

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 02-487; MM Docket No. 02-42; RM-10382]

Radio Broadcasting Services; Chester and Westwood, CA**AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Tom F. Huth, permittee of Station KTOR(FM), Channel 259A, Chester, California, requesting the reallocation of Channel 259A from Chester to Westwood, California, and modification of its authorization accordingly, pursuant to the provisions of section 1.420(i) of the Commission's rules. The coordinates for requested Channel 259A at Westwood, California are 40-14-21 NL and 121-1-52 WL.

Petitioner's reallocation proposal complies with the provisions of section 1.420(i) of the Commission's rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 259A at Westwood, California, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before April 22, 2002, and reply comments on or before May 7, 2002.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Law Office of Dennis J. Kelly; Post Office Box 6648; Annapolis, Maryland 21401-0648.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 02-42, adopted February 20, 2002, and released March 1, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402,

Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

The 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

Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 259A at Chester and adding Westwood, Channel 259A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02-6374 Filed 3-18-02; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 02-489; MM Docket No. 01-242; RM-10248]

Radio Broadcasting Services; Highland, MI**AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule; dismissal.

SUMMARY: Charles Crawford filed a petition for rule making proposing the allotment of Channel 236A at Highland, Michigan, as the community's first local aural transmission service. See 66 FR 49593, September 28, 2001. On November 2, 2001, petitioner filed a

motion for dismissal. A showing of continuing interest is required before a channel will be allotted. It is the Commission's policy to refrain from making an allotment to a community absent an expression of interest. Therefore, at the request of petitioner, we dismiss the instant proposal.

FOR FURTHER INFORMATION CONTACT:

Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01-242, adopted February 20, 2002, and released March 1, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 02-6373 Filed 3-18-02; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 20**

RIN 1018-AI30

Migratory Bird Hunting; Proposed 2002-03 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2002-03 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule, announces the Flyway Council meetings, and describes proposed changes to the regulatory alternatives for the 2002-03 duck hunting seasons. We also request proposals from Indian tribes that wish to establish special migratory bird hunting regulations on Federal Indian reservations and ceded

lands. Migratory game bird hunting seasons provide hunting opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory bird population status and habitat conditions.

DATES: You must submit comments on the proposed regulatory alternatives for the 2002–03 duck hunting seasons by May 1, 2002. You must submit comments for proposed early-season frameworks by July 30, 2002, and for proposed late-season frameworks by August 30, 2002. Tribes should submit proposals and related comments by June 1, 2002.

ADDRESSES: 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 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel at: 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, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Background and Overview

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. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when “hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any * * * bird, or any part, nest or egg” of migratory game birds can take place and to adopt regulations for this purpose. These regulations must be written based on “the zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds” and must be updated annually. This responsibility has been delegated to the Fish and Wildlife Service (Service) of the Department of the Interior as the lead Federal agency for managing and conserving migratory birds in the United States.

The Service develops migratory bird hunting regulations by establishing the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. Acknowledging regional differences in hunting conditions, the Service has administratively divided the nation into four Flyways for the primary purpose of managing waterfowl. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State and Province in that Flyway. The Flyway Councils, established through the International Association of Fish and Wildlife Agencies (IAFWA), also assist in researching and providing management techniques for Federal, State, and Provincial Governments, as well as private conservation agencies and the general public.

The migratory bird hunting regulations, located at 50 CFR 20, are constrained by three primary factors. Legal and administrative considerations dictate how long the rulemaking process will last. Most importantly though, the biological cycle of migratory birds controls the timing of data-gathering activities and thus the date on which results are available for consideration. The process includes two separate regulations-development schedules, based on early- and late-hunting season regulations. Early seasons pertain to all migratory game bird species in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; migratory game birds other than waterfowl (i.e., dove, woodcock, etc.); and special early waterfowl seasons, such as teal or resident Canada geese. The early season generally begins prior to October 1. Late seasons generally start on or after October 1 and include most waterfowl seasons not already established.

There are basically no differences in the processes for establishing either early- or late-hunting seasons. For each cycle, Service biologists gather, analyze, and interpret survey data and provide this information to all those involved in the process through a series of published status reports and presentations to Flyway Councils and other interested parties. Because the Service is required to take abundance of migratory birds and other factors into consideration, the Service undertakes a number of surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, and State and Provincial wildlife-management agencies. Factors such as population size and trend, geographical distribution, annual breeding effort, the condition of breeding, wintering habitat,

the number of hunters, and the anticipated harvest are considered to determine the appropriate frameworks for each species.

