

instructions are given on the forms themselves.

\* \* \* \* \*

3. Add § 801.12 to read as follows:

**§ 801.12 Rules and regulations for the BE-140, Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons.**

(a) The BE-140, Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons, will be conducted covering calendar year 2008 and every fifth year thereafter. All legal authorities, provisions, definitions, and requirements contained in § 801.1 through § 801.9(a) are applicable to this survey. More detailed instructions and descriptions of the individual types of transactions covered are given on the report form itself. The BE-140 consists of three parts and two schedules. Part 1 requests information on whom to consult concerning questions about the report and the certification section. Part 2 requests information about the reporting insurance company. Part 3 requests information needed to determine whether a report is required, the types of transactions that would be reported, and which schedules apply. Each of the two schedules covers the types of insurance services to be reported and the ownership relationship between the U.S. insurance company and foreign transactor and is to be completed only if the U.S. insurance company has transactions of the types covered by the particular schedule.

(b) *Who must report.*

(1) *Mandatory reporting.* A BE-140 report is required from each U.S. insurance company with respect to the transactions listed below, if any of the eight items was greater than \$2 million or less than negative \$2 million for the calendar year covered by the survey on an accrual basis:

- (i) Premiums earned, and
- (ii) Losses, on reinsurance assumed;
- (iii) Premiums incurred, and
- (iv) Losses, on reinsurance ceded;
- (v) Premiums earned, and
- (vi) Losses, on primary insurance sold;

(vii) Sales of, and  
(viii) Purchases of, auxiliary insurance services. U.S. insurance companies that file pursuant to this mandatory reporting requirement must complete parts 1 through 3 of Form BE-140 and all applicable schedules. The total amounts of transactions applicable to a particular schedule are to be entered in the appropriate column(s) and these amounts must be distributed among the countries involved in the transactions.

(2) *Voluntary reporting.* If, during the calendar year covered, the U.S. insurance company's transactions do not exceed the exemption level for any of the types of transactions covered by the survey, the U.S. person is requested to provide an estimate of the total for each type of transaction. Submission of this information is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed records search.

(3) Any U.S. insurance company that receives the BE-140 survey form from BEA, but is not reporting data in either the mandatory or voluntary section of the form, must complete Parts 1 through 3 of the survey. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary follow-up contact.

(c) *Covered types of insurance transactions.* The BE-140 survey is intended to collect information on U.S. international insurance transactions. The types of insurance transactions covered are reinsurance assumed from or ceded to insurance companies resident abroad, primary insurance sold to foreign persons, and receipts and payments of auxiliary insurance services.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

[FWS-R9-MB-2009-0124; 91200-1231-9BPP-L2]

RIN 1018-AW31

#### **Migratory Bird Hunting; Proposed 2009-10 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals and Requests for 2010 Spring and Summer Migratory Bird Subsistence Harvest Proposals in Alaska**

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

**ACTION:** Proposed rule; availability of supplemental information.

**SUMMARY:** The U.S. Fish and Wildlife Service (hereinafter the Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2009-10 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule,

describes the proposed regulatory alternatives for the 2009-10 duck hunting seasons, requests proposals from Indian Tribes that wish to establish special migratory game bird hunting regulations on Federal Indian reservations and ceded lands, and requests proposals for the 2010 spring and summer migratory bird subsistence season in Alaska. Migratory game bird hunting seasons provide 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 game bird population status and habitat conditions.

**DATES:** You must submit comments on the proposed regulatory alternatives for the 2009-10 duck hunting seasons by June 26, 2009. Following subsequent **Federal Register** notices, you will be given an opportunity to submit comments for proposed early-season frameworks by July 31, 2009, and for proposed late-season frameworks and subsistence migratory bird seasons in Alaska by August 31, 2009. Tribes must submit proposals and related comments by June 1, 2009. Proposals from the Co-management Council for the 2010 spring and summer migratory bird subsistence harvest season must be submitted to the Flyway Councils and the Service by June 15, 2009.

