average. The recruitment index for the U.S. portion of the Central Region (1.4 immatures per adult female) was 19 percent below the 2002 index and 16 percent below the long-term average.

#### *Band-tailed Pigeons and Doves*

A significant decline in the Coastal population of band-tailed pigeons occurred during 1968–2003, as

indicated by the Breeding Bird Survey (BBS); however, no trend was noted over the most recent 10 years. Additionally, mineral-site counts at 10 selected sites in Oregon indicate a general increase since the late 1980s. Numbers have declined the past 4 years, but the count of 3,195 in 2003 is still well above the total of 1,462 in 1986. Call-count surveys conducted in Washington showed no significant trends during 1975–2003 or between 1999–2003. A rangewide (British Columbia, Washington, Oregon, and California) mineral-site survey for the Coastal Population was established in 2003, but it will be several years before trend information will be available. The Interior band-tailed pigeon population is stable, with no trend indicated by the BBS over the short- or long-term periods.

Analyses of Mourning Dove Call-count Survey data indicated no significant trend in doves heard in any management unit over the most recent 10 years. Between 1966 and 2004, all three units exhibited significant declines ( $P < 0.05$ ). In contrast, for doves seen over the 10-year period, a significant increase was found in the Eastern Unit ( $P < 0.05$ ), while no trends were found in the Central and Western Units. Over 39 years, no trend was found for doves seen in the Eastern and Central Units, while a decline was indicated in the Western Unit ( $P < 0.05$ ). A project is under way to develop mourning dove population models for each unit to provide guidance for improving our decision-making process with respect to harvest management. Additionally, a small-scale banding study was initiated in 2003 to obtain additional information.

In Arizona, the white-winged dove population has shown a significant decline between 1962 and 2004. However, the number of whitewings has been fairly stable since the 1970s. Estimated harvests in recent years (145,000 in 2003) are low compared to those occurring several decades ago. In Texas, white-winged doves are now found throughout most of the State. In 2004, the whitewing population in Texas was estimated to be 2,387,000 birds, a decrease of 5.5 percent from 2003. A more inclusive count in San Antonio documented more than 1.3 million birds. An estimated 130,900 whitewings were taken during the special whitewing season in south Texas, with an additional 1,224,000 birds taken statewide during the regular mourning dove season. The expansion of whitewings northward and eastward from Texas has led to whitewings being sighted in most of the Great Plains and

Midwestern States and as far north as Ontario. Nesting has been reported in Louisiana, Arkansas, Oklahoma, Kansas, and Missouri. They have been sighted in Colorado, Montana, Nebraska, Iowa, and Minnesota. Additionally, whitewings are believed to be expanding northward from Florida and have been seen along the eastern seaboard as far north as Newfoundland.

White-tipped doves are maintaining a relatively stable population in the Lower Rio Grande Valley of Texas. They are most abundant in cities and, for the most part, are not available to hunting because of their urban location. The count in 2004 averaged 0.84 birds per stop, an 11.6 percent decrease over the count in 2003. The estimated harvest during the special 4-day whitewing season is less than 3,000 birds.

#### **Hunting Season Proposals From Indian Tribes and Organizations**

For the 2004–05 hunting season, we received requests from 26 Tribes and Indian organizations. 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 mid-August 2004 **Federal Register** that will include tribal regulations for the early-hunting season.

The early season generally begins on September 1 each year and most commonly includes such species as American woodcock, sandhill cranes, mourning doves, and white-winged doves. A final rule will also be published in a September 2004 **Federal Register** that will include regulations for late-season hunting. The late season begins on or around September 24 and most commonly includes waterfowl species.

In this current rulemaking, because of the compressed timeframe 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 the same as permitted in 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 17, 2004 (68 FR 42546); 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 26 Tribes that have submitted proposals that meet the established criteria and an additional 4 Tribes from whom we expect to receive proposals are shown below.

#### *(a) Bois Forte Band of Chippewa, Nett Lake, Minnesota (Tribal Members and Non-Tribal Hunters)*

The Bois Forte Band of Chippewa is located in northern Minnesota. Bois Forte is a 103,000-acre land area, home to 800 Band members. The reservation includes Nett Lake, a 7,400-acre wild rice lake.

In their 2004–05 proposal, dated June 9, 2004, Bois Forte requested the authority to establish a waterfowl season on their reservation. The season would be the same as that established by the State of Minnesota, except that shooting hours on opening and every hunting day of the State official season would be one-half hour before sunrise to sunset. Harvest under their proposal would not alter possession limits or species allowances already in place in Minnesota.

Bag limits for non-tribal hunters will not be changed from current, State of Minnesota established levels. Bois Forte requires non-tribal persons hunting on Nett Lake on the first day of the season to complete a survey upon completion of the days hunting requesting: (1) Name and contact information; (2) hunting permit number (State and tribal); (3) number of hours hunted; (4) location of hunting site; (5) tribal guide name; (6) number and species of waterfowl harvested in possession; and (7) number and species of waterfowl shot but not recovered. Bois Forte will collect the results and compare to previous seasons data.

Harvest information from the 2002–03 migratory bird season included harvest of 1,100 ducks. Of these 1,100 taken,

850 were ring-neck ducks, 100 were blue/green-winged teal, and 150 were mallards. They had 371 non-tribal hunters, similar to levels in the past.

The Bands Conservation Department regulates non-tribal harvest limits under the following regulations: (1) Non-tribal hunters must be accompanied at all times by a Band Member guide; (2) non-tribal hunters must have in their possession a valid small game hunting license, a Federal migratory waterfowl stamp, and a Minnesota State waterfowl stamp; (3) non-tribal hunters and Band Members must have only Service-approved non-toxic shot in possession at all times; (4) non-tribal hunters must conform to possession limits established and regulated by the State of Minnesota and the Bois Forte Band.

We propose to approve the Bois Forte Band of Chippewa regulations for the 2004–05 hunting season.