After frameworks, or outside limits, are established for season lengths, bag limits, and areas for migratory game bird hunting, migratory game bird management becomes a cooperative effort of State and Federal governments. After Service establishment of final frameworks for hunting seasons, the States may select season dates, bag limits, and other regulatory options for the hunting seasons. States may be more conservative in their selections than the Federal frameworks but never more liberal.

Notice of Intent To Establish Open Seasons

This notice announces our intent to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 2002–03 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.

For the 2002–03 migratory game bird hunting season, we 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). We describe these proposals under Proposed 2002–03 Migratory Game Bird Hunting Regulations (Preliminary) in this document. We published 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, in the March 14, 1990, **Federal Register** (55 FR 9618).

Regulatory Schedule for 2002–03

This document is the first in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations. We 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, we anticipate abbreviated comment periods on some proposals. Special circumstances limit the amount of time we 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 early enough in the summer to allow resource agencies to select and publish season dates and bag limits prior to the beginning of hunting seasons and, on the other hand, the lack of current status data on most migratory game birds until later in the summer. Because the regulatory process is strongly influenced by the times when information is available for consideration, we divide the regulatory process into two segments: early seasons and late seasons.

Major steps in the 2002–03 regulatory cycle relating to open public meetings and **Federal Register** notifications are illustrated in the diagram at the end of this proposed rule. All publication dates of **Federal Register** documents are target dates.

All sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
 - A. General Harvest Strategy
 - B. Regulatory Alternatives
 - C. Zones and Split Seasons
 - D. Special Seasons/Species Management
 - i. September Teal Seasons
 - ii. September Teal/Wood Duck Seasons
 - iii. Black ducks
 - iv. Canvasbacks
 - v. Pintails
 - vi. Scaup
 - vii. Youth Hunt
2. Sea Ducks
3. Mergansers
4. Canada Geese
 - A. Special Seasons
 - B. Regular Seasons
 - C. Special Late Seasons
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 your attention. Therefore, it is important to note that we will omit those items requiring no attention and remaining numbered items will be discontinuous and appear incomplete.

We will publish final regulatory alternatives for the 2002–03 duck hunting seasons in early June. We will publish proposed early-season frameworks in mid-July and late-season frameworks in mid-August. We will publish final regulatory frameworks for early seasons on or about August 20, 2002, and those for late seasons on or about September 15, 2002.

Announcement of Flyway Council Meetings

Service representatives will be present at the individual meetings of the four Flyway Councils this April. Although agendas are not yet available, these meetings usually commence at 8:00 a.m. on the days indicated. All meetings will be held April 2, 2002, at the Hyatt Regency at Reunion Center, 300 Reunion Boulevard, Dallas, Texas.

Review of Public Comments

This proposed rulemaking contains the proposed regulatory alternatives for the 2002–03 duck hunting seasons. This proposed rulemaking also describes other recommended changes or specific preliminary proposals that vary from the 2001–02 frameworks and issues requiring early discussion, action, or the attention of the States or tribes. 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 proposed rule.

Consolidation of Notices

For administrative purposes, this document consolidates the notice of intent to establish open migratory bird hunting seasons and the request for tribal proposals with the preliminary proposals for the annual hunting regulations-development process. We will publish the remaining proposed and final rulemaking documents separately. For inquiries on tribal guidelines and proposals, tribes should 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) 713–5432.

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.

Requests for Tribal Proposals

Background

Beginning with the 1985–86 hunting season, we have 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. We developed these guidelines in response to tribal requests for our 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, tribal regulations established under the guidelines must 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 applicable to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also may be applied 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 game bird hunting by nonmembers on Indian-owned reservation lands, subject to our 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 migratory bird hunting by non-Indians on these lands. In such cases, we encourage the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where tribes 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 request consultation as a result of the proposal being published in the **Federal Register**. We will not presume to make a determination, without being advised by either a tribe or a State, that any issue is or is not worthy of formal consultation.