**ADDRESSES:** You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *U.S. Mail or Hand-Delivery:* Public Comments Processing, Attn: 1018-AW31; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mailed or faxed comments. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Proposals for the 2010 spring and summer migratory bird subsistence season in Alaska should be sent to the Executive Director of the Co-management Council, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503, or fax to (907) 786-3306, or e-mail to [ambcc@fws.gov](mailto:ambcc@fws.gov).

**FOR FURTHER INFORMATION CONTACT:** Ron W. Kokel, at: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP-4107-ARLSQ, 1849 C Street,

NW., Washington, DC 20240, (703) 358-1714. For information on the migratory bird subsistence season in Alaska, contact Fred Armstrong, (907) 786-3887, or Donna Dewhurst, (907) 786-3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

#### 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 are written after giving due regard to "the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds" and are updated annually (16 U.S.C. 704(a)). This responsibility has been delegated to the Service as the lead Federal agency for managing and conserving migratory birds in the United States.

The Service develops migratory game 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 migratory game birds. 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 migratory game bird management information for Federal, State, and Provincial Governments, as well as private conservation agencies and the general public.

The process for adopting migratory game bird hunting regulations, located at 50 CFR 20, is constrained by three primary factors. Legal and administrative considerations dictate how long the rulemaking process will last. Most importantly, however, the biological cycle of migratory game birds controls the timing of data-gathering

activities and thus the dates on which these results are available for consideration and deliberation.

The process includes two separate regulations-development schedules, based on early and late hunting season regulations. Early hunting 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. Early hunting seasons generally begin prior to October 1. Late hunting 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 biological 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 game 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. To determine the appropriate frameworks for each species, we consider factors such as population size and trend, geographical distribution, annual breeding effort, the condition of breeding and wintering habitat, the number of hunters, and the anticipated harvest.

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 always 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 2009-10 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 2009-10 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 2009-10 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 2009-10

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 (further described and discussed above in the Background and Overview section).

Major steps in the 2009-10 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. Mottled Ducks.
    - viii. Wood Ducks.
    - ix. 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 2009–10 duck hunting seasons in mid-July. 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 17, 2009, and those for late seasons on or about September 14, 2009.

### Request for 2010 Spring and Summer Migratory Bird Subsistence Harvest Proposals in Alaska

#### Background

The 1916 Convention for the Protection of Migratory Birds between the United States and Great Britain (for Canada) established a closed season for the taking of migratory birds between March 10 and September 1. Residents of northern Alaska and Canada traditionally harvested migratory birds for nutritional purposes during the spring and summer months. The 1916

Convention and the subsequent 1936 Mexico Convention for the Protection of Migratory Birds and Game Mammals provide for the legal subsistence harvest of migratory birds and their eggs in Alaska and Canada during the closed season by indigenous inhabitants.

On August 16, 2002, we published in the **Federal Register** (67 FR 53511) a final rule that established procedures for incorporating subsistence management into the continental migratory bird management program. These regulations, developed under a new co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives, established an annual procedure to develop harvest guidelines for implementation of a spring and summer migratory bird subsistence harvest. Eligibility and inclusion requirements necessary to participate in the spring and summer migratory bird subsistence season in Alaska are outlined in 50 CFR part 92.

This proposed rule calls for proposals for regulations that will expire on August 31, 2010, for the spring and summer subsistence harvest of migratory birds in Alaska. Each year, seasons will open on or after March 11 and close prior to September 1.

### Alaska Spring and Summer Subsistence Harvest Proposal Procedures

We will publish details of the Alaska spring and summer subsistence harvest proposals in later **Federal Register** documents under 50 CFR part 92. The general relationship to the process for developing national hunting regulations for migratory game birds is as follows:

#### (a) Alaska Migratory Bird Co-Management Council

The public may submit proposals to the Co-management Council during the period of November 1–December 15, 2009, to be acted upon for the 2010 migratory bird subsistence harvest season. Proposals should be submitted to the Executive Director of the Co-management Council, listed above under the caption **ADDRESSES**.

#### (b) Flyway Councils

(1) The Co-management Council will submit proposed 2010 regulations to all Flyway Councils for review and comment. The Council's recommendations must be submitted prior to the Service Regulations Committee's last regular meeting of the calendar year in order to be approved for spring and summer harvest beginning March 11 of the following calendar year.