*(b) Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Nontribal 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 2004–05 proposal, the Colorado River Indian Tribes requested split dove seasons. They propose their early season begin September 1 and end September 15, 2004. 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 12, 2004, and close December 26, 2004. The 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 16, 2004, and run until January 30, 2005. The Tribes propose the same season dates for mergansers, coots, and common moorhens. The daily bag limit for ducks, including mergansers, would be seven, except that the daily bag limits could contain no more than two hen mallards, two redheads, two Mexican ducks, two goldeneye, and two cinnamon teal. The seasons on canvasback and pintail are closed. The possession limit would be twice the daily bag limit. The daily bag and possession limit for coots and common moorhens would be 25, singly or in the aggregate.

For geese, the Colorado River Indian Tribes propose a season of October 23, 2004, through January 30, 2005. The daily bag limit for geese would be three light geese and three dark geese. The possession limit would be six light geese and six 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 nontoxic shot is required for waterfowl hunting.

We propose to approve the Colorado River Indian Tribes regulations for the 2004–05 hunting season.

*(c) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal and Nontribal 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.

As in the past, tribal regulations for nontribal 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 shot or other federally-approved nontoxic shots are the only legal shotgun loads on the reservation for waterfowl or other game birds.

The requested season dates and bag limits are 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 2004–05 hunting season.

*(d) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Nontribal 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 2004 proposal, the Tribe requested a duck and merganser season of October 2 to December 14, 2004, with a daily bag limit of six ducks, including no more than five mallards (only two of which may be hens), two redheads, two wood ducks, and three scaup. The merganser daily bag limit would be five and include no more than one hooded merganser. The daily bag limit for coots would be 15. The pintail season would run from October 2 to November 30, 2004, with a daily bag limit of one pintail.

For Canada geese, the Tribe proposes an October 16, 2004, to January 18, 2005, season with a three-bird daily bag limit. For white-fronted geese, the Tribe proposes a September 25 to December 19, 2004, season with a daily bag limit of two. For snow geese, the Tribe proposes a September 25, 2004, to December 30, 2004, season with a daily bag limit of 20.

Similar to the last several years, the Tribe also requests a sandhill crane season from September 11 to October 17, 2004, with a daily bag limit of three. The Tribe proposes a mourning dove season from September 1 to October 30, 2004, with a daily bag limit of 15.

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. Total harvest on the reservation in 2000 was estimated to be 179 ducks and 868 geese.

We propose to approve the Tribes 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.

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

Since 1996, the Service and the Fond du Lac Band of Lake Superior Chippewa Indians have cooperated to establish special migratory bird hunting regulations for tribal members. The Fond du Lac's May 29, 2004, proposal covers land set apart for the band under the Treaties of 1837 and 1854 in northeast and east-central Minnesota.

The band's proposal for 2004–05 is essentially the same as that approved last year. Specifically, the Fond du Lac Band proposes a September 18 to December 1, 2004, season on ducks, mergansers, coots, and moorhens, and a September 1 to December 1, 2004, season for geese. For sora and Virginia rails, snipe, and woodcock, the Fond du Lac Band proposes a September 1 to December 1, 2004, season. Proposed daily bag limits would consist of the following:

**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.

**Mergansers:** 15 mergansers, including no more than 3 hooded mergansers.

**Geese:** 12 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:** Eight common snipe.

**Woodcock:** Three woodcock.

The following general conditions apply:

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

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 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.

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

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

*(f) 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 2004–05 season, the Tribe requests that the tribal member duck season run from September 15, 2004, through January 15, 2005. A daily bag limit of 12 would include no more than 2 pintail, 2 canvasback, 1 hooded merganser, 3 black ducks, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens).

For Canada geese, the Tribe proposes a September 1 through November 30, 2004, and a January 1 through February 8, 2005, season. For white-fronted geese, brant, and snow geese, the Tribe proposes a September 20 through November 30, 2004, season. The daily bag limit for all geese (including brant) would be five birds. Based on our information, it is unlikely that any Canada geese from the Southern James Bay Population will be harvested by the Tribe.

For woodcock, the Tribe proposes a September 1 to November 14, 2004, season. The daily bag limit will not

exceed five birds. For mourning doves, snipe and rails, the Tribe proposes a September 1 to November 14, 2004, season. The daily bag limit would be 10 per species.

All other Federal regulations contained in 50 CFR part 20 would apply. The Tribe proposes to monitor harvest closely through game bag checks, patrols, and mail surveys. Harvest surveys from the 2002–03 hunting season indicated that approximately 34 tribal hunters harvested an estimated 200 ducks and 30 Canada geese.

We propose to approve the Grand Traverse Band of Ottawa and Chippewa Indians requested 2004–05 special migratory bird hunting regulations.

*(g) 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 point out that the U.S. Government has recognized the Indian hunting rights decided in the *Lac Courte Oreilles v. State of Wisconsin (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.

The GLIFWC proposed off-reservation special migratory bird hunting regulations for the 2004–05 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 the Lake Superior Tribe of Chippewa Indians, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, the Lac du Flambeau Band of Lake Superior Chippewa Indians, the Red Cliff Band of Lake Superior Chippewa Indians, the St. Croix Chippewa Indians of Wisconsin, the Sokaogon Chippewa Community (Mole Lake Band), all in Wisconsin; 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 2002–03 season.

Results of 1987–98 hunter surveys on off-reservation tribal duck harvest in the Wisconsin/Michigan entire ceded territory ranged from 1,022 to 2,374 with an average of 1,422. Estimated goose harvest has ranged from 72 to 586, with an average of 310. Harvest from 2001 was estimated at 1,014 ducks, 81 geese, and 146 coots. Under the proposed regulations, harvest is expected to remain within these ranges. Tribal harvest in the Minnesota ceded territory is anticipated to be much smaller than in the Wisconsin/Michigan area since waterfowl hunting has been limited to 10 individuals thus far. Due to the limited distribution of doves and dove habitat in the ceded territory, and the relatively small number of tribal off-reservation migratory bird hunters, harvest is expected to be negligible.

We believe that regulations advanced by the GLIFWC for the 2004–05 hunting season are biologically acceptable, and we recommend approval. If the regulations are finalized as proposed, we would request that the GLIFWC closely monitor the member bands 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 2004–05 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, 2004.

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, 2004.

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 15 and end December 1, 2004.

Daily Bag Limit: Five mergansers.