One of the guidelines provides for the continuation of tribal members' harvest of migratory game birds on reservations where such harvest is a customary practice. We do 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, we have reached annual agreement with tribes for migratory bird hunting by tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

Tribes should not view the guidelines as inflexible. We believe 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 2002–03 hunting season should submit a proposal that includes:

- (1) The requested hunting season dates and other details regarding the proposed regulations;
- (2) Harvest anticipated under the proposed 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 request in their 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

We will publish details of tribal proposals for public review in later **Federal Register** documents. Because of the time required for our and public review, Indian tribes that desire special migratory bird hunting regulations for the 2002–03 hunting season should submit their proposals as soon as possible, but no later than June 1, 2002. Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed above under the caption Consolidation of Notices. Tribes that request special migratory game bird 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 Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will

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

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

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 in any final rules.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSER 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the address indicated under the caption **ADDRESSES**.

In a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin

the process of developing a new EIS for the migratory bird hunting program. This issue is discussed below under "Proposed 2002–03 Migratory Game Bird Hunting Regulations."

Endangered Species Act Consideration

Prior to issuance of the 2002–03 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in 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. The migratory bird hunting regulations are economically significant and are annually reviewed by OMB under E.O. 12866. As such, a cost/benefit analysis was prepared in 1998 and is further discussed below under the heading Regulatory Flexibility Act. Copies of the cost/benefit analysis are available upon request from the address indicated under the caption **ADDRESSES**.

E.O. 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 we 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 the Service issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis utilized 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 clearance number 1018–0015 (expires 09/30/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 07/30/2003). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of the harvest, and the portion it constitutes of the total population.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

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

Takings Implication Assessment

In accordance with E.O. 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—E.O. 13211

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

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections 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 E.O. 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 2002–03 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: February 1, 2002.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Proposed 2002–03 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific regulatory proposals. With the exception of modifying the framework opening and closing dates within the regulatory alternatives, we are proposing no change from the final 2001–02 frameworks of August 21 and September 27, 2001 (66 FR 44010 and 49478). Other issues requiring early discussion, action, or the attention of the States or tribes are contained below:

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. Only those containing substantial recommendations are discussed below.

A. General Harvest Strategy

We recommend the continued use of adaptive harvest management (AHM) to help determine appropriate duck-hunting regulations for the 2002–03

season. The current AHM protocol is used to evaluate five alternative regulatory levels based on the population status of mallards (special hunting restrictions are enacted for species of special concern, such as canvasbacks and pintails). The regulatory alternative in the Mississippi, Central, and Pacific Flyways is prescribed based on the status of mallards and breeding-habitat conditions in central North America (Federal survey strata 1–18, 20–50 and 75–77, and State surveys in Minnesota, Wisconsin, and Michigan). The recommended regulatory alternative for the Atlantic Flyway is based on the population status of mallards breeding in eastern North America (Federal survey strata 51–54 and 56, and State surveys in New England and the mid-Atlantic region) and, thus, may differ from that in the remainder of the country. A specific regulatory alternative for each of the Flyways during the 2002–03 season will be proposed after survey information becomes available in late summer.

Last year, the AHM Working Group (an interagency, technical advisory committee) identified a number of concerns with the current AHM protocol for mallards. These concerns focused on the models of population dynamics used to evaluate various regulatory options, and include: (1) Evidence that all models of mallard population dynamics may predict biased annual growth rates; (2) indications that the current method of comparing predicted and observed population sizes may unrealistically inflate the rate at which we can identify the most accurate population model; and (3) the need for improved survival and reproductive models that more effectively capture the range of possible population dynamics and effects of harvest. These concerns have important management implications, and we expect to propose remedial measures for the 2002–03 hunting season. Our proposals will be based on consultations with the AHM Working Group and the Flyway Councils, and will be made available for public comment later in the year.

Finally, we expressed our desire last year to begin the process of developing a new Environmental Impact Statement for migratory bird hunting (66 FR 21302). We reiterate the need to focus on three key themes:

(1) Goal setting—AHM can produce optimal regulatory decisions in the face of uncertainty, if and only if, there is agreement about the goals and objectives of harvest management. Clearly, the goals of duck harvest

management extend well beyond simple measures of hunter success and population size, and many of the difficulties in duck harvest management today probably relate more to ambiguity in objectives, rather than to uncertainty about biological impacts. Disagreement about management objectives poses a serious threat to the long-term viability of AHM.