(2) Alaska Native representatives may be appointed by the Co-management Council to attend meetings of one or more of the four Flyway Councils to discuss recommended regulations or other proposed management actions.

#### (c) Service Regulations Committee

The Co-management Council will submit proposed annual regulations to the Service Regulations Committee (SRC) for their review and recommendation to the Service Director. Following the Service Director's review and recommendation, the proposals will be forwarded to the Department of the Interior for approval. Proposed annual regulations will then be published in the **Federal Register** for public review and comment, similar to the annual migratory game bird hunting regulations. Final spring and summer regulations for Alaska will be published in the **Federal Register** in the preceeding winter after review and consideration of any public comments received.

Because of the time required for review by us and the public, proposals from the Co-management Council for the 2010 spring and summer migratory bird subsistence harvest season must be submitted to the Flyway Councils and the Service by June 15, 2009, for Council comments and Service action at the late-season SRC meeting.

### Review of Public Comments

This proposed rulemaking contains the proposed regulatory alternatives for the 2009–10 duck hunting seasons. This proposed rulemaking also describes other recommended changes or specific preliminary proposals that vary from the 2008–09 final frameworks (*see* August 27, 2008, **Federal Register** (73 FR 50678) for early seasons *and* September 25, 2008, **Federal Register** (73 FR 55602) for late seasons) 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 for the 2009–10 season. We seek additional information and comments on this proposed rule.

### Consolidation of Notices

For administrative purposes, this document consolidates the notice of intent to establish open migratory game bird hunting seasons, the request for Tribal proposals, and the request for Alaska migratory bird subsistence seasons 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:

*Regions 1 and 8 (California, Idaho, Nevada, Oregon, Washington, Hawaii, and the Pacific Islands)*—Brad Bortner, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232-4181; (503) 231-6164.

*Region 2 (Arizona, New Mexico, Oklahoma, and Texas)*—Jeff Haskins, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103; (505) 248-7885.

*Region 3 (Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin)*—Jane West, U.S. Fish and Wildlife Service, Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111-4056; (612) 713-5432.

*Region 4 (Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico and Virgin Islands, South Carolina, and Tennessee)*—David Viker, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; (404) 679-4000.

*Region 5 (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia)*—Diane Pence, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035-9589; (413) 253-8576.

*Region 6 (Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming)*—James Dubovsky, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Building, Denver, Colorado 80225; (303) 236-8145.

*Region 7 (Alaska)*—Russ Oates, 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 game 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 game 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. 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 game bird resource. Since the inception of these guidelines, we have reached annual agreement with Tribes for migratory game 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 also ensuring that the migratory game 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 2009-10 migratory game bird hunting season should submit a proposal that includes:

(1) The requested migratory game bird hunting season dates and other details regarding the proposed regulations;

(2) Harvest anticipated under the proposed regulations;

(3) Methods employed to 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 game bird resource; and

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

A Tribe that desires the earliest possible opening of the migratory game bird season for nontribal members should specify this request in its 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 for nontribal members, the proposal should request the same daily bag and possession limits and season

length for migratory game birds 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 review by us and the public, Indian Tribes that desire special migratory game bird hunting regulations for the 2009–10 hunting season should submit their proposals as soon as possible, but no later than June 1, 2009.

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

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.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post all comments in their entirety—including your personal identifying information—on <http://www.regulations.gov>. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Room 4107, 4501 North Fairfax Drive, Arlington, VA 22203.

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 (FSES 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 **FOR FURTHER INFORMATION CONTACT**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). We have prepared a scoping report summarizing the scoping comments and scoping meetings. The report is available by either writing to the address indicated under **FOR FURTHER INFORMATION CONTACT** or by viewing on our Web site at <http://www.fws.gov/migratorybirds>.

### Endangered Species Act Consideration

Prior to issuance of the 2009–10 migratory game bird hunting regulations, we will comply with 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 12866

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule under Executive Order 12866. A regulatory cost-benefit analysis has been prepared and is available at <http://www.fws.gov/migratorybirds/reports/reports.html> or at <http://www.regulations.gov>. OMB bases its determination of regulatory significance upon the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

### Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

### Regulatory Flexibility Act

The regulations have a significant economic impact on substantial

numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. 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 2008 Analysis was based on the 2006 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 approximately \$1.2 billion at small businesses in 2008. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at <http://www.fws.gov/migratorybirds/reports/reports.html> or at <http://www.regulations.gov>.

