

Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Marcia Cranberg, Arnold & Porter, 555 Twelfth Street, NW., Washington, DC 20004-1202 (Counsel for Duluth-Superior Area Educational Television Corporation).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01-116, adopted June 6, 2001, and released June 7, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting, Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

#### PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

#### § 73.606 [Amended]

2. Section 73.606(b), the Table of Digital Television Allotments under Minnesota is amended by removing Channel \*18-at Hibbing.

#### § 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under Minnesota, is amended by adding DTV channel \*31-at Hibbing.

Federal Communications Commission.

**Barbara A. Kreisman,**  
Chief, Video Services Division, Mass Media Bureau.

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#### DEPARTMENT OF THE INTERIOR

##### Fish and Wildlife Service

#### 50 CFR Part 20

RIN 1018-AH79

#### Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations; Notice of Meetings

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; supplemental.

**SUMMARY:** The U.S. Fish and Wildlife Service (hereinafter Service or we) proposed in an earlier document to establish annual hunting regulations for certain migratory game birds for the 2001-02 hunting season. This supplement to the proposed rule provides the regulatory schedule; announces the Service Migratory Bird Regulations Committee and Flyway Council meetings; and describes the proposed regulatory alternatives for the 2001-02 duck hunting seasons and other proposed changes from the 2000-01 hunting regulations.

**DATES:** The Service Migratory Bird Regulations Committee will meet to consider and develop proposed regulations for early-season migratory bird hunting on June 20 and 21, 2001, and for late-season migratory bird hunting on August 1 and 2, 2001. All meetings will commence at approximately 8:30 a.m. You must submit comments on the proposed regulatory alternatives for the 2001-02 duck hunting seasons by July 6, 2001. You must submit comments on the proposed migratory bird hunting-season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons by July 30, 2001; and for proposed late-season frameworks by September 7, 2001.

**ADDRESSES:** The Service Migratory Bird Regulations Committee will meet in room 200 of the U.S. Fish and Wildlife Service's Arlington Square Building, 4401 N. Fairfax Drive, Arlington,

Virginia. Send your comments on the proposals to the Chief, Division 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. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

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

#### SUPPLEMENTARY INFORMATION:

##### Regulations Schedule for 2000

On April 30, 2001, we published in the *Federal Register* (66 FR 21298) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, and other regulations for migratory game birds under § 20.101 through 20.107, 20.109, and 20.110 of subpart K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. We will publish proposed early-season frameworks and final regulatory alternatives for the 2001-02 duck hunting seasons in mid-July and late-season frameworks in mid-August. We will publish final regulatory frameworks for early seasons on or about August 20, 2001, and those for late seasons on or about September 21, 2001.

#### Service Migratory Bird Regulations Committee Meetings

The Service Migratory Bird Regulations Committee will meet June 20-21, 2001, to review information on the current status of migratory shore and upland game birds and develop 2001-02 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands. The Committee will also develop regulations recommendations for special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, the Committee will review and discuss preliminary information on the status of waterfowl.

At the August 1-2, 2001, meetings, the Committee will review information on the current status of waterfowl and

develop 2001–02 migratory game bird regulations recommendations for regular waterfowl seasons and other species and seasons not previously discussed at the early-season meetings.

In accordance with Departmental policy, these meetings are open to public observation. You may submit written comments to the Director on the matters discussed.

#### Announcement of Flyway Council Meetings

Service representatives will be present at the individual meetings of the four Flyway Councils this July.

Although agendas are not yet available, these meetings usually commence at 8:00 a.m. on the days indicated.

*Atlantic Flyway Council:* July 23–27, Loews Le Concorde Hotel, Quebec City, Quebec, Canada.

*Mississippi Flyway Council:* July 22–27, Drawbridge Inn, Fort Mitchell, Kentucky.

*Central Flyway Council:* July 23–27, Edmonton House Suite Hotel, 10205—100 Avenue, Edmonton, Alberta, Canada.

*Pacific Flyway Council:* July 23–27, Westmark Baranof Hotel, 127 N. Franklin St., Juneau, Alaska.

#### Review of Public Comments

This supplemental rulemaking contains the proposed regulatory alternatives for the 2001–02 duck hunting seasons. We have included and addressed all comments and recommendations received through May 18, 2001, relating to the development of these alternatives. This supplemental rulemaking also describes other recommended changes based on the preliminary proposals published in the April 30, 2001, **Federal Register** (66 FR 21298). We have included only those recommendations requiring either new proposals or substantial modification of the preliminary proposals. This supplement does not include recommendations or comments that simply support or oppose preliminary proposals and provide no recommended alternatives. We will consider these comments later in the regulations-development process. We will publish responses to all proposals and written comments when we develop final frameworks.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the April 30, 2001, proposed rule.