(2) Limits to system control—There are both theoretical and practical limits to our ability to predict, control, and measure the size of waterfowl populations and harvest and, as a consequence, operational constraints on short-term hunting opportunity and on the learning needed to increase long-term performance. The waterfowl management community needs to better explore, understand, and acknowledge these limits, and to develop regulatory alternatives and strategies that avoid the most undesirable consequences of those limits, while meeting reasonable demands for hunting opportunity.

(3) Management scale—The history of duck harvest management has been characterized by efforts to account for increasingly more spatial, temporal, and taxonomic variability in waterfowl demographics in a continuing effort to maximize hunting opportunity. We have begun to question the wisdom of this approach, given the inevitable tradeoff between harvest benefits and the direct and indirect costs of managing at progressively finer scales. The level of resolution that ultimately will be most appropriate in the AHM process remains to be seen, but we are increasingly concerned about what we see as unrealistic expectations for accommodating small-scale variation in waterfowl population dynamics.

We look forward to exploring these and other duck-harvest management issues with the Flyway Councils, other stakeholders, and the general public during the coming year.

B. Regulatory Alternatives

The Service regulates the earliest and latest dates within which States can select duck-hunting seasons. Historically, these dates have been approximately October 1 to January 20. The effects of extending these dates so that seasons could open earlier and/or later have been the subject of extensive debate within the waterfowl management community. Biological impacts and impacts on harvest resulting from such changes remain uncertain.

In 1998, Congress specified that the 1998–99 hunting season in Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee could

extend to January 31, with a 9-day reduction from the 60-day season established for other States. The 9-day reduction was intended to offset the anticipated increase in harvest that was expected to occur. Since 1998, Alabama, Mississippi, and Tennessee chose to use this extended closing date (January 31) with the 9-day offset. We have continued to monitor duck harvests in these States but do not yet have sufficient data to determine definitively whether the magnitude of season-length reduction is accomplishing its intended purpose.

In August 2000, the Flyway Council Consultants to the Service Regulations Committee requested that the Service evaluate the projected impacts of extending the framework opening date for duck hunting from the Saturday nearest October 1 to the Saturday nearest September 24 and extending the closing date from the Sunday nearest January 20 to the last Sunday in January. The evaluation, completed in January 2001, was based on a canvassing of all Flyways to determine which States would use the extension. The principal conclusion of this review reaffirmed earlier assessments that nationwide use of framework-date extensions might significantly reduce the frequency of more liberal duck hunting seasons. This is primarily a result of greater uncertainty in our ability to predict the impacts of such fundamental changes in the regulations.

In 2001, the National Flyway Council (NFC) submitted a letter signed by the Atlantic, Central, and Pacific Flyway Councils, and the Lower-Region Regulations Committee of the Mississippi Flyway Council, that formally recommended 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, in the "moderate" and "liberal" regulatory packages, for the 2001–03 duck seasons. The letter further recommended that the framework dates be applicable either Statewide or in zones and that the Service use an evaluation of the framework date extensions for the next 3 years as a basis for establishing future framework dates.

We considered the recommendation, but declined to offer any changes to existing framework dates for duck hunting in the 2001–02 hunting season (66 FR 38498) due to a number of unresolved issues. Among those were: (1) Uncertainty about changes in mallard harvest rates that might occur with implementation of framework-date extensions; (2) the need for a reliable monitoring program for estimating

realized harvest rates of mallards, i.e., current estimates of band-reporting rates; (3) the potential for adverse biological impacts to species other than mallards, such as wood ducks, and especially those below objective levels (e.g., pintails, scaup); and (4) certain administrative and procedural issues involved in extending framework dates, particularly the timing of key meetings, publication of proposed and final rules, and the availability of adequate public notice and opportunity for comment. Other long-standing concerns were: (1) Changes in distribution of the harvest both within and among Flyways; (2) the need to maintain stability of regulatory packages; and (3) the potential impact of late-season extensions on ducks returning to the breeding grounds in the spring. We also emphasized that any uncertainty surrounding the impact of framework-date extensions on mallard numbers could be addressed most effectively using an adaptive management approach. This approach would not only help identify the effects of framework-date extensions but also ensure that we can account for uncertainty associated with harvest and population impacts in each regulatory decision.