#### **Small Business Regulatory Enforcement Fairness Act**

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons 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 (44 U.S.C. 3501 *et seq.*). 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 our Migratory Bird Surveys and assigned control number 1018–0023 (expires 2/28/2011). 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 Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska, and

assigned control number 1018–0124 (expires 1/31/2010). 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 proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

#### **Takings Implication Assessment**

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

#### **Energy Effects—Executive Order 13211**

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

#### **Government-to-Government Relationship With Tribes**

In accordance with the President's memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian Tribes and have determined that there are no effects on

Indian trust resources. However, in this proposed rule we solicit proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2009–10 migratory bird hunting season. The resulting proposals will be contained in a separate proposed rule. By virtue of these actions, we have consulted with Tribes affected by this rule.

#### **Federalism Effects**

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Indian 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.

**Authority:** The rules that eventually will be promulgated for the 2009–10 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: March 5, 2009.

**Jane Lyder,**

*Assistant Deputy Secretary.*

#### **Proposed 2009–10 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. At this time, we are proposing no changes from the final 2008–09 frameworks established on August 27 and September 25, 2008 (73 FR 50678 and 73 FR 55602). 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 propose to continue use of adaptive harvest management (AHM) to help determine appropriate duck-hunting regulations for the 2009–10 season. AHM is a tool that permits sound resource decisions in the face of uncertain regulatory impacts, as well as providing a mechanism for reducing that uncertainty over time. The current AHM protocol is used to evaluate four alternative regulatory levels based on the population status of mallards (special hunting restrictions are enacted for species of special concern, such as canvasbacks, scaup, and pintails).

Until last year, the prescribed regulatory alternative for the Pacific, Central, and Mississippi Flyways was 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). In 2008, however, we implemented the western mallard AHM protocol for the 2008–09 hunting season. This new protocol sets hunting regulations in the Pacific Flyway based on the status and dynamics of a newly defined stock of “western” mallards. Currently, western mallards are defined as those breeding in Alaska (as based on Federal surveys in strata 1–12), and in California and Oregon (as based on State-conducted surveys). As we detailed in the July 24, 2008, **Federal Register** (73 FR 43290), implementation of this new AHM decision framework for western mallards required several further considerations. First, the new protocol necessitated that we “rescale” the closed season constraint in the existing mid-continent mallard (identified above as those breeding in central North America) AHM strategy from 5.50 to 4.75 million mallards and the population objective from 8.8 to 8.5 million mallards. These “rescalings” were necessary to adjust for removing

mallards breeding in Alaska from the mid-continent population and assigning them to the western mallard population. Second, the optimal regulatory policies for western mallards (and mid-continent mallards) are based on independent optimization. That is, the optimum regulations for mid-continent mallards and western mallards are determined independently, and based upon the breeding stock that contributes primarily to each Flyway (western mallards for the Pacific Flyway and mid-continent mallards for the Central and Mississippi Flyways). Third, that the current regulatory alternatives remain in place for the Pacific Flyway, while we continue to work with the Pacific Flyway to develop regulatory options necessary to effect a substantive increase or decrease in the harvest rate of western mallards. And lastly, regulations in Alaska would continue to be addressed as an early season issue, and future consideration of Alaska regulatory changes would be based on the status of the western mallards rather than mid-continent mallards. We are recommending a continuation of this protocol for the 2009–10 season.

Finally, since 2000, we have prescribed a regulatory alternative for the Atlantic Flyway 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). We are recommending a continuation of this protocol for the 2009–10 season.

The final AHM protocol for the 2009–10 season will be detailed in the early-season proposed rule, which will be published in mid-July (*see* Schedule of Regulations Meetings *and* **Federal Register** Publications at the end of this proposed rule for further information).

We will propose a specific regulatory alternative for each of the Flyways during the 2009–10 season after survey information becomes available in late summer. More information on AHM is located at <http://www.fws.gov/migratorybirds/mgmt/AHM/AHM-intro.htm>.