#### 1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Regulatory Alternatives, including specification of framework dates, season length, and bag limits, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. Only those categories for which we received public comment are discussed below.

##### A. Harvest Strategy Considerations

*Council Recommendations:* The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the Adaptive Harvest Management (AHM) Working Group and the Service consider the following actions when AHM regulations packages are reconsidered:

(1) Elimination of the “very restrictive” option.

(2) Replace open cells with the “restrictive” alternative to a population level of  $\leq 4.5$  million. Below this level, year-specific decisions on closed seasons would be based on both biological and sociological considerations.

(3) Evaluation of the influence of year-to-year constraints on regulations increments on AHM performance.

(4) Strong consideration of limiting increments of year-to-year change to single regulations “steps.”

(5) The role of hunter satisfaction be formally considered in the revision of the harvest management objective or the regulation packages.

*Service Response:* We recognize that periodic changes to the protocols for adaptive harvest management (AHM) will be necessary to accommodate changing biological, social, and administrative needs. Revisions of the nature recommended by the Mississippi Flyway Council potentially have profound implications, however, as they involve specification of the set of regulatory alternatives, the harvest-management objective(s), and associated regulatory constraints (e.g., minimizing year-to-year changes in regulations). The AHM Working Group, which is comprised of both Service and Flyway Council representatives, currently is exploring the implications of these recommendations. We will consider the changes suggested by the Mississippi Flyway Council once these investigations are complete, and the results communicated to all interested parties.

##### B. Regulatory Alternatives

*Council Recommendations:* The Atlantic Flyway Council recommended

that the regulations packages for 2001 be the same as those in 2000, except for an experimental framework opening date of the Saturday nearest September 24 and a framework closing date of the last Sunday in January with no offsets for the 2001–2003 duck seasons in the “moderate” and “liberal” alternatives. The Council further recommended that the framework dates be applicable either Statewide or in zones and that the Service use the evaluation of the framework-date extensions for the next three years as a basis for establishing future framework dates.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the regulations alternatives from 2000 be used in 2001. The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the regulations packages for 2001 be the same as those in 2000, except that the framework opening and closing dates would be the Saturday nearest September 24 through the last Sunday in January, and there would be no offsets in season length or bag limit.

The Central Flyway Council recommended 2001–02 duck regulations packages and species/sex restrictions for the Central Flyway that are the same as those used in 2000–01, except for a framework opening date of the Saturday closest to September 24th in the “liberal” and “moderate” AHM regulations alternatives with no offset penalties (reduced or restricted bag limits or reduction in season length). The framework closing date in the Central Flyway would remain the Sunday nearest January 20th.

The Pacific Flyway Council preferred that regulatory alternatives remain as adopted in 1999 and 2000 but recommends that if season extensions are allowed (without offsets), that they be classified as an experiment for 3 years. At the end of the experimental period, the distribution of mallard harvest during the experimental period shall be compared to the harvest distribution during the period of stabilized regulations (1979–1984). If the distribution of mallard harvest has changed more than 5 percent between these two periods, AHM regulatory packages should be re-configured to realign mallard harvest distribution with the distribution that occurred in 1979–1984. The Council also recommended a framework opening date of the Saturday nearest September 24 and a framework closing date of the last Sunday in January with no offsets for the 2001–2003 duck seasons in the “moderate” and “liberal” alternatives.

The Council further recommended that the framework dates be applicable either Statewide or in zones. The Council requested that the Service use the evaluation of the framework-date extensions for the next three years as a basis for establishing future framework dates.

*Service Response:* On August 3, 2000, Regulations Consultants representing the four Flyway Councils requested that the Service conduct another assessment of the projected impacts of extended framework dates for duck hunting. A full report of that assessment can be found at <http://migratorybirds.fws.gov/reports/reports.html>, but the principal findings are summarized here.