On October 11, 2001, upon reconsideration of the previously established "liberal" regulatory alternative, we proposed (66 FR 51919) a framework opening date of September 29 and a closing date of January 31, with no reduction (offset) in season length, for the 2001–02 hunting season in the States of Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee. This proposal was in contrast to framework-date extensions existing since 1998 in Alabama, Mississippi, and Tennessee, of a closing date of January 31, accompanied by a 9-day reduction in season length.

The vast majority of comments received during the comment period were strongly opposed to this proposal. Consequently, we withdrew the proposal on November 23, 2001 (66 FR 58707) and stated that we would begin immediately to work with the Flyway Councils to develop a resolution to the framework-date issue prior to the 2002–03 duck hunting season.

On December 2, 2001, we met in Wichita, Kansas, with a newly formed working group of the International Association of Fish and Wildlife Agencies (IAFWA). This group, comprised of State representatives, including representatives from each Flyway Council, was formed to facilitate early coordination with the Flyway Councils and States. The discussion focused on the original 2001

recommendation submitted through the NFC and how the current regulations-setting process and schedule would need to be changed in order to accommodate changes in framework dates should such a proposal be adopted through the usual regulatory process. This early coordination was considered necessary since meetings throughout the process, which are scheduled well in advance, might have to be changed. It was concluded that changes to the current process could be made to allow for earlier and later season extensions as proposed by the Flyway Councils.

Based on discussions with Flyway Council representatives, and using the above recommendation to extend season dates, we propose the following: (1) To modify the current set of regulatory alternatives changing the framework opening date from the Saturday nearest October 1 to the Saturday nearest September 24 and change the closing date from the Sunday nearest January 20 to the last Sunday in January, with no offset in days or bag limits, in the "moderate" and "liberal" regulatory alternatives; (2) to keep these changes to framework dates in place for 3 years to allow for a reasonable opportunity to monitor the impacts of these extensions on harvest distribution and rates of harvest prior to considering any subsequent use; (3) to make any changes to frameworks within the context of AHM; and (4) to hold the Flyway Technical Committee and Council meetings and the Service Regulations Committee meeting for late-season hunting proposals approximately 1 week earlier than normally scheduled to accommodate administrative and procedural requirements.

Based on our recent assessment, "Framework-date Extensions for Duck Hunting in the United States: Projected Impacts & Coping With Uncertainty (January 2001)", we expect this proposal to result in some redistribution of the harvest, increases in harvest of mallards and perhaps other species, and potentially less frequent liberal regulations. These impacts were summarized in the June 14, 2001, **Federal Register** (66 FR 32297).

Regarding administrative and procedural issues, the Service underscores the need to proceed carefully with modifications to the existing timetable for regulations development. That is, if additional changes to the schedule become necessary, beyond those already proposed to accommodate early-season framework extensions, significant problems could arise. Included in these concerns would be the availability of

survey information prior to the development of regulatory proposals.

In light of the uncertainty about the impacts of extended framework dates, we support the recommendation of the Flyway Councils that changes must be accomplished within the context of AHM. Several years ago (April 1999), the AHM Working Group considered an adaptive approach to framework-date extensions and developed a set of principles and general guidelines, which we continue to support. Those principles are: (1) The need for stability in regulatory alternatives so that associated levels of duck harvest can be estimated reliably; (2) the advisability of framework-date proposals with minimal complexity (i.e., few, if any, special cases or dispensations); (3) the specification of framework regulations that are uniform within Flyways; (4) the need for improved resource monitoring to provide necessary feedback; and (5) a cautionary statement that regulatory changes far beyond the realm of experience undermine our ability to make data-based predictions about harvest impacts and, thus, undermine the integrity of the AHM process.

In light of these concerns, we are requesting the AHM Working Group to evaluate the framework-date proposal contained herein, and to recommend appropriate changes to the current AHM technical protocol. At a minimum, we believe that the AHM Working Group should: (1) Review and update the predictions of mallard harvest rates under the current regulatory alternatives (without framework-date extensions); (2) determine how we will account for the uncertainty about the impacts of extended framework dates; (3) recommend changes to resource monitoring programs that will be necessary to permit an evaluation of framework-date extensions; and (4) provide guidelines for assessing impacts to species other than mallards (especially those species below objective levels). Finally, in evaluating the current framework-date proposal, we urge all interested parties to consider how improvements to resource monitoring programs would be funded, whether the risk of more restrictive hunting seasons (i.e., shorter season lengths and smaller bag limits) is acceptable, and whether some redistribution of duck harvest to more northerly and more southerly States is desirable.

In conclusion, the Service re-emphasizes its commitment to monitoring the impacts of these proposed extensions of framework dates over a 3-year period, particularly with regard to any effects on harvest distribution and rates of harvest. It is essential, therefore, that improvements to existing monitoring programs, such as the need to estimate the rate at which hunters voluntarily report band encounters (band reporting rate), be in place during this evaluation period. Resulting improvements in the estimation of harvest rates of mallards and other duck species, along with other elements of ongoing survey activities, will play a major role in the evaluation effort. Any decision to continue these framework extensions, or implement more restrictive hunting seasons, will be contingent on the outcome of this assessment.

Thus, as indicated above, for the 2002–03 season, we are proposing to modify 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 June. Public comments will be accepted until May 1, 2002, and should be sent to the address under the caption **ADDRESSES**.

D. Special Seasons/Species Management

iv. Canvasbacks

Since 1994, the Service has followed a canvasback harvest strategy such that, if population status and production are sufficient to permit a harvest of one canvasback per day nationwide for the entire length of the regular duck season, while attaining a spring population objective of 500,000 birds, the season on canvasbacks should be opened. Otherwise, the season on canvasbacks should be closed nationwide. Last spring, the estimate of canvasback abundance was 580,000 birds and the number of ponds in Prairie Canada in May (2.7 million) was 20% below the long-term average. The size of the spring population, together with natural mortality and below-average expected production due to the relatively dry conditions, was insufficient to offset expected mortality associated with a canvasback season lasting the entire

length of the “liberal” regulatory alternative and still attain the population objective of 500,000 canvasbacks in the spring of 2002.

While we continued to support the harvest strategy and the model adopted in 1994, despite the reduced numbers and below-average production forecast last year, we believed there was still some opportunity to allow a limited harvest last fall without compromising the population’s ability to reach 500,000 canvasbacks this spring. Thus, we allowed a very restrictive, shortened canvasback season for 2001–02. In the Atlantic and Mississippi Flyways, the season length was 20 days, in the Central Flyway, 25 days, and in the Pacific Flyway, 38 days. Our objective was to provide some hunting opportunity while still maintaining the spring population above the 500,000 objective level.

