

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,  
Secretary.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

RIN 1018-AD74

#### **Migratory Bird Hunting: Regulations Regarding the Prohibition Against Artificially Altering or Manipulating Natural Vegetation in Moist Soil Areas To Attract Waterfowl for Hunting Purposes**

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

**ACTION:** Notice of intent and request for comments.

**SUMMARY:** The principal purpose of this action is to notify the public and invite comments regarding promulgation of a separate rulemaking that will govern the manner in which, or if at all, natural vegetation in moist soil areas may be altered or manipulated artificially to attract waterfowl for hunting purposes. Previously, the subject regulations [§ 20.21(i)] had been part of the ongoing review of 50 CFR Part 20, but henceforth will be considered separately.

**DATES:** Comments on this proposal must be received by June 20, 1996.

**ADDRESSES:** Comments regarding this notice should be addressed to: Director (FWS/NAWWO), U.S. Fish and Wildlife Service, 110 ARLSQ, 1849 C ST., NW., Washington, DC 20240. Comments received on this notice will be available for public inspection during normal business hours in Room 110, Arlington Square Building, 4401 No. Fairfax Drive, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Dr. Byron K. Williams, Executive Director, or Dr. Keith A. Morehouse, Wildlife Biologist, North American Waterfowl and Wetlands Office, 703/358-1784; Faxform 703/358-2282.

**SUPPLEMENTARY INFORMATION:** The Service is currently undertaking review and revision of the migratory bird hunting regulations contained in 50 CFR Part 20; there have been two earlier notices regarding this review (56 FR 57872; 58 FR 63488). Publication of the proposed rule that incorporates and/or takes into consideration comments submitted as part of that review will occur soon.

In the Part 20 review process, the Service has received many comments concerning waterfowl baiting. In particular, many commenters have expressed the need for changes in regulations addressing manipulation of natural vegetation in moist soil areas to attract waterfowl for hunting. Based on these comments, the Service proposes opening for further review and comment only the particular waterfowl baiting that occurs with natural vegetation in moist soil areas. However, it would not be judicious to treat a single concern of waterfowl baiting in isolation. Thus, the Service further proposes to remove the entire waterfowl aspect of the baiting regulations from the broader review of migratory bird hunting regulations and treat it as a separate rulemaking. Subsequently, the additional review of the manipulation of natural vegetation on moist soil areas will be incorporated with other aspects of waterfowl baiting in a single, proposed rulemaking.

Waterfowl baiting has been an issue for years, possibly extending back to the inception of the regulations and there is a wide diversity of opinion on the subject. Some see the baiting regulations as highly definitive and clear; others believe that they lack definition and subject to broad, individual interpretation. The concern is how and whether to consider changing the waterfowl baiting regulations to allow for management (i.e., mowing or other artificial manipulation) of natural vegetation for waterfowl habitat. There are four key issues:

(1) What are the potential impacts on available habitat? Supporters of a regulatory change suggest that the regulations as currently enforced impose unnecessary economic burdens on landowners (e.g., by altering otherwise cost-effective mowing schedules). As a result, some groups argue that the current baiting regulations will lead to loss of waterfowl habitats as landowners transfer these lands to other uses. Though such losses may occur, at present there is no way to determine their magnitude and importance.

(2) What are the potential impacts on waterfowl populations? Waterfowl harvest is likely to increase; however, the magnitude of the increase and resulting impacts on populations are open to speculation since little or no evidence exists to support a position.

(3) What are the potential impacts on law enforcement? Any change must be enforceable by law enforcement personnel and clearly define what constitutes "natural vegetation." Hunters must be able to clearly recognize what is lawful and what is not

lawful, so that law enforcement agents are not in the position of certifying areas as legal for hunting, or trying to enforce rules that are unclear and subject to wide individual interpretation.

(4) What is the effect on existing law? Courts have interpreted the current baiting regulations in a number of decisions. These judicial opinions add to the ability of those concerned with the regulations to determine accurately the scope of their prohibitions. Any change to the regulations would render some of this existing case law inapplicable and, therefore, would at least temporarily increase the degree of uncertainty associated with the regulations.

The Service is not offering strategies or options to resolve the issue at this time. The intent of this notice is to apprise the public that the Service is beginning a process to review and may propose to change the baiting regulations as they apply to natural vegetation manipulation and waterfowl hunting. At a later date, the Service will provide more detail on the nature of the process and how the Service proposes to involve the public.

You may at any time submit preliminary comments regarding whether revision of the waterfowl baiting regulations is desirable. However, the Service does plan to publish a proposed rule during which specific comments will be solicited. In addition, the Service will consider in future proposed rulemakings any comments received in response to previous notices (referenced earlier in this section) pertaining to waterfowl baiting and moist soil management.

In summary, the principal purpose of this action is to notify the public and invite any comments regarding promulgation of separate rulemakings that will govern the manner in which, or if at all, natural vegetation in moist soil areas may be altered or manipulated artificially to attract waterfowl for hunting purposes.

#### NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500-1508), the Service will comply with NEPA prior to adopting a final rule.

#### Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531-1543; 87 Stat. 884), provides that, "The Secretary shall review other programs

administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out \* \* \* is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat \* \* \*"

Consequently, the Service will initiate Section 7 consultation under the ESA for the final rulemaking to change, if appropriate, the waterfowl baiting regulations. When completed, the results of the Service's consultation under Section 7 of the ESA may be

inspected at, and will be available from, the North American Waterfowl and Wetlands Office, Suite 110, 4401 North Fairfax Drive, Arlington, Virginia 22203.

#### Authorship

The primary author of this notice is Dr. Keith A. Morehouse, U.S. Fish and Wildlife Service, North American Waterfowl and Wetlands Office, Arlington, Virginia.

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

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

The regulation(s) that eventually may be promulgated to govern baiting are authorized under the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703-711); the Fish and Wildlife Improvement Act of 1978 (November 8, 1978), as amended (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended (16 U.S.C. 742 a-d and e-j).

Dated: March 15, 1996.

George T. Frampton,  
*Assistant Secretary for Fish and Wildlife and Parks.*

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