Based on a survey conducted by the Flyway Councils, only 13 of the 48 contiguous States would not take advantage of extended opening dates, closing dates, or both in at least a portion of the State, assuming that there were no penalties in season length or bag limit. The predicted increase in annual harvest associated with extended framework dates in these States in the "moderate" and "liberal" regulatory alternatives was approximately 15 percent and 5 percent for midcontinent and eastern mallards, respectively. Assuming these projected increases in harvest are accurate, we would expect a significant reduction in the frequency of "liberal" regulations, with a concurrent increase in the frequency of "moderate" regulations, in the Pacific, Central, and Mississippi Flyways. There was no discernable change in the expected frequency of "liberal" regulations for mallards in the Atlantic Flyway. Despite repeated assessments of this nature, however, we remain profoundly uncertain about the impacts of widespread framework-date extensions on mallards and other species because experience with extended framework dates is so limited.

We acknowledge that AHM has proven to be an effective tool for coping with these type of management uncertainties, but only when there is broad-based agreement on management objectives (*i.e.*, how to value harvests, and how those values should be shared). In this light, a decision to use framework-date extensions continues to be problematic not because of any shortcoming of AHM, but because of tacit disagreement over desirable distributions of harvest or harvest opportunity. In the absence of such agreement, however, it is still possible to formulate an adaptive approach to the use of framework-date extensions, provided that the Flyway Councils are prepared to accept the changes in harvest distribution that might occur.

The approach would involve embracing two or more alternative hypotheses about the change in mallard harvests that might be associated with widespread application of extended framework dates. Over time, the AHM process should identify which impact hypothesis is the most accurate among the alternatives, while ensuring that uncertainty as to harvest impacts is properly accounted for in each regulatory decision.

Essential to the successful application of this adaptive approach, however, is a reliable monitoring program for estimating realized harvest rates of mallards. Such a program does not exist at this time because of uncertainty about the rate at which hunters report band recoveries. This uncertainty resulted from the introduction in 1995 of a toll-free phone number for reporting band recoveries, which is a key feature of a campaign designed to increase band-reporting rates. We are currently developing plans and seeking funding to estimate band-reporting rates, but do not believe that the program can be implemented in time to modify framework dates for this year. Additionally, we reiterate that proposed changes to traditional framework dates must consider the potential for adverse biological impacts to species other than mallards, especially those currently at depressed population levels.

Finally, there continues to be some disagreement among Flyway Councils and States: (1) About the desirability of framework-date extensions; (2) about whether extensions should be applied to opening dates, closing dates, or both; and (3) about the inclusion of framework-date extensions in some or all of the regulatory alternatives. We will continue to cooperate with Flyway Councils and States in reviewing Flyway- and region-specific changes to framework dates, to address the biological and sociological implications of any changes.

For the 2001–02 hunting season, we are proposing no modifications to the four regulatory alternatives used last year (see accompanying table for specifics of the proposed regulatory alternatives). Alternatives are specified for each Flyway and are designated as "VERY RES" for the very restrictive, "RES" for the restrictive, "MOD" for the moderate, and "LIB" for the liberal alternative. We will announce final regulatory alternatives in early July following the early-season regulations meetings in late June. Public comments will be accepted until July 6, 2001, and should be sent to the address under the caption **ADDRESSES**.

#### C. Zones and Split Seasons

*Council Recommendations:* The Atlantic Flyway Council recommended that the State of Vermont be allowed to extend the New Hampshire Interior Zone boundary to the Vermont side of the Connecticut River without losing the ability to split their duck season.

#### D. Special Seasons/Species Management iii. September Teal Seasons

*Council Recommendations:* The Atlantic Flyway Council recommended that Atlantic Flyway States that have participated in the recent experimental September teal seasons and met the required criteria (Delaware, Maryland, Virginia, and Georgia) be offered an operational September teal season, beginning in 2001. The recommended season would run for nine consecutive days during September 1–30, with a bag limit not to exceed four teal, whenever the breeding population of blue-winged teal exceeds 3.3 million. Delaware, Georgia, and Virginia would have shooting hours between one-half hour before sunrise to sunset, while shooting hours for Maryland would be between sunrise and sunset.

The Atlantic Flyway Council further recommended that Florida be offered an operational September teal season. The Council pointed out that Florida has requested and would prefer continuation of its current September wood duck and teal season, which the Council has supported with previous recommendations. If the Service carries through with its intent to discontinue the current September wood duck and teal seasons, this recommendation would allow Florida's current season to be replaced by an operational September teal season. Florida's teal season would begin in 2001 and be structured similar to teal seasons offered in other Atlantic Flyway states (9 consecutive days during September 1–30, with a bag limit of no more than 4 teal), with shooting hours of one-half hour before sunrise to sunset, whenever the breeding population of blue-winged teal exceeds 3.3 million.

The Central Flyway Council recommended continuation of the 16-day September teal season in 2001 contingent upon acceptable May breeding population survey estimates of blue-winged teal (>4.7 million).