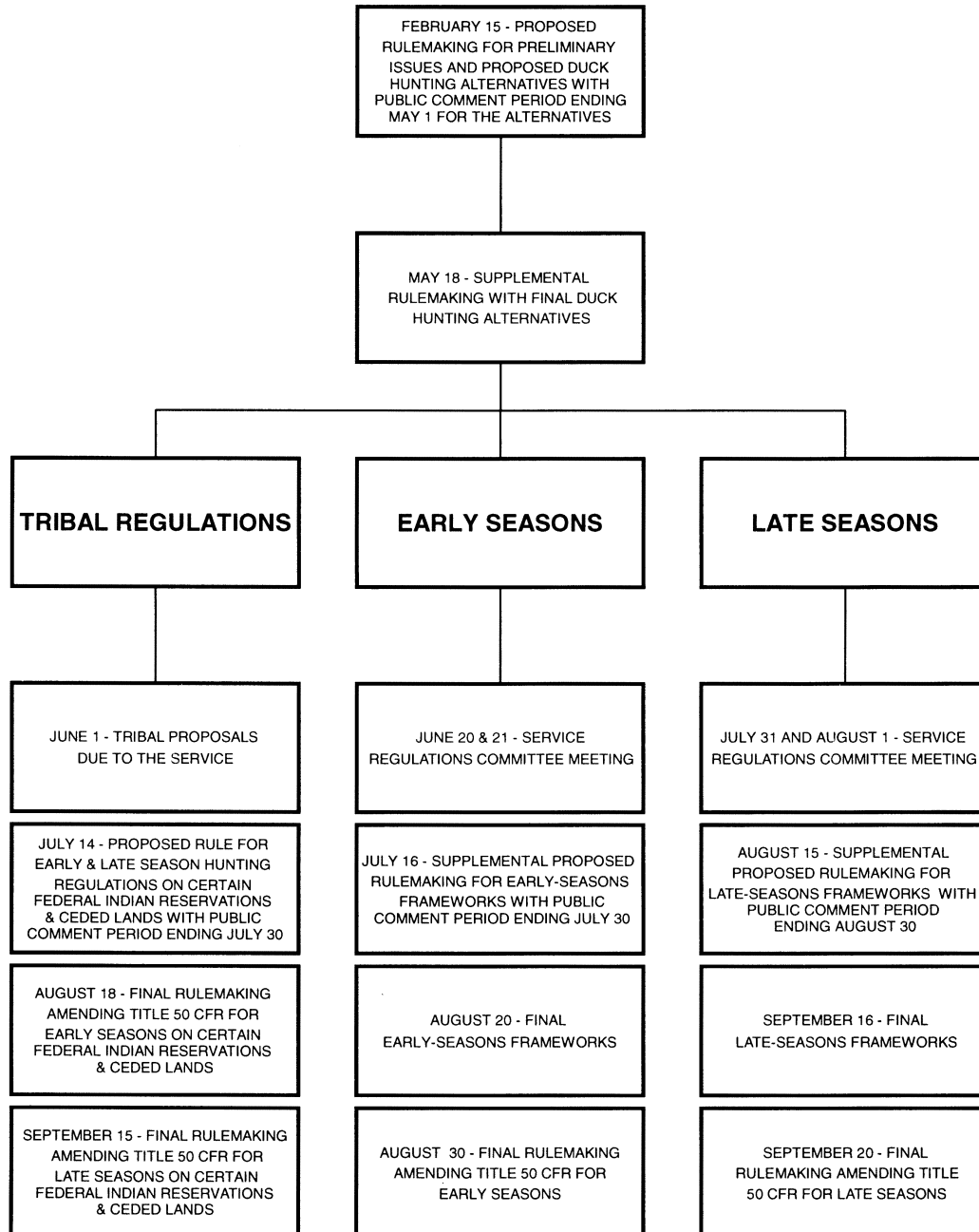
We also expressed a willingness to revisit the guidelines outlined in the strategy and asked that any proposed changes have broad-based support and reflect the interests of all stakeholders. In addition, we urged the Flyway Councils to begin internal discussions regarding species-specific restrictions in the existing AHM framework. In 2002, we will again consider the size of the spring population and model-based predictions of production and harvest in development of regulations proposals for canvasbacks. However, absent the broad-based support by the Flyway Councils to revise the strategy, we intend to follow the 1994 model-based prescriptions originally developed for canvasbacks.

v. Pintails

We presently utilize an interim strategy to manage the harvest of pintails. In the current strategy, the determination of appropriate bag limits is based, in part, on the harvest predicted by a set of models that were developed from historical data relating harvest to bag limit and season length. However, since the interim strategy was implemented in 1997, the predicted harvest has consistently been lower than the estimated harvest from the U.S. and Canadian Federal harvest surveys. We will work with the Flyway Councils to review the current method of determining bag limits with the intent of making appropriate adjustments to the strategy to better reflect the realized harvest of pintails.

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2002 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS



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

PROPOSED REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2002-03 SEASON

	ATLANTIC FLYWAY				MISSISSIPPI FLYWAY				CENTRAL FLYWAY (a)				PACIFIC FLYWAY (b)(c)			
	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB	VERY RES	RES	MOD	LIB
Beginning Shooting Time	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise	1/2 hr before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24
Closing Date	Jan. 20	Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Jan. 20	Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Jan. 20	Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Jan. 20	Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.
Season Length (in days)	20	30	45	60	20	30	45	60	25	39	60	74	38	60	86	107
Daily Bag/Possession Limit	3 6	3 6	6 12	6 12	3 6	3 6	6 12	6 12	3 6	6 12	6 12	6 12	4 8	4 8	7 14	7 14
Species/Sex Limits within the Overall Daily Bag Limit																
Mallard (Total/Female)	3/1	3/1	4/2	4/2	2/1	2/1	4/1	4/2	3/1	3/1	5/1	5/2	3/1	3/1	5/2	7/2
Pintail	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Black Duck	2	2	2	2	1	1	2	2	1	1	2	2	2	2	2	2
Scaup (d)	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Canvasback	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Redhead	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Wood Duck	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Whistling Ducks	Closed	Closed	Closed	Closed	1	1	1	1	1	1	1	1	1	1	1	1
Harlequin	1	1	1	1	3	3	3	3	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

(a) 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:

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