##### *Geese: All Ceded Areas.*

Season Dates: Begin September 1 and end December 1, 2004. In addition, any portion of the ceded territory that is open to State-licensed hunters for goose hunting after December 1 will also be open concurrently for tribal members.

Daily Bag Limit: 10 geese in aggregate.

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

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

Season Dates: Begin September 15 and end December 1, 2004.

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, 2004.

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

Possession Limit: 25.

#### C. Common Snipe

Season Dates: Begin September 15 and end December 1, 2004.

Daily Bag Limit: Eight common snipe.

#### D. Woodcock

Season Dates: Begin September 7 and end December 1, 2004.

Daily Bag Limit: Five woodcock.

#### E. Mourning Dove: 1837 and 1842 Ceded Territories

Season Dates: Begin September 1 and end October 30, 2004.

Daily Bag Limit: 15 mourning dove.

#### General Conditions

A. All tribal members will be required to obtain a valid tribal waterfowl hunting permit.

B. 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 *Voigt and Mille Lacs Band v. State of Minnesota* cases. The respective Chapters 10 of these model codes regulate ceded territory migratory bird hunting. They parallel Federal requirements as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting. They also automatically incorporate by reference the Federal migratory bird regulations adopted in response to this proposal.

C. Particular regulations of note include:

1. Nontoxic shot will be required for all off-reservation 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.

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 and 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 taken on reservation lands. All migratory birds that fall on reservation lands will not

count as part of any off-reservation bag or possession limit.

4. The baiting restrictions included in the respective sections 10.05 (2)(h) of the model ceded territory conservation codes will be amended to include language which parallels that in place for non-tribal members as published in 64 FR 29799, June 3, 1999. This language is also included in Appendix 1.

5. The shell limit restrictions included in the respective sections 10.05 (2)(b) of the model ceded territory conservation codes will be removed.

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

*(h) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal 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.

The Tribe proposed a 2004–05 waterfowl season beginning with the earliest possible opening date in the Pacific Flyway States and a closing date of November 30, 2004. Daily bag and possession limits for waterfowl would be the same as Pacific Flyway States. The Tribe proposes a season on Canada geese with a two-bird daily bag limit. Other regulations specific to the Pacific Flyway guidelines for New Mexico would be in effect.

During the Jicarilla Game and Fish Department's 2002–03 season, estimated duck harvest was 288, which is within the historical harvest range. The species composition in the past has included mainly mallards, gadwall, wigeon, and teal. Northern pintail comprised 2 percent of the total harvest in 2002. The estimated harvest of geese was three birds.

The proposed regulations are essentially the same as were established last year. The Tribe anticipates the maximum 2004–05 waterfowl harvest would be around 250–700 ducks and 20–30 geese.

We propose to approve the Tribe's requested 2004–05 hunting seasons.

*(i) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal 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 nontribal 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 2004–05 migratory bird hunting seasons, the Kalispel Tribe proposed tribal and nontribal member waterfowl seasons. The Tribe requests that both duck and goose seasons open at the earliest possible date and close on the latest date under Federal frameworks. For nontribal members, the Tribe requests that the season for ducks begin September 17, 2004, and end January 31, 2005. In that period, nontribal hunters would be allowed to hunt approximately 101 days. Hunters should obtain further information on specific hunt days from the Kalispel Tribe.

The Tribe also requests the season for geese run from September 1 to September 15, 2004, and from October 1, 2004, to January 31, 2005. Total number of days would not exceed 107. Nontribal members should obtain further information on specific hunt days from the Tribe. Daily bag and possession limits would be the same as those for the State of Washington.

The Tribe reports a 2002–03 nontribal harvest of 30 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 non-toxic shot and possession of a signed migratory bird hunting stamp, would be required.

For tribal members on Kalispel-ceded lands, the Kalispel propose outside frameworks for ducks and geese of

September 1, 2004, through January 31, 2005. The Tribe requests that both duck and goose seasons open at the earliest possible date and close on the latest date under Federal frameworks.

However, during that period, the Tribe proposes that the season run continuously. Daily bag and possession limits would be concurrent with the Federal rule.

The Tribe reports that there was no 2002–03 tribal harvest. Under the proposal, the Tribe expects harvest to be less than 500 birds for the season with less than 200 geese. 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 nontribal seasons conform to Treaty limitations and final Federal frameworks for the Pacific Flyway. All seasons for nontribal hunters must conform with the 107-day maximum season length established by the Treaty.

*(j) 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.

For the 2004–05 season, we have not yet heard from the Tribe regarding this seasons proposal. Based on last year, we assume the Tribe would request proposed season dates of October 1, 2004, through January 28, 2005. Daily bag limits would be nine for ducks and six 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. Steel shot is required.

Based on the number of birds produced in the Klamath Basin, this year's harvest would 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 2004–05 special migratory bird hunting regulations upon receipt of their proposal and confirmation that the Tribe would like to have a special season.

*(k) 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. The Service and the Tribe have cooperatively established migratory bird hunting regulations since 2000.

For the 2004–05 season, we have not yet heard from the Tribe regarding this seasons proposal. Based on last year, we assume the Tribe would request a duck season starting on September 15 and ending December 31, 2004, and a goose season to run from September 1 through December 31, 2004. Daily bag limits for both ducks and geese would be 10. Possession limits would be twice the daily bag limit. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

The annual harvest by tribal members on the Leech Lake Reservation is estimated at 1,000–2,000 birds.

We propose to approve the Leech Lake Band of Ojibwe's upon receipt of their proposal and confirmation that the Tribe would like to have a special season.

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

The Little River Band of Ottawa Indians is a self-governing, federally recognized Tribe located in Manistee, Michigan, and 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. Ceded lands are located in Lake, Mason, Manistee, and Wexford Counties.

For the 2004–05 season, we have not yet heard from the Tribe regarding this seasons proposal. Based on last year, we assume the Little River Band of Ottawa Indians would propose a duck, merganser, coot, and common moorhen seasons from September 29 through December 5, 2004. A daily bag limit of eight ducks would include no more than one pintail, one canvasback, one black duck, two wood ducks, two redheads, three scaup, and five mallards (only one of which may be a hen). The daily bag limit for mergansers would be five, of

which only one could be a hooded merganser. The possession limit for mergansers is 10, only 2 of which may be hooded mergansers. The daily bag limit for coots and common moorhens would be 12. Possession limits would be twice the daily bag limit.