#### iv. September Teal/Wood Duck Seasons

*Council Recommendations:* The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that Kentucky and Tennessee's September duck seasons be continued on an experimental basis for

3 years with increased monitoring. The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that Kentucky and Tennessee's September duck seasons be given operational status in their current format under the early season regulation frameworks. As a condition of operational status Kentucky and Tennessee would maintain wood duck population monitoring and banding efforts at levels consistent to that done during the period of the wood duck initiative (1991–96).

#### v. Youth Hunt

*Council Recommendations:* The Atlantic Flyway Council recommended that the Service allow States to hold a youth waterfowl hunt on two consecutive hunting days.

#### 4. Canada Geese

##### A. Special Seasons

*Council Recommendations:* The Atlantic Flyway Council recommended that the framework closing date for September Canada goose hunting seasons throughout upstate New York and Vermont be September 25, beginning in 2001, and that the September resident goose season framework dates in Rhode Island be extended from September 25 to September 30. The Council further recommended that the daily bag limit during September Canada goose seasons be increased to 8 with no possession limit beginning with the 2001–02 hunting season.

The Upper-Region Regulations Committee of the Mississippi Flyway Council supported the development of comprehensive harvest management strategies for Canada geese throughout the Flyway that includes caution when expanding seasons impacting populations of concern as well as removing constraints when not warranted. The Lower-Region Regulations Committee of the Mississippi Flyway Council urged the Service to use caution in changing or expanding special goose seasons.

The Pacific Flyway Council recommended that the experimental portion (the period after September 15) of NW Oregon's September goose season related to the Pacific Population of Western Canada Geese, be made operational.

##### B. Regular Seasons

*Council Recommendations:* The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the 2001 regular goose season opening date be as

early as September 16 throughout Michigan and Wisconsin and as early as September 15 in Missouri and Iowa.

The Pacific Flyway Council recommended that the flyway-wide prohibition of take of Aleutian Canada geese be removed upon publication of the Final Rule removing this goose from the list of endangered and threatened species. Existing special management areas in Alaska, Oregon and California will remain closed to take of Canada geese until a population objective and harvest strategy are established by the Council, as indicated in the Flyway Management Plan.

#### 9. Sandhill Cranes

*Council Recommendations:* The Central Flyway Council made a number of recommendations pertaining to sandhill cranes. The Council recommended that the sandhill crane open hunting area boundary be changed in Texas and North Dakota for 3 years beginning in the fall of 2001 and population status, harvest and distribution be evaluated using existing population and harvest surveys. The new hunt area in Texas would include the Gulf Coast, south of Corpus Christi Bay and north of Lavaca Bay. In North Dakota, the hunt boundary would be extended eastward from US Highway 281 to the Minnesota border. Season length in these two new areas would be a maximum of 37 days and the daily bag limit would be 2 birds.

The Central Flyway Council also recommended a 95-day hunting season on Mid-Continent Population sandhill cranes and reinstatement of the option to split the season into no more than two segments for Texas and Oklahoma.

The Central and Pacific Flyway Councils recommended a change to the current New Mexico SW hunt boundary to include those portions of Grant and Hidalgo Counties south of Interstate 25. The Councils further recommended allowing New Mexico to conduct an experimental 3-year sandhill crane season in the Estancia Valley located in portions of Torrance, Santa Fe and Bernalillo Counties following the guidelines outlined in the Pacific and Central Flyways Management Plan for the Rocky Mountain Population of Greater Sandhill Cranes.

#### 18. Alaska

*Council Recommendations:* The Pacific Flyway Council recommended that tundra swan frameworks in Alaska be modified to: (1) Replace current swan harvest caps with maximum permit allowances (Unit 18—300, Unit 22—200, Unit 23—200); (2) make the swan season in GMU 23 operational; and (3)

establish a new experimental tundra swan season in Alaska Game Management Unit 17 (North Bristol Bay region). The new hunt would have a 61-day season from September 1–October 31; up to 200 registration permits could be issued; each permit to allow up to 3 swans per season; hunter activity and harvest reporting would be required. The Council also recommended that frameworks for duck limits in Alaska be modified to include harlequin and long-tailed ducks in the special sea duck limit, with appropriate adjustment to retain current species limits.

#### Public Comment Invited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, seek the comments and suggestions of the public, other concerned governmental agencies, non-governmental organizations, and other private interests on these proposals. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations to the address indicated under the caption **ADDRESSES**.

