

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AE93

Migratory Bird Hunting; Proposed 1998–1999 Migratory Game Bird Hunting Regulations (Preliminary) with Requests for Indian Tribal Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposes to establish annual hunting regulations for certain migratory game birds. The Service also requests proposals from Indian tribes that wish to establish special migratory bird hunting regulations. The establishment of these regulations will permit the taking of the designated species during the 1998–99 hunting season. The Service annually prescribes outside limits (frameworks) within which States may select hunting seasons. The Service has also employed guidelines to establish special migratory bird hunting regulations on Federal Indian reservations and ceded lands. These seasons provide hunting opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and are designed to permit harvests at levels compatible with migratory bird population status and habitat conditions.

DATES: Tribes should submit proposals and related comments by June 2, 1998. The comment period for proposed early-season frameworks will end on July 27, 1998; and for proposed late-season frameworks on September 7, 1998. The Service will hold a public hearing for early-season frameworks on June 25, 1998, at 9 a.m. and late-season frameworks on August 6, 1998, at 9 a.m.

ADDRESSES: The Service will hold both public hearings in the Auditorium, Department of the Interior Building, 1849 C Street NW., Washington, DC. The public may submit written comments on the proposals and notice of intention to testify at either hearing to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. The public may inspect comments received during normal business hours in room 634, Arlington

Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel at: Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240 (703) 358–1714.

SUPPLEMENTARY INFORMATION: For administrative purposes, this document consolidates the notice of intent and request for tribal proposals with the preliminary proposals for the annual regulations-development process. The Service will publish the remaining proposed and final rulemaking documents separately. For inquiries on tribal guidelines and proposals, please contact the following personnel.

- Region 1—Brad Bortner, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; (503) 231–6164.
- Region 2—Jeff Haskins, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103; (505) 248–7885.
- Region 3—Steve Wilds, U.S. Fish and Wildlife Service, Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056; (612) 725–3737.
- Region 4—Frank Bowers, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; (404) 679–4000.
- Region 5—George Haas, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; (413) 253–8576.
- Region 6—John Cornely, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Building, Denver, Colorado 80225; (303) 236–8145.
- Region 7—Robert Leedy, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; (907) 786–3423.

Notice of Intent to Establish Open Seasons

This notice announces the intention of the Director, U.S. Fish and Wildlife Service, to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 1998–1999 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

“Migratory game birds” are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. All other birds designated as migratory (under

10.13 of Subpart B of 50 CFR Part 10) in the aforementioned conventions may not be hunted. For the 1998–99 hunting season, the Service will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). These proposals are described under Proposed 1998–99 Migratory Game Bird Hunting Regulations (Preliminary) in this document. Definitions of waterfowl flyways and mourning dove management units, as well as a description of the data used in and the factors affecting the regulatory process, were published in the March 14, 1990, **Federal Register** (55 FR 9618).

Regulatory Schedule for 1998–1999

This is the first in a series of proposed and final rulemaking documents for migratory game bird hunting regulations. The Service will make proposals relating to the harvest of migratory game birds initiated after publication of this proposed rulemaking available for public review in supplemental proposed rulemakings published in the **Federal Register**. Also, the Service will publish additional supplemental proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available.

Because of the late dates when certain portions of these data become available, the Service anticipates that comment periods on some proposals will be necessarily abbreviated. Special circumstances limit the amount of time which the Service can allow for public comment on these regulations. Specifically, two considerations compress the time for the rulemaking process: the need, on one hand, to establish final rules at a time early enough in the summer to allow resource agencies to select and publish season dates and bag limits prior to the hunting seasons and, on the other hand, the lack of current data on the status of most migratory game birds until later in the summer.

Because the process is strongly influenced by the times when information is available for consideration, the overall regulations process is divided into two segments. Early seasons are those seasons that generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. Late seasons are those seasons opening in the remainder of the United States about

October 1 and later, and include most of the waterfowl seasons.