For Canada geese, white-fronted geese, snow geese, Ross geese, and brant, we assume the Tribe would propose a September 1 through November 30, 2004, season. Daily bag limits would be 5 Canada geese and a combination of 10 of all other species. For Canada geese only, the Tribe proposes a January 1, 2005, through February 7, 2005, season with a daily bag limit of five Canada geese. The possession limit would be twice the daily bag limit.

For snipe, woodcock, and rails, we assume the Tribe would propose a September 1 to November 14, 2004, season. The daily bag limit would be 10 common snipe, 5 woodcock, and 10 rails. Possession limits for all species would be twice the daily bag limit. For mourning dove, the Tribe proposes a September 15 to November 14, 2004, season. The daily bag limit would be 10 and possession limit of 20.

The Tribe monitored harvest through mail surveys. General Conditions were as follows:

A. All tribal members will be required to obtain a valid tribal resource card and 2004–05 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.

We propose to approve Little River Band of Ottawa Indians upon receipt of their proposal and confirmation that the Tribe would like to have a special season.

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

The Little Traverse Bay Bands of Odawa Indians is a self-governing, federally recognized Tribe located in Petoskey, Michigan, and 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 2004–05 season, the Little Traverse Bay Bands of Odawa Indians propose regulations similar to other Tribes in the 1836 treaty area. The tribal member duck season would run from September 15, 2004, through January 20, 2005. A daily bag limit of 12 would include no more than 2 pintail, 2 canvasback, 1 hooded merganser, 3 black ducks, 3 wood ducks, 2 redheads, and 6 mallards (only 3 of which may be hens). For Canada geese, the Tribe proposes a September 1, 2004, through February 8, 2005, season. For white-fronted geese, brant, and snow geese, the Tribe proposes a September 1 through November 30, 2004, season. The daily bag limit for Canada geese would be 5 birds, and for snow geese, brant, and white-fronted geese, 10 birds. Based on our information, it is unlikely that any Canada geese from the Southern James Bay Population would be harvested by the Tribe. Possession limits are twice the daily bag limit.

For woodcock, the Tribe proposes a September 1, 2004, to November 14, 2004, season. The daily bag limit will not exceed five birds. For snipe, mourning doves, and sora rail, the Tribe proposes a September 1 to November 14, 2004, season. The daily bag limit will not exceed 10 birds per species. The possession limit will not exceed two days bag limit for all birds. All other Federal regulations contained in 50 CFR part 20 would apply. The Tribe proposes to monitor harvest closely 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 Little Traverse Bay Bands of Odawa Indians' requested 2004–05 special migratory bird hunting regulations.

*(n) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal 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 an 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 2004–05 season, the two parties have come to an agreement that provides 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 2004–05 migratory bird hunting season, the Lower Brule Sioux Tribe proposes a nontribal member duck, merganser, and coot season length of 97 days, the same number of days tentatively allowed under the liberal regulatory alternative in the High Plains Management Unit for this season. The Tribe's proposed season would run from October 2, 2004, through January 6, 2005. The daily bag limit would be six birds, including no more than five mallards (only one of which may be a hen), one pintail, two redheads, two wood ducks, three scaup, and one mottled duck. The canvasback season for nontribal members is closed. The daily bag limit for mergansers would be five, only one of which could be a hooded merganser. 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 25–26, 2004.

The Tribe's proposed nontribal member Canada goose season would run from October 16, 2004, through January 18, 2005, with a daily bag limit of three Canada geese. The Tribe's proposed nontribal member white-fronted goose season would run from October 16, 2004, through January 9, 2005, with a daily bag limit of two white-fronted geese. The Tribe's proposed nontribal member light goose season would run from October 16, 2004, through January 15, 2005, and February 26 through March 10, 2005. The light goose daily bag limit would be 20. Possession limits would be twice the daily bag limits.

For tribal members, the Lower Brule Sioux Tribe proposes a duck, merganser, and coot season from October 2, 2004, through March 7, 2005. The daily bag limit would be six birds, including no more than five mallards (only one of which may be a hen), one pintail, two redheads, one canvasback, two wood

ducks, three scaup, and one mottled duck. The daily bag limit for mergansers would be five, only one of which could be a hooded merganser. 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 25–26, 2004.

The Tribe's proposed Canada goose season for tribal members would run from October 16, 2004, through March 7, 2005, with a daily bag limit of three Canada geese. The Tribe's proposed white-fronted goose tribal season would run from October 16, 2004, through March 7, 2005, with a daily bag limit of two white-fronted geese. The Tribe's proposed light goose tribal season would run from October 16, 2004, through March 7, 2005. The light goose daily bag limit would be 20. Possession limits would be twice the daily bag limits.

In the 2002–03 season, hunters harvested an estimated 3,554 geese and 768 ducks. In the 2002–03 season, duck harvest species composition was primarily mallard (79 percent), green-winged teal (4 percent), gadwall (8 percent), and blue-winged teal, wood duck, scaup, pintail, and wigeon (8 percent collectively). Goose harvest species composition in 2002 at Mni Sho was approximately 85 percent Canada geese, 11 percent snow geese, and 4 percent white-fronted geese. Harvest of geese harvested by other hunters was approximately 100 percent Canada geese, and less than 1 percent snow geese.

The Tribe anticipates a duck harvest similar to the previous three years 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.

*(o) Lower Elwha Klallam Tribe, Port Angeles, Washington (Tribal Members Only)*

Since 1996, the Service and the Point No Point Treaty Tribes, of which Lower Elwha was one of, have cooperated to establish special regulations for migratory bird hunting. The Tribes are now acting independently and the Lower Elwha Klallam Tribe would like

to establish migratory bird hunting regulations for tribal members for the 2004–2005, season. The Tribe has a reservation on the Olympic Peninsula in Washington State and is a successor to the signatories of the Treaty of Point No Point of 1855.