Special circumstances involved in the establishment of these regulations limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates specified is contrary to the public interest.

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.

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not

respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date.

#### 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 (FSSES 88-14)," filed with the Environmental Protection Agency on June 9, 1988. We published a 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). Copies are available from the address indicated under the caption **ADDRESSES**.

#### Endangered Species Act Consideration

Prior to issuance of the 2001-02 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531-1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and that the proposed action is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

#### Executive Order 12866

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

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) does the rule contain technical language or jargon that interferes with its clarity? (3) does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) would the rule be easier to understand if it were divided into more (but shorter) sections? (5) is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding

the rule? (6) what else could the Service do to make the rule easier to understand?

#### Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail, and a Small Entity Flexibility Analysis (Analysis) was issued by the Service in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between \$429 million and \$1.084 billion at small businesses in 1998. Copies of the Analysis are available upon request from the Division of Migratory Bird Management.

#### Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of \$100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

#### Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. 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 control number 1018-0015 (expires 09/30/2001).

This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest

Questionnaire and assigned control number 1018-0023 (expires 07/31/2003). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed 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.

#### Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 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. As this supplemental proposed rule is not expected to significantly affect energy supplies, distribution, or use, this proposed action is not a significant energy action and no Statement of Energy Effects is required.

#### 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.

#### Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the

States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This 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.

**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 2001–02 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742a–j.

Dated: June 7, 2001.

**Marshall P. Jones, Jr.,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

## PROPOSED REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2001-02 SEASON

	ATLANTIC FLYWAY					MISSISSIPPI FLYWAY (a)					CENTRAL FLYWAY (b)					PACIFIC FLYWAY (c)(d)				
	VERY	RES	MOD	LIB		VERY	RES	MOD	LIB		VERY	RES	MOD	LIB		VERY	RES	MOD	LIB	
	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	LIB	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	LIB	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	LIB	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	LIB
Beginning Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Ending Shooting Time	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1
Opening Date	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20
Closing Date	20	30	45	60	60	20	30	45	60	60	25	39	60	74	74	38	60	86	107	107
Season Length (in days)	3	3	6	6	6	3	3	6	6	6	3	3	6	6	6	4	4	7	7	7
Daily Bag/ Possession	6	6	12	12	12	6	6	12	12	12	6	6	12	12	12	8	8	14	14	14
<b>Species/sex Limits within the Overall Daily Bag Limit</b>																				
Mallard (Total/Female)	3/1	3/1	4/2	4/2	4/2	2/1	2/1	4/1	4/2	4/2	3/1	3/1	5/1	5/2	5/2	3/1	3/1	5/2	7/2	7/2
Pintail	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Black Duck	2	2	2	2	2	1	1	2	2	2	1	1	2	2	2	2	2	2	2	2
Scaup (e)	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Canvasback	1	1	1	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Redhead	1	1	1	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Wood Duck	1	1	1	1	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Whistling Ducks	Closed	Closed	Closed	Closed	Closed	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Harlequin	1	1	1	1	1	3	3	3	3	3	1	1	1	1	1	1	1	1	1	1
Mottled Duck	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

(a) In the States of Alabama, Mississippi, and Tennessee, the season length will be 51 days in the liberal alternative and 38 days in the moderate alternative with a framework closing date in both alternatives of January 31.

(b) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway with the exception of season length. Additional days would be allowed under the various alternatives as follows:

very restrictive - 8, restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(c) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(d) In Alaska, framework dates, bag limits, and season length would be different than the remainder of the Pacific Flyway. The bag limit would be 5-7 under the very restrictive and restrictive alternatives, and 8-10 under the moderate and liberal alternatives. There would be no restrictions on pintails, and canvasback limits would follow those for the remainder of the Pacific Flyway. Under all alternatives, season length would be 107 days and framework dates would be Sep 1 - Jan 26.

(e) Scaup daily bag limits will be based on current scaup status information until an agreed upon harvest strategy is completed and implemented.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 223 and 224

[Docket No. 010522134-1134-01; I.D. 050201D]

RIN 0648-XA69

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to list Bocaccio (*Sebastes paucispinis*) as Threatened

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Notification of 90-day petition finding and request for comments.

**SUMMARY:** NMFS has received a petition to list the southern bocaccio (*Sebastes paucispinis*) as a threatened species and to designate critical habitat concurrent with the listing. NMFS finds that the petition presents substantial scientific and commercial information indicating that the request for listing may be warranted. Therefore, NMFS is conducting a status review to determine whether the petitioned action is warranted. To assure that the review is comprehensive, NMFS is soliciting information and data regarding this species and its habitat from any interested party. NMFS will use information received during the comment period and other information in its review of the status of the southern bocaccio.