#### B. Regulatory Alternatives

The basic structure of the current regulatory alternatives for AHM was adopted in 1997. The alternatives remained largely unchanged until 2002, when we (based on recommendations from the Flyway Councils) extended framework dates in the “moderate” and “liberal” regulatory alternatives by changing the opening date from the Saturday nearest October 1 to the Saturday nearest September 24, and changing the closing date from the

Sunday nearest January 20 to the last Sunday in January. These extended dates were made available with no associated penalty in season length or bag limits. At that time we stated our desire to keep these changes in place for 3 years to allow for a reasonable opportunity to monitor the impacts of framework-date extensions on harvest distribution and rates of harvest prior to considering any subsequent use (67 FR 12501).

For 2009–10, we are proposing to maintain the same regulatory alternatives that were in effect last year (see accompanying table for specifics of the proposed regulatory alternatives). Alternatives are specified for each Flyway and are designated as “RES” for the restrictive, “MOD” for the moderate, and “LIB” for the liberal alternative. We will announce final regulatory alternatives in mid-July. Public comments will be accepted until June 26, 2009, and should be sent to an address listed under the caption **ADDRESSES**.

#### D. Special Seasons/Species Management

##### v. Pintails

As we have stated over the past several years, we remain committed to the development of a framework to inform pintail harvest management based on a formal, derived strategy and clearly articulated management objectives. In collaboration with scientists from the U.S. Geological Survey, we developed a fully adaptive harvest management protocol for pintails and forwarded the technical details to the Flyway Councils for their review in 2008. We are requesting the Flyways conclude their review and provide any modifications or adjustments they believe are warranted no later than November 2009. We will then modify the proposed derived strategy based on these comments. We anticipate making the revised strategy available for review by Flyway Councils and the public with the intent of implementing a revised harvest strategy for pintails during the 2010–11 regulatory cycle.

##### vi. Scaup

The continental scaup (greater *Aythya marila* and lesser *Aythya affinis* combined) population has experienced a long-term decline over the past 20 years. Over the past several years in particular, we have continued to express our growing concern about the status of scaup (see the May 28, 2008, **Federal Register**, 73 FR 30712, for a review of actions we have taken over the last few

years to synthesize data relevant to scaup harvest management and frame a scientifically sound scaup harvest strategy, or see <http://www.fws.gov/migratorybirds/reports/reports.html> for a complete list of reports). While the breeding population estimate for scaup was 3.74 million last spring, this estimate was not significantly different from 2007 and remained 27 percent below the long-term average.

In the July 24, 2008, **Federal Register** (73 FR 43290), we adopted a scaup harvest strategy that resulted from five years of development and review in cooperation with the Flyway Councils. One of the outcomes of our communication efforts with the Flyways was an agreement to consider an alternative model that represents the belief that the scaup population will continue to decline to a new equilibrium level and that harvest has no effect on the decline. The results from the alternative model, along with the existing model, would then be compared and weighted through an adaptive process while forming a basis for the derivation of an optimal harvest strategy.

We have begun preliminary scoping of the technical and policy issues associated with incorporating such an alternative. However, the harvest management implications of developing an adaptive decision process that accommodates ongoing system change are largely unexplored and will likely require a significant amount of effort to evaluate. Additional technical work is necessary and policy guidance will be required throughout model development. We will rely on technical feedback from the waterfowl management community to reach a consensus on the final model. At this time it is unclear when such a model will be available for use.

During last year's regulatory cycle we solicited proposals from the Flyways regarding the configuration of their restrictive, moderate and liberal regulatory packages for scaup. Such packages were to remain in place for 3 years, at which time their performance was to be evaluated. All Flyway Councils eventually submitted proposals that met criteria we had established; however, some State agencies expressed dissatisfaction with the process. Consequently, we indicated our willingness to revisit the process for the 2009–10 regulatory cycle, and we

have provided Flyway Councils with guidelines to be used in developing new packages (see <http://www.regulations.gov> for guidelines provided to Flyway Councils), if they choose to do so. The suite of packages adopted during this current regulatory cycle will remain in place for the next 3 years and will be evaluated at the end of that period. These restrictions will also apply to Flyways that choose not to reconfigure their regulatory packages. To facilitate our review of any new regulatory packages, we request that Flyway Councils provide us information on potential changes to scaup regulatory packages either in writing prior to, or at the early-season Service Regulations Committee meeting in June 2009. We look forward to continued cooperation with the Flyways in further development of the scaup harvest management strategy.