The Lower Elwha Klallam Tribe request a duck and coot season from September 15, 2004, to March 9, 2005. The daily bag limit is seven ducks including no more than two hen mallards, one pintail, one canvasback, and two redheads. The daily bag and possession limit on harlequin duck is one per season. The coot daily bag limit is 25. The possession limit is twice the daily bag limit except as noted above.

For geese, the Tribe requests a season from September 15, 2004, to March 9, 2005. The daily bag limit is four including no more than three light geese. The season on Aleutian Canada geese is closed. For Brant, the Tribe proposes a season from November 1, 2004, to March 9, 2005, with a daily bag limit of two. The possession limit is twice the daily bag limit.

For mourning doves and bandtailed pigeon, the Tribe requests a season from September 1, 2004, to March 9, 2005, with a daily bag limit of 10 and 2, respectively. For Snipe, the Tribe requests a season from September 15, 2004, to March 10, 2005, with a daily bag limit of eight. The possession limit is twice the daily bag limit.

All Tribal hunters authorized to hunt migratory birds are required to obtain a tribal hunting permit from the Lower Elwha Klallam Tribe pursuant to tribal law. Hunting hours would be from one-half hour before sunrise to sunset. Only steel, tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is unlawful to use or possess lead shot while hunting waterfowl.

The Tribe anticipates harvest to be less than 100 birds. Tribal reservation police and Tribal Fisheries enforcement officers have the authority to enforce these migratory bird hunting regulations.

We propose to approve the Lower Elwha Klallam Tribe's requested migratory bird hunting season.

*(p) Makah Indian Tribe, Neah Bay, Washington (Tribal Members Only)*

The Makah Indian Tribe and the Service have been cooperating to establish special regulations for migratory game birds on the Makah Reservation and traditional hunting land off the Makah Reservation since the 2001–02 hunting season. Lands off the Makah Reservation are those contained within the boundaries of the

State of Washington Game Management Units 601–603 and 607.

The Makah Indian Tribe proposes a duck and coot hunting season from September 25, 2004, to January 19, 2005. The daily bag limit is seven ducks including no more than one canvasback and one redhead. The daily bag limit for coots is 25. The Tribe has a year-round closure on wood ducks and harlequin ducks. For geese, the Tribe proposes the season open on September 25, 2004, and close January 19, 2005. The daily bag limit for geese is four. The Tribe notes that there is a year-round closure on Aleutian and Dusky Canada geese. For band-tailed pigeons, the Tribe proposes the season open September 1, 2004, and close October 31, 2004. The daily bag limit for band-tailed pigeons is two. Shooting hours for all species of waterfowl are one-half hour before sunrise to sunset.

The Tribe anticipates that harvest under this regulation will be relatively low since fewer than 20 hunters are likely to participate at this time. The Tribe expects fewer than 50 total waterfowl and 20 pigeons are expected to be harvested during the 2004–05 migratory bird hunting season.

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.

We propose to approve the Makah Indian Tribes requested 2004–05 special migratory bird hunting regulations.

*(q) Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal 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 Navajo Nation owns almost all lands on the reservation and has full wildlife management authority.

For the 2004–05 season, we have not yet heard from the Tribe regarding this seasons proposal. Based on last year, we assume The Navajo Nation would request special migratory bird hunting regulations on the reservation for both tribal and nontribal members for the 2004–05 hunting season for ducks (including mergansers), Canada geese, coots, band-tailed pigeons, and mourning doves. For ducks, mergansers, Canada geese, and coots, we assume the Tribe would request 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, we assume the Navajo Nation would propose seasons of September 1 through September 30, 2004, with daily bag limits of 10 and 5 for mourning dove and band-tailed pigeon, respectively. Possession limits would be twice the daily bag limits.

The Nation requires tribal members and nonmembers 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 of the stamp. Special regulations established by the Navajo Nation also apply on the reservation.

The Tribe usually anticipates a total harvest of less than 100 mourning doves, 20 band-tailed pigeons, 500 ducks, coots, and mergansers, and 300 Canada geese for the 2004–05 season. Harvest will be measured by mail survey forms. Through the established Tribal Nation Code, Title 17 and 18 U.S.C. 1165, the Tribe will take action to close the season, reduce bag limits, or take other appropriate actions if the harvest is detrimental to the migratory bird resource. We propose to approve the Navajo Nations request upon receipt of their proposal and confirmation that the Tribe would like to have a special season.

*(r) 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 June 1, 2004, letter, the Tribe proposed special migratory bird hunting regulations. For ducks, the Tribe described the general outside dates as being September 25 through December 5, 2004, with a closed segment of November 20 through 28. The Tribe proposes a daily bag limit of six birds, which could include no more than six mallards (three hen mallards), five wood ducks, one redhead, two pintails, and one hooded merganser.

For geese, the Tribe requests a season between September 1 and December 31, 2004, with a daily bag limit of 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. The Tribe will close the season November 20 to 28, 2004. 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 14, 2004, with a daily bag and possession limit of 5 and 10, respectively.

For mourning dove, the Tribe proposes a season between September 1 and November 14, 2004, with a daily bag and possession limit of 10 and 20, respectively.

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, including shooting hours of one-half hour before sunrise to sunset, season dates, and daily bag limits. 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: Oneida members 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. Tribal member shooting hours will be from one-half hour before sunset to one-half hour after sunset.

The Service proposes to approve the request for special migratory bird

hunting regulations for the Oneida Tribe of Indians of Wisconsin.

*(s) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal 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 2004–05 hunting season, provided the duck and goose hunting season dates are the same as on the reservation.

In a proposal for the 2004–05 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 for 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 2, 2004, and a closing date of January 16, 2005. Coot and snipe season dates would be the same as for ducks, with the same daily bag and possession limits permitted for 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 in Idaho under Federal frameworks. The Tribes propose that, if the same number of hunting days is permitted as in previous years, the season would have an opening date of October 2, 2004, and a closing date of January 16, 2005. The Tribes anticipate harvest will be between 4,000 and 6,000 geese.

The Tribe requests a common snipe season with the maximum number of days and the same daily bag and possession limits permitted in 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 2, 2004, and a closing date of January 16, 2005.

Nontribal 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 2004–05 hunting season.

*(t) Sokaogon Chippewa Community, Madison, Wisconsin (Tribal Members Only)*

The Sokaogon Chippewa Community has a reservation of approximately 1850 acres in northeastern Wisconsin. These special regulations apply to tribal members on the Sokaogon Chippewa Community Reservation and trust lands in Crandon, Wisconsin.

For the 2004–05 season, The Tribe proposes that duck (including mergansers, gallinule, and coots), goose, woodcock, rail, and snipe seasons run from September 1, 2004, to December 1, 2004. The daily bag limit on ducks (including sea ducks and mergansers) is 50 and must include no more than 20 mallards (only 10 of which can be hens), 10 pintail, 10 redhead, 10 black ducks, and 8 canvasback. The daily bag limit for coot is 50. For geese, the daily bag limit is 25 in the aggregate. The daily bag limit on woodcock is seven. The daily bag limit on sora and Virginia rails is 25 singly or in the aggregate. The daily bag limit for snipe is eight. Possession limits are double the daily bag limits except on opening day of the season, when the possession limit equals the daily bag limit. Possession limits are applicable only to transportation and do not include birds that are cleaned, dressed, and at a member's primary residence.

Tribal members must carry a picture identification card issued or approved by the Tribal Council for hunting purposes. Shooting hours are one-half hour before sunrise until three-quarters hour after sunset. The Tribal Council shall enforce these guidelines for on-reservation hunting by designating an on-reservation game warden for the hunting season.

We propose to approve the Sokaogon Chippewa Community's requested 2004–05 special migratory bird hunting regulations.

*(u) 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.

For the 2004–05 season, the Tribe requests to establish duck and coot seasons that would run from September 1, 2004, through January 15, 2005. The daily bag limit for ducks is five per day and could include only one canvasback. The season on harlequin ducks is closed. For coots the daily bag limit is 25. For snipe, the Tribe proposes the season start on September 15, 2004, and end on January 15, 2005. The daily bag limit for snipe is eight.

We propose to approve the Squaxin Island Tribe's requested 2004–05 special migratory bird hunting regulations.

*(v) Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only)*

The Stillaguamish Tribe of Indians and the Service have cooperated to establish special regulations for migratory game birds since 2001. The Tribe is proposing regulations to hunt all open and unclaimed lands under the Treaty of Point Elliott of January 22, 1855, including their main hunting grounds around Camano Island, Skagit Flats, Port Susan to the border of the Tulalip Tribes Reservation. Ceded lands are located in Whatcom, Skagit, Snohomish, and Kings Counties, and a portion of Pierce County, Washington. The Stillaguamish Tribe of Indians is a federally recognized Tribe and reserves the Treaty Right to hunt (*U.S. v. Washington*).

The Tribe proposes that duck (including mergansers, sea ducks, and coots), goose, and snipe seasons run from October 1, 2004, to January 31, 2005. The daily bag limit on ducks (including sea ducks and mergansers) is 10 and must include no more than 7 mallards (only 3 of which can be hens), 3 pintail, 3 redhead, 3 scaup, and 3 canvasback. The daily bag limit for coot is 25. For geese, the daily bag limit is six. The daily bag limit on brant is three. The daily bag limit for snipe is ten. Possession limits are totals of two daily bag limits.

Harvest is regulated by a punch card system. Tribal members hunting on lands under this proposal will observe

all basic Federal migratory bird hunting regulations found in 50 CFR part 20, which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a non-toxic shot as required by Federal regulations.

The Tribe anticipates a total harvest of 200 ducks, 100 geese, 50 mergansers, 50 brant, 100 coots, and 100 snipe. Anticipated harvest needs include subsistence and ceremonial needs. Certain species may be closed to hunting for conservation purposes, and consideration for the needs of certain species will be addressed.

The Service proposes to approve the request for special migratory bird hunting regulations for the Stillaguamish Tribe of Indians.

*(w) 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. The Swinomish Reservation was established by the Treaty of Point Elliott of January 22, 1855, and lies in the Puget Sound area north of Seattle, Washington.

For the 2004–05 season, we have not yet heard from the Tribe regarding this seasons proposal. Based on last year, we assume the Tribe would request to establish a migratory bird hunting season on all areas that are open and unclaimed and consistent with the meaning of the treaty. We assume the Tribe would request to establish duck, merganser, Canada goose, brant, and coot seasons 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 its season. The Swinomish requests an additional three birds of each species over that allowed by the State for daily bag and possession limits.

The Community normally anticipates that the regulations will result in the harvest of approximately 300 ducks, 50 Canada geese, 75 mergansers, 100 brant, and 50 coot. The Swinomish utilize a report card 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 proposes a hunting season for the above-mentioned species beginning on the

earliest possible opening date and closing March 9, 2005. The Swinomish manage harvest by a report card permit system, and we 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 affect migratory bird populations. We propose to approve the Tribe's requested 2004–05 special migratory bird hunting regulations upon receipt of the Tribal proposal.

*(x) Skokomish Tribe, Shelton, Washington (Tribal Members Only)*

Since 1996, the Service and the Point No Point Treaty Tribes, of which Lower Elwha was one of, have cooperated to establish special regulations for migratory bird hunting. The Tribes are now acting independently and the Skokomish Tribe would like to establish migratory bird hunting regulations for tribal members for the 2004–2005, season. The Tribe has a reservation on the Olympic Peninsula in Washington State and is a successor to the signatories of the Treaty of Point No Point of 1855.

The Skokomish Tribe request a duck and coot season from September 15, 2004, to March 9, 2005. The daily bag limit is seven ducks including no more than two hen mallards, one pintail, one canvasback, and two redheads. The daily bag and possession limit on harlequin duck is one per season. The coot daily bag limit is 25. The possession limit is twice the daily bag limit except as noted above.

For geese, the Tribe requests a season from September 15, 2004, to March 9, 2005. The daily bag limit is four including no more than three light geese. The season on Aleutian Canada geese is closed. For Brant, the Tribe proposes a season from November 1, 2004, to March 9, 2005, with a daily bag limit of two. The possession limit is twice the daily bag limit.

For mourning doves and band-tailed pigeon, the Tribe requests a season from September 1, 2004, to March 9, 2005, with a daily bag limit of 10 and 2, respectively. For Snipe, the Tribe requests a season from September 15, 2004, to March 10, 2005, with a daily bag limit of eight. The possession limit is twice the daily bag limit.

All Tribal hunters authorized to hunt migratory birds are required to obtain a tribal hunting permit from the Skokomish Tribe pursuant to tribal law. Hunting hours would be from one-half hour before sunrise to sunset. Only steel, tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is

unlawful to use or possess lead shot while hunting waterfowl.

The Tribe anticipates harvest to be less than 150 birds. The Skokomish Public Safety Office enforcement officers have the authority to enforce these migratory bird hunting regulations.

We propose to approve the Lower Elwha Klallam Tribe's requested migratory bird hunting season.

*(y) The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Nontribal 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 just north of the City of Everett in Snohomish County, 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 nonmember hunting unless opened by Tulalip Tribal regulations.

For the 2004–05 season, we have not yet heard from the Tribe regarding this seasons proposal. Based on last year, we assume the Tribe would propose tribal and nontribal hunting regulations for the 2004–05 season. Migratory waterfowl hunting by Tulalip Tribal members is authorized by Tulalip Tribal Ordinance No. 67. For ducks, mergansers, coot, and snipe, we assume the proposed season for tribal members would be from September 15, 2004, through February 29, 2005. In the case of nontribal hunters hunting on the reservation, we assume the season would be the latest closing date and the longest period of time allowed under final Pacific Flyway Federal frameworks. Daily bag and possession limits for Tulalip Tribal members would be 7 and 14 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 in accordance with final Federal frameworks. For nontribal hunters, bag and possession limits would be the same as those permitted under final Federal frameworks. Nontribal members should check with the Tulalip tribal authorities regarding additional conservation measures which may apply to specific species managed within the region. Ceremonial hunting may be authorized by the Department of Natural Resources at any time upon application of a qualified tribal member. Such a hunt

must have a bag limit designed to limit harvest only to those birds necessary to provide for the ceremony.

For geese, we assume tribal members are proposed to be allowed to hunt from September 15, 2004, through February 29, 2005. We assume Non-tribal hunters would be allowed the longest season and the latest closing date permitted for Pacific Flyway Federal frameworks. For tribal hunters, the goose daily bag and possession limits would be 7 and 14, respectively, except that the bag limits for brant, cackling Canada geese, and dusky Canada geese would be those established in accordance with final Federal frameworks. For nontribal hunters hunting on reservation lands, the daily bag and possession limits would be those established in accordance with final Federal frameworks for the Pacific Flyway. The Tulalip Tribes also set a maximum annual bag limit for those tribal members who engage in subsistence hunting of 365 ducks and 365 geese.

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.

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

We propose approval of the Tulalip Tribes request upon receipt of their proposal and confirmation that the Tribe would like to have a special season. We request that harvest be monitored closely and regulations be reevaluated for future years if harvest becomes too great in relation to population numbers.

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

The Upper Skagit Indian Tribe and the Service have cooperated to establish special regulations for migratory game birds since 2001. The Tribe has jurisdiction over lands within Skagit, Island, and Whatcom Counties, Washington. Tribal hunters are issued a harvest report card that will be shared with the State of Washington.

For the 2004–05 season, the Tribe requests a duck season of November 1, 2004, and ending February 8, 2005. The Tribe proposes a daily bag limit of 15 with a possession limit of 20. The coot daily bag limit is 20 with a possession limit of 30.

The Tribe proposes a goose season from November 1, 2004, to February 8, 2005, with a daily bag limit of seven geese and five brant. The possession limit for geese and brant are seven and five, respectively.

The Tribe proposes a mourning dove season between September 1 to December 31, 2004, with a daily bag limit of 12 and possession limit of 20.

The anticipated migratory bird harvest under this proposal would be 100 ducks, 5 geese, 2 brant, and 10 coots. 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, except shooting hours would be one-half hour before official sunrise to one-half hour after official sunset.

The Service proposes to approve the request for special migratory bird hunting regulations for the Upper Skagit Indian Tribe. We request that the Tribe closely monitor harvest of this special migratory bird hunting season.

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

The Wampanoag Tribe of Gay Head is a federally-recognized Tribe located on the island of Marthas Vineyard in Massachusetts. The Tribe has approximately 560 acres of land, which it manages for wildlife through its natural resources department. The Tribe also enforces its own wildlife laws and regulations through the natural resources department.

For the 2004–05 season, the Tribe proposes a duck season of October 20, 2004, to February 21, 2005. The Tribe proposes a daily bag limit of six birds, which could include no more than two hen mallards, two black ducks, two mottled ducks, one fulvous whistling duck, four mergansers, three scaup, one hooded merganser, two wood ducks, one canvasback, two redheads, and one pintail. The season for harlequins would be closed. The Tribe proposes a teal (green-winged and blue) season of October 20, 2004, to January 29, 2005. A daily bag limit of six teal would be in addition to the daily bag limit for ducks.

For sea ducks, the Tribe proposes a season between October 20, 2004, and February 21, 2005, with a daily bag limit

of seven, which could include no more than one hen eider and four of any one species unless otherwise noted above.

For geese, the Tribe requests a season between September 11 to September 25, 2004, and November 8, 2004, through February 21, 2005, with a daily bag limit of 5 Canada geese during the first period and 3 Canada geese during the second period. They propose a daily bag limit of 15 snow geese.

For woodcock, the Tribe proposes a season between October 16 and November 30, 2004, with a daily bag limit of three.

The Tribe currently has 22 registered tribal hunters and estimates harvest to be no more than 15 geese, 25 mallards, 25 teal, 50 black ducks, and 50 of all other species combined. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20. Hunters will be required to register with the HIP program.

The Service proposes to approve the request for special migratory bird hunting regulations for the Wampanoag Tribe of Gay Head.

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

The White Earth Band of Ojibwe is a federally-recognized tribe located in northwest Minnesota and encompasses all of Mahnomen County and parts of Becker and Clearwater Counties. The reservation employs conservation officers to enforce migratory bird regulations. The Tribe and the Service first cooperated to establish special tribal regulations in 1999.

For the 2004–05 migratory bird hunting season, the White Earth Band of Ojibwe requests a duck and merganser season to start September 27 and end December 14, 2004. For ducks, they request a daily bag limit of 10 including no more than 2 mallards and 1 canvasback. The merganser daily bag limit would be five with no more than two hooded mergansers. For geese, the Tribe proposes an early season from September 1 to September 24, 2004, and a late season from September 25, 2004, to December 19, 2004. The early season daily bag limit is eight geese and the late season daily bag limit is five geese.

For coots, dove, rail, woodcock, and snipe, the Tribe proposes a September 4 to November 30, 2004, season with daily bag limits of 20 coots, 25 doves, 25 rails, 10 woodcock, and 10 snipe. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required.

Based on past harvest surveys, the Tribe anticipates harvest of 1,000 to 2,000 Canada geese and 1,000 to 1,500

ducks. The White Earth Reservation Tribal Council employs four full-time Conservation Officers to enforce migratory bird regulations.

We propose to approve the White Earth Band of Ojibwes request to have a special season.

*(cc) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal 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 length of the Black River west of the Bonito Creek and Black River confluence and the entire length of the Salt River 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, 5, 6, and 7. Tanks located below the Mogollon Rim, within Wildlife Management Units 2 and 3 will be open to waterfowl hunting during the 2004–05 season. The length of the Black River east of the Black River/Bonito Creek confluence is closed to waterfowl hunting. All other waters of the reservation would be closed to waterfowl hunting for the 2004–05 season.

For nontribal and tribal hunters, the Tribe proposes a continuous duck, coot, merganser, gallinule, and moorhen hunting season, with an opening date of October 9, 2004, and a closing date of January 30, 2005. The Tribe proposes a separate pintail season, with an opening date of October 11, 2004, and a closing date of December 10, 2004. The season on canvasback is closed. The Tribe proposes a daily duck (including mergansers) bag limit of seven, which may include no more than two redheads, one pintail (when open), and seven mallards (including no more than two hen mallard). The daily bag limit for coots, gallinules, and moorhens would be 25, singly or in the aggregate. For geese, the Tribe is proposing a season from October 11, 2004, through January 25, 2005. Hunting would be limited to Canada geese, and the daily bag limit would be three.

Season dates for band-tailed pigeons and mourning doves would run concurrently from September 3 through September 17, 2004, in Wildlife Management Unit 10 and all areas south

of Y–70 in Wildlife Management Unit 7, only. Proposed daily bag limits for band-tailed pigeons and mourning doves would be 3 and 10, 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 nontribal 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 2004–05 season.

*(dd) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Nontribal Hunters)*

On May 28, 2004, the Yankton Sioux Tribe submitted a waterfowl hunting proposal for the 2004–05 season. The Yankton Sioux tribal waterfowl hunting season would be open to both tribal members and nontribal hunters. The waterfowl hunting regulations would apply to tribal and trust lands within the external boundaries of the reservation.

For ducks (including mergansers) and coots, the Yankton Sioux Tribe proposes a season starting October 9, 2004, and running for the maximum amount of days allowed under the final Federal frameworks. The Tribe indicated that if the Service decided to close the canvasback season, the Tribe would close theirs, otherwise, the canvasback season would start October 9, 2004, and run for the maximum amount of days allowed under the final Federal frameworks. Daily bag and possession limits would be 6 ducks, which may include no more than 5 mallards (no more than 2 hens), 1 canvasback (if open), 2 redheads, 3 scaup, 1 pintail, or 2 wood ducks. The bag limit for mergansers is 5, which would include no more than 1 hooded merganser. The coot daily bag limit is 15.

For geese, the Tribe has requested a dark geese (Canada geese, brant, white-fronts) season starting October 29, 2004, and closing January 31, 2005. The daily bag limit would be three geese (including no more than one whitefront or brant). Possession limits would be twice the daily bag limit. For white geese, the proposed hunting season would start October 29, 2004, and run for the maximum amount of days allowed under the final Federal frameworks. Daily bag and possession limits would be the maximum as those allowed under Federal frameworks.

All hunters would have to be in possession of a valid tribal license while hunting on Yankton Sioux trust lands. Tribal and nontribal 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 2002–03 hunting season, the Tribe reported that 62 nontribal hunters took 325 Canada geese, 25 light geese, and 65 ducks. Seventy-eight tribal members harvested less than 50 geese and 50 ducks.

We concur with the Yankton Sioux proposal for the 2004–05 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, nongovernmental 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 adjust appropriately 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 the comment period past the date specified in **DATES** is contrary to the public interest.

The Department of the Interiors 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 4107, 4501 North Fairfax Drive, Arlington, Virginia. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

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 in the final rules.

#### NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSER 88-14)," filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the address indicated under the caption **ADDRESSES**. In a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new EIS for the migratory bird hunting program.

#### Endangered Species Act Consideration

Prior to issuance of the 2004-05 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 is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in future supplemental proposed rulemaking documents.

#### Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990-1996, and then updated in 1998. We have updated again this year. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 2004 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of \$734 million to \$1.064 billion, with a midpoint estimate of \$899 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at <http://www.migratorybirds.gov>.

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

- (1) Are the requirements in the rule clearly stated?
- (2) Does the rule contain technical language or jargon that interferes with its clarity?
- (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?
- (4) Would the rule be easier to understand if it were divided into more (but shorter) sections?
- (5) Is the description of the rule in the ASupplementary Information@ section of the preamble helpful in understanding the rule?
- (6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of the Executive Secretariat and Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail comments to this address: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

#### Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990 through 1995. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between \$481 million and \$1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at <http://www.migratorybirds.gov>.

#### 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 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 required by 5 U.S.C. 801 under the exemption contained in 5 U.S.C. 808 (1).

#### Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the 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



clearance 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 the 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 impose a cost of \$100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a significant regulatory action under the Unfunded Mandates Reform Act.

#### Civil Justice Reform-Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this 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, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

#### Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect

energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

#### Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or tribe may be more restrictive than the Federal frameworks. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### 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 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 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, 2004, 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 nontribal 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, woodcock, common snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks, mergansers, and geese.

The rules that eventually will be promulgated for the 2004–05 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 11, 2004.

David P. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–18755 Filed 8–12–04; 12:02 pm]

BILLING CODE 4310–55–P