

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR PART 20

RIN 1018-AE93

**Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

**SUMMARY:** This rule revises the waterfowl hunting frameworks and the season dates for those States in the Lower Region of the Mississippi Flyway. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits the taking of these designated species during the 1998–99 season.

**DATE:** This rule takes effect on November 13, 1998.

**ADDRESSES:** The public may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Blohm, Acting 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, (703) 358-1714.

**SUPPLEMENTARY INFORMATION:****Regulations Schedule for 1998**

On March 20, 1998, the Service published in the **Federal Register** (63 FR 13748) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory birds, designated as “migratory game birds” in conventions between the United States and several foreign nations for their protection and management, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. 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.

On May 29, 1998, the Service published in the **Federal Register** (63 FR 29518) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 1998–99 duck hunting season. The May 29 supplement also provided detailed information on the 1998–99 regulatory schedule and announced the Service

Migratory Bird Regulations Committee and Flyway Council meetings.

On June 25, 1998, the Service held a public hearing in Washington, DC, as announced in the March 20 and May 29 **Federal Registers** to review the status of migratory shore and upland game birds. The Service discussed hunting regulations for these species and for other early seasons. On July 17, 1998, the Service published in the **Federal Register** (63 FR 38700) a third document specifically dealing with proposed early-season frameworks for the 1998–99 season. The July 17 supplement also established the final regulatory alternatives for the 1998–99 duck hunting season for all States except Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee. On August 5, 1998, the Service published in the **Federal Register** (63 FR 41926) a fourth document dealing specifically with the final regulatory alternatives for the 1998–99 duck hunting season for the States of Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee.

On August 6, 1998, the Service held a second public hearing in Washington, DC, as announced in the March 20, May 29, and July 17 **Federal Registers**, to review the status of waterfowl. Proposed hunting regulations were discussed for late seasons. On August 25, 1998, the Service published a fifth document in the **Federal Register** (63 FR 45350) which dealt specifically with proposed frameworks for the 1998–99 late-season migratory bird hunting regulations.

On August 28, 1998, the Service published a sixth document in the **Federal Register** (63 FR 46124) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits for the 1998–99 season. A seventh document published in the August 31, 1998, **Federal Register** (63 FR 46336) amended subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons.

The Service published final late-season frameworks for migratory game bird hunting regulations, from which State wildlife conservation agency officials selected late-season hunting dates, hours, areas, and limits for 1998–99 in the September 29, 1998, **Federal Register** (63 FR 51998). A tenth document published in the September 30, 1998, **Federal Register** (63 FR 52322) amended subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for species subject to late-season regulations and

those for early seasons that States previously deferred.

This document is the eleventh in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations for the 1998–99 season. It deals specifically with revising the current duck hunting frameworks in the Lower Region of the Mississippi Flyway and the previously-selected and published hunting season dates for those eligible States that opt to change their seasons, as directed by Congress in Division C, Title 1, Section 150 of the Omnibus Appropriations Bill.

**Background**

Current duck hunting frameworks provide for earliest opening and latest closing dates for duck seasons of October 1 and January 20 in the Atlantic Flyway, and the Saturday nearest October 1, and the Sunday nearest January 20 in the Mississippi, Central, and Pacific Flyways. January 20 (or the Sunday nearest) is the latest closing date that has been allowed since the flyway management system for waterfowl began in 1948, except for an experimental extension of the framework closing date to January 31 in Mississippi during 1979–84.

In March 1998, the Lower-Region Regulations Committee (representing the States of Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee) of the Mississippi Flyway Council recommended that the Service allow a January 31 framework closing date. The other three Flyway Councils and the Upper-Region Regulations Committee of the Mississippi Flyway Council recommended no change in the framework dates. However, the Upper-Region Regulations Committee recommended that if an extension were authorized, it should be coupled with a commensurate reduction in season length and/or bag limits in the participating States to offset the predicted increase in harvest.

In order to address the request of the Lower-Region Regulations Committee of the Mississippi Flyway Council, the Service announced (May 29 **Federal Register**) that it would consider extending the framework closing date for those six States only (Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee), with the requirement that the predicted additional harvest be offset with a reduction in season length. The States interested in this approach were to develop an analysis to assist the Service in predicting how many days of reduction in season length would be appropriate.

The proposal generated extensive public comment in opposition to the change, including comments from many State fish and wildlife agencies in all four Flyways (detailed comments are available in the August 5 **Federal Register**). The primary reasons for the opposition were:

(1) A perception of inequity because the Service would not be offering other States the option of an extension;

(2) Concern that the Flyway Councils did not have a role in developing the proposal and would not have the opportunity to meet and discuss concerns or alternatives before it was finalized; and

(3) Concerns that the Service would not be able to predict the effects of the proposed extensions on harvest or duck populations and guarantee the season-length reduction would be sufficient to completely offset the expected increase in harvest.

Because of the broad-based opposition to the proposal, the Service decided to withdraw it. The Service published the decision in the August 5 **Federal Register**. The Service further announced that it would support an overall review of framework dates by the Flyway Councils, the National Flyway Council, and the International Association of Fish and Wildlife Agencies. Interest in conducting such a review was recently expressed by the National Flyway Council, and the Service is committed to working with the above organizations to accomplish the review in time for consideration of duck-hunting regulatory alternatives for the 2000–2001 hunting season.

#### **Congressional Action Subsequent to Final Frameworks**

As stated previously, the Service published final late-season frameworks for migratory game bird hunting regulations, from which all State wildlife conservation agency officials selected late-season hunting dates, hours, areas, and limits for 1998–99 in the September 29, 1998, **Federal Register**. Duck hunting frameworks for the Mississippi Flyway, which includes the States of Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee, consisted of the following:

“Outside Dates: Between the Saturday nearest October 1 (October 3) and the Sunday nearest January 20 (January 17).

Hunting Seasons and Duck Limits: 60 days with a daily bag limit of 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback, and 2 redheads.”

On October 19, 1998, Congress specified the following in Division C,

Title I, Section 150 of the Omnibus Appropriations Bill:

“Sec. 150.

(a) Extension of Agreement for State of Mississippi.—The Secretary of the Interior shall offer to reinstate the Memorandum of Agreement between the Mississippi Department of Wildlife Conservation and the United States Fish and Wildlife Service concerning the framework closing dates for the 1979–1980 through 1981–1982 duck hunting seasons, executed in November 1979, for the 1998–1999 duck hunting season in the State of Mississippi, except that—

(1) the duck hunting season shall end on January 31, 1999; and

(2) the total number of days for the duck hunting season in the State of Mississippi shall not exceed 51 days.

(b) Extension of Agreement to Other States.—At the request of any other State represented on the Lower Region Regulations Committee of the Mississippi Flyway Council, the Secretary of the Interior shall extend the agreement described in subsection (a) to that State for the 1998–1999 duck hunting season if the State agrees to reduce the total number of days of the duck hunting season in the State to the extent necessary to result in no net increase in the duck harvest in the State for that season.”

Therefore, following the directive provided by Congress, the Service will reinstate the 1979 Memorandum of Agreement (MOA) between the Mississippi Department of Wildlife Conservation and the Service concerning the framework closing dates for the 1998–1999 duck hunting season in the State of Mississippi. The Service has also extended the offer to the other five States in the Lower Region of the Mississippi Flyway with the following guidelines:

1. The extension will apply only to duck hunting seasons (ducks, mergansers, and coots).

2. In participating States, the maximum season length will be reduced from 60 to 51 days.

3. If a season closing date after the Sunday nearest January 20 is selected for any portion of a State, the 51-day maximum season length will apply throughout the State.

Based on these guidelines, the States of Alabama, Mississippi, and Tennessee have opted to enter into a Memorandum of Agreement for the 1998–1999 duck hunting season and extend the framework closing date to January 31. Arkansas, Kentucky, and Louisiana declined to participate in the framework extension. Revised season dates for Alabama, Mississippi, and Tennessee are included herein.

#### **Public Comment**

The Service, by this rule, is revising the 1998–99 duck season hunting dates for the States of Alabama, Mississippi,

and Tennessee without the standard notice for public comment. As required by the Administrative Procedure Act (5 U.S.C. 553(b)(B)), the Service has found that the notice and public procedure required by the APA are impracticable, and contrary to the public interest for the following reasons: (1) the Service is revising the frameworks at the direction of Congress; (2) public comment cannot change the Congressional action; (3) providing a comment period at this time would preclude the affected States from selecting and beginning their upcoming duck hunting seasons on time; and (4) the Service has already received extensive public comment on the issue.

#### **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 EPA on June 9, 1988. The Service published a Notice of Availability in the June 16, 1988, **Federal Register** (53 FR 22582). The Service published its Record of Decision on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES**.

#### **Endangered Species Act Considerations**

As in the past, the Service designs hunting regulations to remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species. Consultations previously conducted regarding the 1998–99 regulatory proposals also cover the regulatory actions herein. Findings from these consultations are included in a biological opinion and may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. The Service’s biological opinions resulting from its Section 7 consultation are public documents available for public inspection in the Service’s Division of Endangered Species and MBMO, at the address indicated under the caption **ADDRESSES**.

#### **Regulatory Flexibility Act**

In the March 20, 1998, **Federal Register**, the Service reported measures it took to comply with requirements of the Regulatory Flexibility Act. One measure was to update the 1996 Small Entity Flexibility Analysis (Analysis) documenting the significant beneficial economic effect on a substantial number of small entities. The 1996 Analysis

estimated that migratory bird hunters would spend between \$254 and \$592 million at small businesses. The Service has updated the 1996 Analysis with information from the 1996 National Hunting and Fishing Survey. Nationwide, the Service now estimates that migratory bird hunters will spend between \$429 and \$1,084 million at small businesses in 1998. No negative or cost impacts are predicted as the result of the hunting season framework extension. Copies of the 1998 Analysis are available upon request from the Office of Migratory Bird Management.

#### **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.

E.O. 12866 requires each agency to write regulations that are easy to understand. The Service invites comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the SUPPLEMENTARY INFORMATION section of the preamble helpful in understanding the rule? What else could the Service do to make the rule easier to understand?

Send a copy of any comments that concern how this rule could be made easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. Comments may also be e-mailed to: Exsec@ios.doi.gov.

#### **Congressional Review**

In accordance with Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 8), this rule has been submitted to Congress and has been declared major. Because this rule establishes hunting seasons, this rule qualifies for an exemption under 5 U.S.C. 808(1); therefore, the Department determines that this rule shall take effect immediately.

#### **Paperwork Reduction Act**

The Service 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, the information collection requirements of the Migratory Bird Harvest Information Program have been approved by OMB and assigned clearance number 1018-0015 (expires 09/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve Service harvest estimates for all migratory game birds in order to better manage these populations. The Service 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**

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 rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

#### **Takings Implication Assessment**

In accordance with Executive Order 12630, these rules, authorized by the Migratory Bird Treaty Act, do not have significant takings implications and do not affect any constitutionally protected property rights. These rules will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduce restrictions on the use of private and public property.

#### **Federalism Effects**

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. The Service annually prescribes frameworks from which the States make selections and employs guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are

developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulation. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### **Government-to-Government Relationship with Tribes**

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects.

#### **Effective Date**

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

Therefore, the Service finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these seasons will, therefore, take effect immediately upon publication. Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

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

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

Dated: November 6, 1998.

**Donald J. Barry,**

*Assistant Secretary for Fish and Wildlife and  
Parks.*

**PART 20—[AMENDED]**

For the reasons set out in the  
preamble, the Service amends title 50,  
chapter I, subchapter B, part 20, subpart  
K as follows:

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

**Authority:** 16 U.S.C. 703–712; and 16  
U.S.C. 742 a–j.

BILLING CODE 4310–55–P

Note - The following annual regulations provided for by §20.104 and 20.105 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

2. Section 20.104 is amended by revising the entries for Tennessee to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 28 and September 28 Federal Registers.

NOTE: The following seasons are in addition to the seasons published previously in the August 31, 1998, Federal Register (63 FR 46336).

	Sora & Virginia Rails	Clapper & King Rails	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	3	8
Possession limit	25 (1)	30 (2)	6	16

MISSISSIPPI FLYWAY

Tennessee Reelfoot Zone	Nov. 14-Nov. 15 & Nov. 21-Jan. 8	Closed	Oct. 31-Dec. 14	Nov. 14-Feb. 28
State Zone	Dec. 5-Dec. 11 & Dec. 19-Jan. 17	Closed	Oct. 31-Dec. 14	Nov. 14-Feb. 28

3. In Section 20.105, paragraphs (a), (e) and (f) are amended by revising the entries for the following States in alphabetical order to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 28 (63 FR 46124) and September 29 (63 FR 61988) Federal Registers.

(a) Common Moorhens and Purple Gallinules  
(Atlantic, Mississippi, and Central Flyways)

NOTE: The following seasons are in addition to the seasons published previously in the August 31, 1998, Federal Register (63 FR 46336). The zones named in this paragraph are the same as those used for setting duck seasons.

	Season Dates	Bag	Limits Possession
MISSISSIPPI FLYWAY			
Tennessee Reelfoot Zone	Nov. 14-Nov. 15 & Nov. 21-Jan. 8	15 15	30 30
State Zone	Dec. 5-Dec. 11 & Dec. 19-Jan. 17	15 15	30 30

(e) Waterfowl, Coots, and Pacific-Flyway Seasons for Common Moorhens and Purple Gallinules

MISSISSIPPI FLYWAY

Flyway-wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 4 mallards (no more than 2 of which may be females), 1 black duck, 1 pintail, 1 canvasback, 2 redheads, and 2 wood ducks. The possession limit is twice the daily bag limit.

Merganser Limits: The merganser limits include no more than 1 hooded merganser daily and 2 in possession.

	Season Dates	Bag	Limits Possession
Alabama Ducks:			
North Zone	Dec. 12-Jan. 31	6	12
South Zone	Dec. 12-Jan. 31	6	12
Mergansers	Same as for ducks	5	10
Alabama (cont.) Coots	Same as for ducks	15	30

[illegible]

**(f) Youth Waterfowl Hunting Day**

The following seasons are open only to youth hunters. Youth Hunters must be accompanied into the field by an adult at least 18 years of age. This adult can not duck hunt but may participate in other open seasons.

### **Definition**

**Youth Hunters:** Includes youths 15 years of age or younger.

**NOTE:** The following seasons are in addition to the seasons published previously in the August 31 (63 FR 46336) Federal Register. Bag and possession limits will conform to those set for the regular season.