#### vii. Mottled Ducks

The Service and other agencies have been concerned about the status of mottled ducks since the late 1990s. This long-term concern stems from negative trends in population survey data, growth rate modeling based on banding and parts collection data, loss and degradation of habitat, interbreeding with captive-reared and feral mallards, and increased harvest rates as the result of longer hunting seasons since 1997. In the past, we have expressed our desire to work with the States to develop a harvest-management strategy for mottled ducks. Since 2005, several workshops have been convened with State agencies, the U.S. Geological Survey, and others to discuss the status of mottled ducks, population structure and delineation, and to evaluate current monitoring programs and plan for the development of new population surveys. A major conclusion from these workshops was that mottled ducks should be managed as two separate populations, a Florida Population and a Western Gulf Coast Population. Secondly, the lack of a range-wide population survey for Western Gulf Coast mottled ducks is a significant impediment to management. Additionally, a report expanding on analyses first presented at the 2005 Workshop has recently been released (available at <http://www.fws.gov/migratorybirds/reports/reports.html>) and distributed to the Central and Mississippi Flyways. This report

included an assessment of available data and suggested that there has been a reduction in the harvest potential for this population.

We are encouraged by the progress that has been made toward development of monitoring systems to improve assessment capabilities for mottled ducks. We provided the Flyway Councils with analyses of harvest data that examined potential harvest restrictions to reduce harvest rates (available at <http://www.fws.gov/migratorybirds/reports/reports.html>), should that be deemed necessary, and we appreciate the responses from the Flyways on this analysis. However, after consideration of long-term population trends for this population, recent harvest levels, and this year's breeding habitat conditions (especially on the Texas Gulf Coast), we believe that a reduction in harvest levels for this population may be appropriate. Thus, we strongly encourage the Central and Mississippi Flyway Councils to examine the status of mottled ducks and assess the potential need for any regulatory actions for the 2009–10 season.

#### viii. Wood Ducks

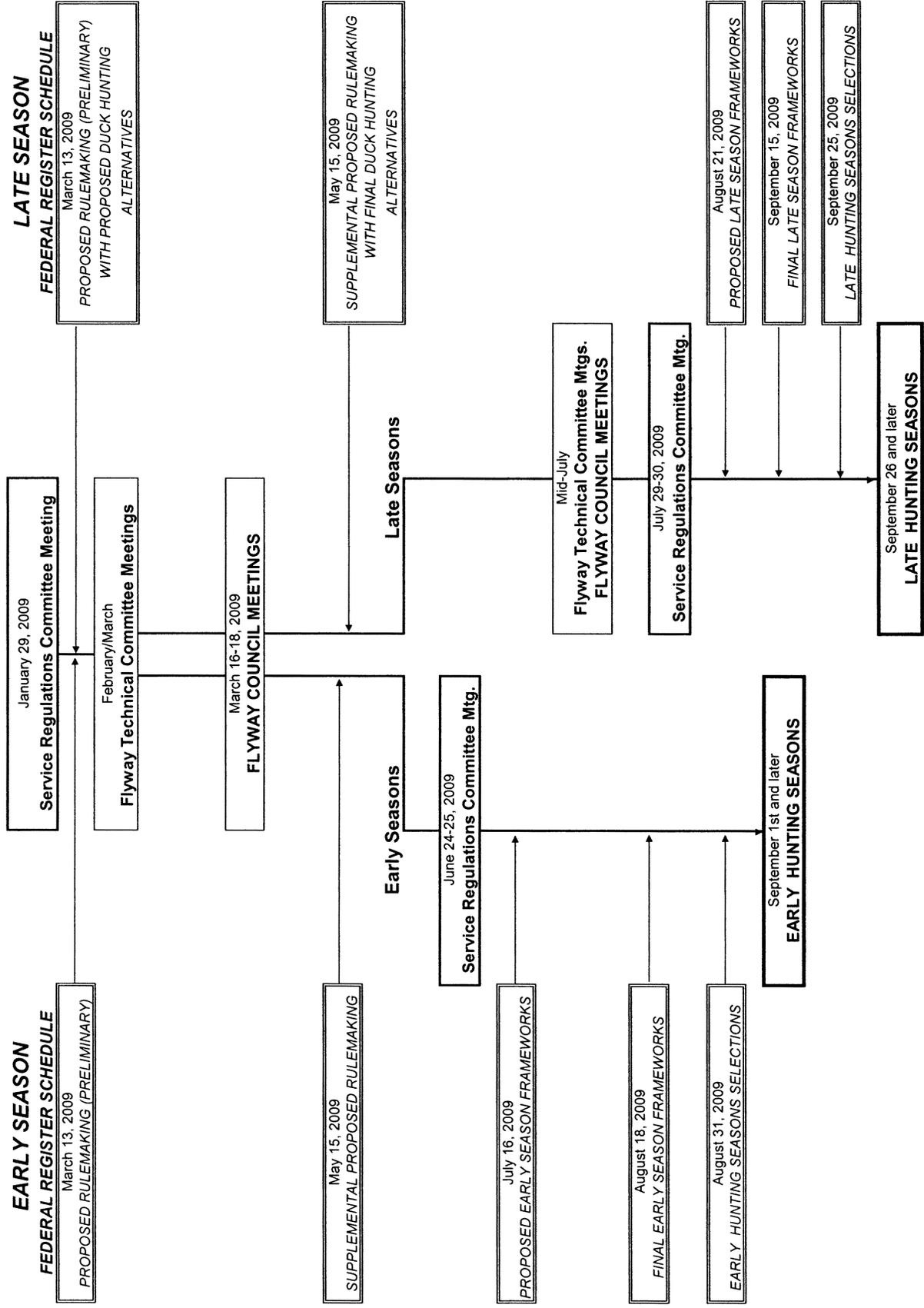
As we stated last year, we look forward to continuing involvement by the Flyways in developing a wood duck harvest strategy, including (1) determining specific harvest management objectives; (2) determining regulatory alternatives; (3) designation of and support for appropriate population monitoring programs; and (4) designation of the appropriate test criteria for making management decisions. We would like the Flyways to develop this strategy for implementation during the 2010–11 hunting season.

### 14. Woodcock

In 2008, we completed a review of available woodcock population databases. Concurrently, we requested the Atlantic, Mississippi, and Central Flyway Councils to appoint members to a task group to work with the Service on developing a woodcock harvest strategy. The task group is currently evaluating potential approaches as to how available databases could be utilized in a woodcock harvest strategy. It is anticipated that a draft harvest strategy would be available for consideration for the 2010–2011 hunting season.

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# 2009 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS



**PROPOSED REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2009-10 SEASON**

	ATLANTIC FLYWAY			MISSISSIPPI FLYWAY			CENTRAL FLYWAY (a)			PACIFIC FLYWAY (b)(c)		
	RES	MOD	LIB									
Beginning Shooting Time	1/2 hr. before sunrise											
Ending Shooting Time	Sunset											
Opening Date	Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24
Closing Date	Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.
Season Length (in days)	30	45	60	30	45	60	39	60	74	60	86	107
Daily Bag/Possession Limit	3 6	6 12	6 12	3 6	6 12	6 12	3 6	6 12	6 12	4 8	7 14	7 14
<b>Species/Sex Limits within the Overall Daily Bag Limit</b>												
Mallard (Total/Female)	3/1	4/2	4/2	2/1	4/1	4/2	3/1	5/1	5/2	3/1	5/2	7/2

- (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: restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.
- (b) 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.
- (c) In Alaska, framework dates, bag limits, and season length would be different from the remainder of the Pacific Flyway. The bag limit would be 5-8 under the restrictive alternative, and 7-10 under the moderate and liberal alternatives. Under all alternatives, season length would be 107 days and framework dates would be Sep 1 - Jan. 26.