Major steps in the 1998–1999 regulatory cycle relating to public hearings and **Federal Register** notifications are illustrated in the accompanying diagram. Dates shown relative to publication of **Federal Register** documents are target dates.

Sections of this and subsequent documents which outline hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
2. Sea Ducks
3. Mergansers
4. Canada Geese
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Later sections of this and subsequent documents will refer only to numbered items requiring attention. Therefore, we will omit those items requiring no attention and remaining numbered items will be discontinuous and appear incomplete.

Public Hearings

Two public hearings pertaining to 1998–1999 migratory game bird hunting regulations are scheduled. The Service will conduct both hearings in accordance with 455 DM 1 of the Departmental Manual. On June 25, the Service will hold a public hearing at 9 a.m. in the Auditorium of the Department of the Interior Building, 1849 C Street NW., Washington, DC. This hearing will review the status of migratory shore and upland game birds and discuss proposed hunting regulations for these species plus regulations for migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; extended falconry seasons; and proposed regulatory alternatives for the 1998–99 duck hunting season. On

August 6, the Service will hold a public hearing at 9 a.m. in the Auditorium of the Department of the Interior Building, address above. This hearing will review the status and proposed regulations for waterfowl not previously discussed at the June 25 public hearing. The public is invited to participate in both hearings. Persons wishing to make a statement at these hearings should write to the address indicated under the caption **ADDRESSES**.

Requests for Tribal Proposals

Background

Beginning with the 1985–86 hunting season, the Service has employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. The Service developed these guidelines in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout 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 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 would have to be consistent with the annual 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 (Convention). The guidelines are capable of application to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also apply to the establishment of 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 non-Indian lands.

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, the Service encourages the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, the Service will consult with a tribe and State with the aim of facilitating an accord. The Service also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands. As explained in previous rulemaking documents, it is incumbent upon the tribe and/or the State to put forward a request for consultation as a result of the proposal being published in the **Federal Register**. The Service will not presume to make a determination, without being advised by a tribe or a State, that any issue is/is not worthy of formal consultation.

One of the guidelines provides for the continuation of harvest of migratory game birds by tribal members on reservations where it is a customary practice. The Service does not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory bird resource. For several years, the Service has reached annual agreement with tribes for hunting by tribal members on their lands or on lands where they have reserved hunting rights. The Service will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

The guidelines should not be viewed as inflexible. Nevertheless, the Service believes that they 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. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 1998–99 hunting season must submit a proposal that includes:

(1) the requested hunting season dates and other details regarding regulations to be observed;

(2) harvest anticipated under the requested regulations;

(3) methods that will be employed to measure or monitor harvest (mail-questionnaire survey, bag checks, etc.);

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

(5) tribal capabilities to establish and enforce migratory bird hunting regulations.

A tribe that desires the earliest possible opening of the waterfowl season should specify this in the proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit, the proposal should request the same daily bag and possession limits and season length for ducks and geese that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

Tribal Proposal Procedures

The Service will publish pertinent details in tribal proposals for public review in later **Federal Register** documents. Because of the time required for Service and public review, Indian tribes that desire special migratory bird hunting regulations for the 1998–99 hunting season should submit their proposals as soon as possible, but no later than June 2, 1998. Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed under the caption **SUPPLEMENTARY INFORMATION**. Tribes that request special hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments Solicited

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons are invited to submit written comments, suggestions, or recommendations regarding the proposed regulations. Promulgation of final migratory game bird hunting regulations will take into

consideration all comments received by the Service. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. Interested persons are invited to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES**.

The public may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, the Service will establish specific comment periods. The Service will consider, but possibly may not respond in detail to, each comment. As in the past, the Service will summarize all comments received during the comment period and respond to them after the closing date.

Flyway Council Meetings

Departmental representatives will be present at the following winter meetings of the various Flyway Councils:

- DATE: March 19 and 20, 1998
—Central Flyway Council, 8:00 a.m.
- DATE: March 19 and 23, 1998
—National Waterfowl Council, 1:00 p.m.
- DATE: March 20, 1998
—Atlantic Flyway Council, 8:00 a.m.
- Mississippi Flyway Council, 10:30 a.m.
- DATE: March 21 and 22, 1998
—Pacific Flyway Council, 3:00 p.m. and 9:30 a.m., respectively

The Council meetings will be held at the Omni Rosen Hotel, 9840 International Drive, Orlando, Florida 32819–8122.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)," filed with the Environmental Protection Agency on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published 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 Service at the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

Prior to issuance of the 1998–99 migratory game bird hunting

regulations, the Service 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 the Service to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order (E.O.) 12866

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

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.). The economic impacts of the annual hunting regulations on small business entities were analyzed in detail and a Small Entity Flexibility Analysis (Analysis) was issued by the Service in 1996. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis utilized the 1991 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 \$254 and \$592 million at small businesses in 1996.

Copies of the Analysis are available upon request from the Office of Migratory Bird Management. The address is indicated under the caption **ADDRESSES**.

Paperwork Reduction Act

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

Unfunded Mandates

The Service has determined and certifies, in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

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

List of Subjects in 50 CFR Part 20

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

The rules that eventually will be promulgated for the 1998–99 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: March 4, 1998

Donald Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Proposed 1998–1999 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, specific framework proposals (including opening and closing dates, seasons lengths, and bag limits) may be deferred. Unless otherwise specified, no change from the final 1997–98 frameworks of August 20 and September 26, 1997, (62 FR 44229 and 50660) is proposed. Specific preliminary proposals that vary from the 1997–98 frameworks and issues requiring early discussion, action, or the attention of the States or tribes are contained below:

1. Ducks

A. Harvest Strategy Considerations

Adaptive harvest management (AHM) was introduced in 1995 to help managers better understand the impacts of regulations on waterfowl harvest and population levels. In addition, AHM is intended to provide: (1) a more objective, better informed, and less contentious decision-making process; (2) an explicitly defined role for monitoring programs in setting regulations; and (3) a formal and coherent framework for addressing controversial harvest-management issues.

Since 1995, the AHM process has focused primarily on midcontinent mallards. However, there continues to be considerable interest in accounting for mallards breeding eastward and westward of the midcontinent region. The ultimate goal is to develop Flyway-specific harvest strategies, which represent an average of optimal strategies for each mallard breeding stock, weighted by the relative

contribution of each stock to the respective Flyways. The Service and States also have expressed interest in extending the AHM protocol to other important species such as pintails, teal, and black ducks.

Harvest strategies that account for important biological differences in duck stocks are expected to yield the highest management benefits, but also are characterized by relatively high monitoring and assessment costs. Thus, the Service believes objective assessments of the tradeoff in costs and benefits are necessary for deciding when the AHM protocol should be extended to various duck stocks. Preliminary investigations using the tools of decision-theory suggest that management benefits may be less sensitive to biological differences in duck stocks than commonly believed. If so, cost considerations will motivate managers to implement AHM strategies based explicitly on just a few stocks (e.g., western, midcontinent, and eastern mallards).

Determining the degree to which AHM strategies should account for important sources of biological variation is an incredibly difficult challenge, and one that will require considerable effort and focus by the AHM Working Group. The AHM Working Group is comprised of representatives from the U.S. Fish and Wildlife Service, the four Flyway Councils, and the Canadian Wildlife Service and was established in 1992 to assist with implementation of AHM. The working group continues to meet at least once a year to pursue AHM conceptual development and to consider technical and communication issues for the current regulatory cycle.

The Service believes requests for further changes to the set of regulatory alternatives established in 1997 likely would delay extension of AHM to stocks other than midcontinent mallards. Therefore, future proposals to change the regulatory alternatives will be viewed critically and reasons for change should be compelling. This means that proposals should enjoy broad-based support and should be accompanied by strong rationale, including a recognition of impacts on both harvest and learning rates, as well as on other AHM priorities.

B. Framework dates

During 1997 the Service attempted to address concerns about the set of regulatory alternatives that had been used for AHM since the 1995 hunting season. Based on extensive input from the Flyway Councils and others, the regulatory alternatives considered for the 1997 season were modified to

include: (1) a “very restrictive” alternative; (2) additional days and a higher total-duck daily bag limit in the “moderate” and “liberal” alternatives; and (3) an increase in the bag limit of hen mallards in the “moderate” and “liberal” alternatives. No changes were made to the traditional framework dates of roughly October 1 to January 20.

The Service received extensive public comment both supporting and opposing extensions of traditional framework dates. By August of last year, the issue had become highly divisive and politically-charged. Ultimately, the Service was directed by the U.S. Congress to review existing information on framework extensions and to consult further with the States and International Association of Fish & Wildlife Agencies.

Following the guidance provided by Congress, the Service has prepared a summary of the effects of framework extensions in Mississippi and Iowa, and of predicted impacts of large-scale framework extensions on the regulation of mallard harvests. Available data generally reflect increases in the harvest of most duck species due to framework extensions in Mississippi and Iowa, although the magnitude of the increases could not be estimated precisely. Based on these results, large-scale extensions of framework dates could decrease the frequency of years with liberal regulations from 70 to 15 percent, while increasing the frequency of years with restrictive regulations from 11 to 42 percent. The Service's report is now available to the Flyway Councils, States, and public for further consultation.

G. Special Seasons/Species Management

i. Canvasbacks

The Service continues to support the canvasback harvest strategy adopted in 1994. Last year, the Service noted its intent to review recent data and assess how well observed harvests and population abundance were predicted by the strategy (62 FR 50662). The assessment is nearing completion, and will be available for review by the Flyway Technical Sections at their meetings during February and March, 1998.

ii. September Teal/Wood Duck Seasons

These experimental seasons have been held in Florida, Kentucky, and Tennessee since 1981. The Service has consistently stated that continuation of September wood duck seasons is contingent on the development of regional wood duck population monitoring programs, as well as evaluation and decision criteria for these seasons. The final report of the

“Wood Duck Population Monitoring Initiative” (Initiative) completed in July 1997 indicated that monitoring programs at geographic scales below the flyway level are not meeting requisite sample sizes. Therefore, harvest management strategies aimed at scales below the flyway level likely is not feasible.

An evaluation of September wood duck seasons was recently completed and a draft report will be made available to the Atlantic and Mississippi Flyway Councils for their review during February 1998. Results from the evaluation indicate that estimates of population parameters for individual states are usually imprecise, which

often precludes drawing meaningful conclusions. In light of these results, as well as those from the Initiative, the Service may propose suspension of September wood duck seasons this year.

2. Sea Ducks

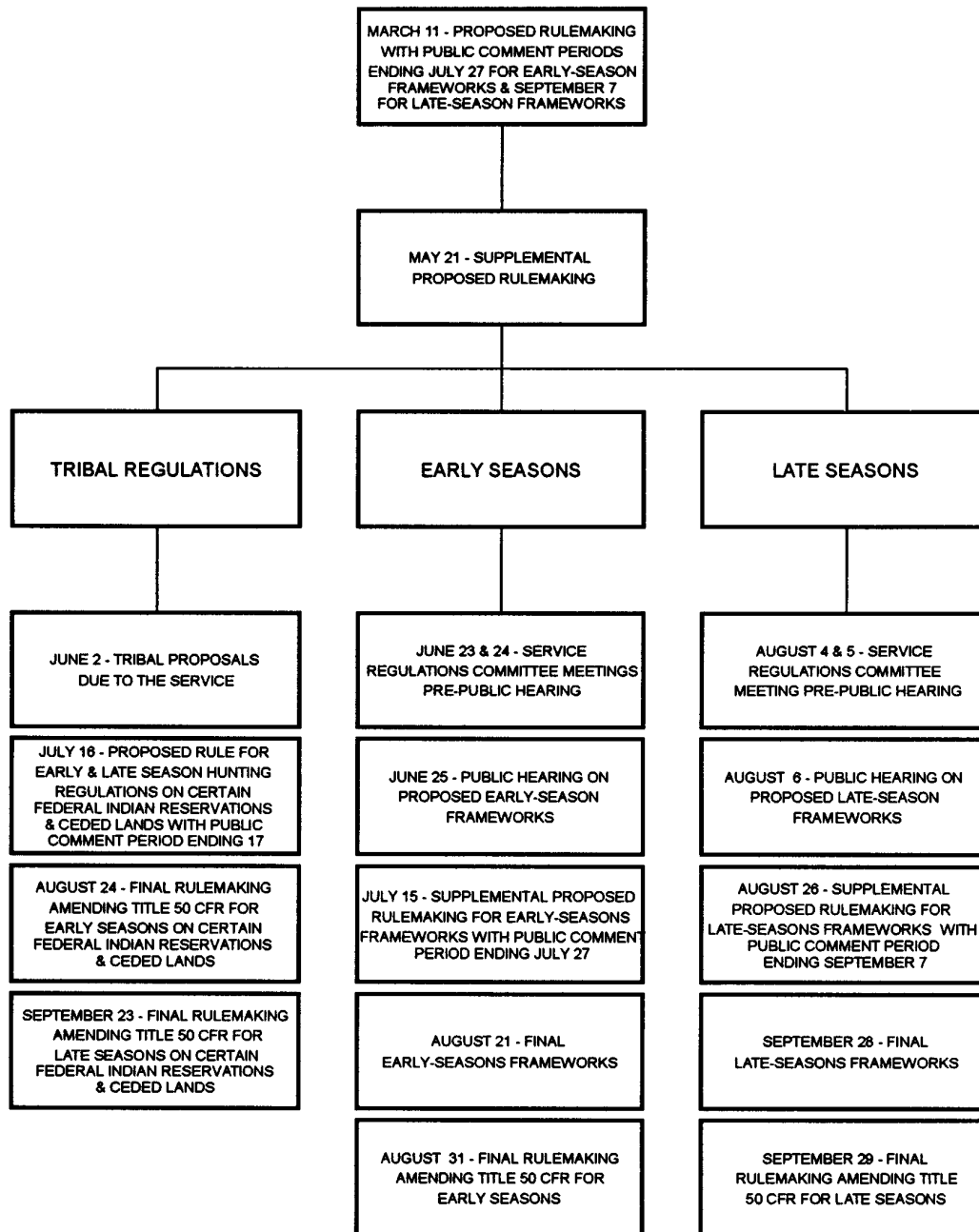
A. Special Sea Duck Seasons in the Atlantic Flyway

At the request of the Atlantic Flyway Council, the Service has investigated the effects of bag limit restrictions on scoters that were initiated in the Atlantic Flyway in 1993. In addition, the Service has reviewed other features of this special season and the biological status of sea ducks in eastern North America. A draft report, titled “Status of

Sea Ducks in Eastern North America and a Review of the Special Sea Duck Season in the Atlantic Flyway” will be available from the Office of Migratory Bird Management by late-February, 1998. This report recommends consideration of several changes to sea duck hunting seasons in the Atlantic Flyway, including changes to sea duck hunting zones, bag limits, and season lengths. The Service seeks from the Atlantic Flyway Council and others comments on the draft report, consideration of changes to sea duck seasons in 1998 in the Atlantic Flyway, and progress toward development of management goals for sea ducks.

BILLING CODE 4310-55-F

1998 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS



DATES SHOWN RELATIVE TO PUBLICATION
OF FEDERAL REGISTER DOCUMENTS
ARE TARGET DATES