**DATES:** Comments and information must be received by August 13, 2001.

**ADDRESSES:** Requests for copies of the petition and comments regarding the listing of bocaccio should be submitted to Jim Lecky, Assistant Regional Administrator for Protected Resources, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA, 90802-4213. The petition and supporting data are available for public inspection by appointment, Monday through Friday, at the same address.

**FOR FURTHER INFORMATION CONTACT:** Jim Lecky, NMFS Southwest Region, 562/980-4000; or Marta Nammack, NMFS Office of Protected Resources, 301/713-1401, ext. 116.

#### SUPPLEMENTARY INFORMATION:

#### Background

Section 4 of the Endangered Species Act (ESA) contains provisions allowing interested persons to petition the Secretary of the Interior or the Secretary of Commerce (Secretary) to add a species to or remove a species from the List of Endangered and Threatened Wildlife and to designate critical habitat. On January 30, 2001, NMFS received a petition from the Natural Resources Defense Council, Center for Biological Diversity, and Center for Marine Conservation (Petitioners) to list the central/southern distinct population segment of bocaccio, or, in the alternative, bocaccio throughout its entire range as threatened under the ESA and to designate critical habitat.

Petitioners contend that bocaccio have suffered precipitous population declines over the last several decades and that these population declines threaten bocaccio with extinction and compromise its ability to recover. The primary factor identified by Petitioners is overutilization, specifically overfishing by fisheries targeting bocaccio and as bycatch in other fisheries. Other factors identified by Petitioners as contributing to the status of bocaccio include inadequate regulatory mechanisms, habitat modification due to bottom trawl fishing gear, pollution of nearshore habitat used by juvenile bocaccio, and shifts in oceanographic conditions.

NMFS has recognized two separate West Coast bocaccio populations, divided at approximately 36° N. latitude. The southern population (south of 36° N. latitude), which ranges from Cape Mendocino to Baja California, Mexico, is the stock for which NMFS has received a petition and is synonymous with what Petitioners have called the central/southern population of bocaccio. In the 1999 stock assessment report for southern bocaccio, the spawning output of the southern bocaccio stock was estimated to be 2.1 percent of the estimated spawning output at its unfished level. This stock was designated as overfished under the Magnuson-Stevens Fishery Conservation and Management Act on March 3, 1999.

Initial stock rebuilding measures were implemented through the 2000 annual specifications and management measures for Pacific coast groundfish. These measures included the setting of a conservative allowable biological catch level and optimum yield level. These conservative levels precluded any directed targeting of bocaccio and reserved allowable catch to incidental

catch in other fisheries. On September 5, 2000, NMFS announced formal approval of the rebuilding plan for southern bocaccio (65 FR 53646).

On December 29, 2000, NMFS published a final rule (65 FR 82947) approving Amendment 12 to the Pacific Coast Groundfish Fishery Management Plan and disapproving three overfished stock rebuilding plans, including the plan previously approved for bocaccio. Amendment 12 provides framework procedures for developing overfished species rebuilding plans, for setting guidelines for rebuilding plan contents, and procedures for submitting rebuilding plans to NMFS for review and approval/disapproval. The three rebuilding plans that were disapproved in that action were disapproved because of inconsistencies with the new procedure and guidelines established by Amendment 12, not because the harvest limits were inadequate to provide for rebuilding of the stock. The Pacific Fishery Management Council (PFMC) will resubmit recommended rebuilding plans for review by NMFS, consistent with the requirements of Amendment 12, for the 2002 fishing year cycle.

In the presentation of their petition, Petitioners rely on the information produced by NMFS and the PFMC in their evaluation of southern bocaccio relative to overfishing criteria and a review of published literature on the status, distribution, and ecology of bocaccio.

#### Finding

NMFS finds that Petitioners present substantial scientific and commercial information indicating that a listing may be warranted, based on the criteria specified in 50 CFR 424.14(b)(2). Although a positive 90-day finding under section 4(b)(3)(A) of the ESA is not a decision to list a species, this finding requires that a review of the status of southern bocaccio be completed within 12 months of receiving the petition (by January 30, 2002) to determine whether the petitioned action is warranted.

#### Listing Factors and Basis For Determinations

Under section 4 (a) (1) of the ESA, a species can be determined to be endangered or threatened for any of the following reasons: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued