

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 20

RIN 1018-AE93

**Migratory Bird Hunting; Final Regulatory Alternatives for the 1998-99 Duck Hunting Season**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

**SUMMARY:** This proposed rule supplement establishes the Service's final regulatory alternatives for the 1998-99 duck hunting season for the States of Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee. The effect of this supplement is to facilitate the selection of the appropriate regulatory alternative for the 1998-99 duck hunting season for these States. The selection of the alternative for the 1998-99 season will be published in the **Federal Register** in late-August.

**FOR FURTHER INFORMATION CONTACT:** Paul R. Schmidt, Chief, MBMO, U.S. Fish and Wildlife Service, (703) 358-1714.

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

On March 20, 1998, the Service published in the **Federal Register** (63 FR 13748) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On May 29, 1998, the Service published in the **Federal Register** (63 FR 29518) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 1998-99 duck hunting season. The May 29 supplement also provided detailed information on the 1998-99 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings. On June 25, 1998, the Service held a public hearing to announce the proposed early-season migratory bird hunting regulations frameworks. On July 17, 1998, the Service published in the **Federal Register** (63 FR 38700) a third document specifically dealing with proposed early-season frameworks for the 1998-99 season. The July 17 supplement also established the final regulatory alternatives for the 1998-99 duck hunting season for all States except Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee.

This document is the fourth in a series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations and deals specifically with the final regulatory alternatives for the 1998-99 duck hunting season for the States of Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee. It will lead to the selection of the proposed alternative and ultimately final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 1998-99 season. The Service has considered all pertinent comments received through July 1, 1998, in developing this document. The Service will publish proposed regulatory frameworks, including the selection of the appropriate regulatory alternative for the 1998-99 duck hunting season, for late seasons in the **Federal Register** on or about August 21, 1998.

**Comments Received at June 25 Public Hearing**

Mr. Brad Bales, gamebird program coordinator for the Oregon Department of Fish and Wildlife, made two statements on behalf of two separate organizations. The first, on behalf of the National Flyway Council, was an announcement that the National Flyway Council would establish a committee to address the framework question from a national perspective. At their next meeting, the National Flyway Council will determine the composition of the group and establish a time frame for the committee to complete their work and make their recommendations back to the National Flyway Council.

Mr. Bales' second comment was on behalf of the Pacific Flyway Council. He indicated that the Pacific Flyway Council urged the Service not to extend the framework dates for duck hunting in the lower Mississippi Flyway as recently proposed in the **Federal Register**. Further, he offered the support of the Pacific Flyway Council for the effort proposed by the National Flyway Council.

Mr. Robert McDowell, representing the Atlantic Flyway Council stressed the Flyway's proposal that framework dates remain fixed where they currently are in all Flyways and disapproved of attempts occurring outside the formal regulatory process to change them. He further indicated that if the Service finalized the proposed framework closing date extensions, all States should have the same opportunity. He supported the National Flyway Council efforts to resolve this problem that is divisive among Flyways.

Mr. Charles Kelley, representing the Alabama Department of Conservation and Natural Resources, commented in support of the proposed extension of the framework closing date for duck hunting, stating that the State had been requesting an extension for a number of years because a later hunting season would allow them to take better advantage of duck abundance in the State.

**Written Comments Received**

The preliminary proposed rulemaking, which appeared in the March 20 **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The supplemental proposed rule, which appeared in the May 29 **Federal Register**, defined the public comment period for the Service's proposed regulatory alternatives for the 1998-99 duck hunting season. The public comment period for the proposed regulatory alternatives closed July 1, 1998. Comments pertaining to the proposed alternatives are summarized below and numbered in the order used in the March 20 **Federal Register**. All of these comments were included in the July 17 supplement, however, comments related to the regulatory alternatives for the States of Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee were not addressed in that document. They are instead addressed here, and thus, have been repeated as a convenience for the reader. Only the numbered items pertaining to the proposed regulatory alternatives for which written comments were received are included.

The Service received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

**General***I. Ducks*

The categories used to discuss issues related to duck harvest management are as follows: (A) General Harvest Strategy, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special Seasons/Species Management. Only those categories

containing substantial recommendations are included below.

#### A. Harvest Strategy Considerations

On May 29, 1998, the Service published for public comment the proposed regulatory alternatives for the 1998–99 duck hunting season (63 FR 29518). The proposed regulatory alternatives were identical to the alternatives utilized in 1997–98 except for the proposal to offer an extension of the framework closing date to no later than January 31 in those States in the Lower Region of the Mississippi Flyway (Arkansas, Alabama, Kentucky, Louisiana, Mississippi, and Tennessee). Further discussion of the framework issue can be found in B. Framework Dates.

*Council Recommendations:* All four Flyway Councils generally endorsed continuation of the 1997–98 regulatory alternatives. Modifications recommended by the Councils were identified and discussed in the May 29, 1998, **Federal Register**. The recommendations are reiterated below and modified where necessary based on subsequent comments received from the Flyway Councils.

The Atlantic Flyway Council recommended that the duck hunting packages used for the 1997–98 season be continued for the 1998–99 season.

The Upper-Regulations Committee of the Mississippi Flyway Council recommended that the 1997–98 regulations packages be maintained for the 1998–99 duck season. These consisted of 20-, 30-, 45-, and 60-day seasons, with bag limits ranging from 3 to 6 ducks, including appropriate species restrictions, and frameworks dates from the Saturday nearest October 1 to the Sunday nearest January 20.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the regulatory packages for the 1997–98 season be continued in 1998–99, with the exception of framework dates (see further discussion in B. Framework Dates).

The Central Flyway Council recommended that the duck hunting packages used for the 1997–98 season be continued for the 1998–99 season.

*Service Response:* In the July 17 proposed rule, the Service indicated that for the 1998–99 regular duck hunting season, the Service would utilize the four regulatory alternatives detailed in the accompanying table for all States except Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee. The regulatory alternatives for those six States were not finalized pending a decision on the framework

closing date and associated season length.

For the 1998–99 regular duck hunting season, the Service will utilize the previously identified regulatory alternatives for all States. Details of the four alternatives are identified in the accompanying table. 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. The Service is convinced that these alternatives will be successful at providing maximum hunting opportunity, while not jeopardizing the ability of duck species to attain population goals when habitat conditions are adequate. The Service will propose a specific regulatory alternative when survey data on waterfowl population and habitat status are available.

#### B. Framework Dates

*Council Recommendations:* The Atlantic Flyway Council recommended no change to the current framework dates, believing that extensions would be premature without knowing the potential harvest impacts, which could reduce the frequency of liberal regulations and would reduce the likelihood that eastern mallards will be fully incorporated into Adaptive Harvest Management (AHM) this year. In a subsequent letter, the Council opposed the Service’s May 29, 1998, framework extension proposal because the proposal was developed outside the normal Flyway meeting schedule which prohibited Flyway Council review. The Council voiced concerns regarding the impact on the AHM process, adverse impacts on hunting opportunities across all Flyways to accommodate desires of a small region which already enjoys very high hunter success, negative biological impacts on mallard pairing and hen body condition, and impacts on eastern mallard stocks, black ducks, and wood ducks. They believe the proposal calls into question the fair allocation of a shared resource and mechanisms used to achieve that allocation. The Council warned that allowing extensions without using existing Flyway Council protocol would fracture the existing Flyway system and politicize the system. The Council recommended delaying action on frameworks for at least one year to allow appropriate State and Flyway review.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended the Service allow States to choose a framework closing date as late as January 31 with a 10% penalty in days.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended no change in existing framework dates. The Committee also recommended that if the Service were to offer States the opportunity to extend frameworks, the extension should be coupled with a commensurate reduction in season length and/or bag limits in the participating States to offset the predicted increase in harvest.

The Central Flyway Council recommended maintaining the current opening and closing framework dates adopted under AHM. However, at some future date, when the packages are reviewed for modification, the Council recommended that the framework dates issue should be cooperatively dealt with by all Flyways in seeking an agreement for equitable harvest opportunity. In a subsequent letter, the Council opposed the Service’s May 29, 1998, proposal because it was developed outside the normal Flyway Council/Service review process. They believe the proposal’s adoption will create animosity among States and erode the cooperative framework the Council system has provided for the past fifty years, and threaten the success of AHM. The Council perceives the extension issue as one of fair allocation of harvest opportunity. The Council is concerned that other States are not being offered the extension and may be held to a more stringent criteria for future changes. The Council urged the Service to work with Flyways to continue development of the AHM program, which the Council believes will promote enhanced hunting opportunities in the future. The Council stated that both early and late framework issues should be addressed when AHM packages are next revised and that they look forward to working with the other Flyways and the Service towards an agreement on equitable harvest opportunity.

The Pacific Flyway Council recommended maintaining the current opening and closing duck season framework dates adopted under AHM for the near future.

*Written Comments:* The Mississippi Department of Wildlife, Fisheries, and Parks commented in favor of extending the framework closing date to January 31 and submitted an analysis of data based on the most recent two years. Although their analysis indicated an appropriate reduction in season length of 3 days, they proposed to reduce the season length 8 days, based on a more liberal estimate of harvest increases.

The Kentucky Department of Fish and Wildlife Resources communicated their interest in having the option of a

January 31 framework closing date. While the State had no specific data related to an appropriate penalty for the extension, they believed Mississippi's analysis was applicable for the Lower Region at this time, unless more appropriate analyses had been conducted elsewhere. Kentucky urged the Service to develop final framework packages based on the information that most accurately reflects the anticipated impacts.

The Arkansas Game and Fish Commission expressed concern that the framework issue had been pursued largely outside the Flyway Council process and threatened the long-term waterfowl management process, but believed a component of its hunters was interested in the extended opportunity. Arkansas expressed concern over the potential for the extensions to result in more restrictive harvest regulations in the future, and the inability to accurately measure harvest rates and assess impacts of the extensions.

The Tennessee Wildlife Resources Agency stated that the recent warmer-than-normal conditions had renewed sportsmen's interest in framework extensions. The State pledged the assistance of its personnel to help resolve the framework issue in a fair, equitable, and non-divisive manner. An Agency resolution called for the Service and the Mississippi Flyway Council to work towards extending season frameworks in a fair and equitable manner for the 1998-99 season and beyond.

The Louisiana Department of Wildlife and Fisheries supported a framework extension to January 31 as long as the State's participation does not require a reduction in hunting days or bag limits. Louisiana was disappointed by the proposed rule and hoped the Service would develop a practical resolution to this contentious issue. A 1997 opinion survey of Louisiana hunters indicated a large majority preferred a January 31 closing date and State waterfowl survey data indicate that more ducks are in Louisiana during December and January. The State was unable to develop, in the allotted period, an estimate of the impact on harvest rates that they would consider reliable.

The Alabama Department of Conservation and Natural Resources stated that they had supported framework extensions in Alabama for many years and support maximizing hunting opportunities as long as the resource is not negatively impacted. The Department stated that Alabama hunter success is near or below the Mississippi Flyway average as shown by seasonal duck harvest per hunter and that an

increased proportion of mallards harvested in Alabama may help offset the long-term decline in Canada goose harvest opportunity in Alabama. Alabama had no data regarding an offset penalty and would rely on the analysis from Mississippi.

The Pennsylvania Game Commission opposed the extension proposal. Pennsylvania stated the proposal was developed without consultation with the other Flyway Councils, it conflicted with cooperatively developed AHM packages, and would confound attempts to assess impacts of season length on harvest. Concern was expressed about the potential for increased harvest of eastern duck stocks and the potential for more restrictive harvest opportunities on a broad scale if frameworks were extended in southern States. Pennsylvania believed that, at the very least, consideration of this proposal should be delayed until Flyway Councils and the AHM working group had assessed its ramifications.

The South Carolina Department of Natural Resources objected to the proposal to limit the extension of the framework closing date to the southern portion of the Mississippi Flyway. They stated that waterfowl hunters in South Carolina have been dissatisfied with the framework dates for a very long time, and the proposal to restrict the extension is arbitrary and capricious and violates the tenet of "fairness" that we have operated under for so many years as relates to the nationwide management of migratory birds through the regulatory process administered by the Service. They recommended that the same option for extension of the framework closing date be offered to States in the southern portion of the Atlantic Flyway.

The Georgia Department of Natural Resources did not support the extension proposal because it undermined the primary goals of the AHM process which had been adopted by all Flyways. They believed adoption of the proposal would serve as a catalyst for additional regional campaigns leading to increased regulatory inconsistency. Many of Georgia's hunters strongly desire a framework extension to January 31; however, until current packages are tested over a longer period, it was not in the long-term interest of waterfowl to extend frameworks. If changes are to be made now, extensions should be available to all States. The Lower Mississippi Flyway proposal has triggered discussions regarding a southern coalition within the Atlantic Flyway, intended to pursue southern issues and framework extensions in that region.

The New York State Department of Environmental Conservation requested that the proposed framework extension be deferred for one year to allow adequate review by all Flyway Councils and the AHM working group. New York expressed concerns that the proposal was developed without Flyway Council review, was counter to AHM principles, that efforts on framework extensions would delay the incorporation of eastern mallards into the decision process, future harvest opportunity for all Flyways could be adversely affected, eastern duck stocks could be impacted, and that adoption of the proposal would spawn additional requests from special interest groups. The Department stated that when regulation packages were set and agreed to by all Councils, it was understood that they would be stable for several years, New York recommended that the Flyway Councils and the AHM working group work this year to devise a strategy for 1999.

The North Dakota Game and Fish Department stressed that waterfowl harvest management should be based on sound scientific information and objectives established through the Flyway Council process. North Dakota expressed great concern over the unfairness of extending southern frameworks when northern States have benefitted little from special teal seasons and recently lengthened seasons. They believed if an extension is offered to southern States similar opportunity must be offered to all States.

The South Dakota Department of Game, Fish and Parks urged the Service to not extend the framework closing date in the southern part of the Mississippi Flyway, since all other Flyway Councils and the Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that framework dates not be changed. Such action would be totally unfair to all other States that are willing to use the AHM process to fairly and biologically determine the framework issue.

The Kansas Department of Wildlife & Parks strongly opposed the proposal to offer extended duck hunting season framework dates to States in the lower region of the Mississippi Flyway, stating that it is blatantly unfair to other States that may be interested in such changes, and that it will establish an undesirable precedent regarding how we implement harvest regulations.

The Delaware Department of Natural Resources opposed a framework extension for the southern Mississippi Flyway because it conflicted with recommendations from all Flyways

Councils (1997) to maintain consistency in regulatory packages and it could negatively affect other States through redistribution of harvest. Delaware urged all four Councils and the AHM working group work to recommend a specific strategy for 1999 to address all concerns.

The Missouri Department of Conservation opposed the framework extension due to concerns regarding biological impacts on the waterfowl resource including changes in harvest timing and composition (age, species, and sex), the inequitable provision of the extension opportunities, and conflicts with the AHM process. Missouri believes adopting this proposal would set an unfortunate precedent and have negative implications for the future of cooperative waterfowl and wetland management.

The Michigan Department of Natural Resources strongly opposed the extension proposal on the basis of its conflict with previous recommendations of the Upper-Region Regulations Committee. Michigan believed if extensions were implemented, both early and late extensions should be offered to all States.

The Connecticut Department of Environmental Protection opposed the extension proposal and requested the Service defer action until full review by all Flyways is possible. Connecticut voiced concern over reduced hunting opportunity across the nation and impacts to black ducks which are more vulnerable in late winter.

The Minnesota Department of Natural Resources continued to support recommendations of the Upper-Region Regulations Committee of the Mississippi Flyway Council and the other 3 Flyway Councils for no change in framework dates. They believe the extension proposal is extremely divisive and threatens the future of the Flyway Council system and AHM. They stated that the potentially negative physiological impacts on ducks of extensions have not been addressed and should be evaluated by States and the Service prior to implementing extensions. Minnesota believed northern States have the strongest argument for framework extensions because of weather-related limitations to long duck seasons. The extension proposal was contrary to the cooperative process of establishing migratory bird regulations; however, if it is offered, it should be offered to all States.

The Wisconsin Department of Natural Resources supported no change in framework dates. Wisconsin found the extension proposal completely unacceptable because it increases

inequity, citing the current higher hunter success rates in southern States, frequently truncated season length in northern States due to freeze-up, and differences in special-teal-season availability. Wisconsin expressed concern about the possible impacts of late-winter hunting on mallard pair formation and nutrient-reserve accumulation. Wisconsin opposed offering southern States an extension, but believed if the extension was granted to southern States, northern States must be offered an extension on season opening dates.

The Illinois Department of Natural Resources stated the extension proposal was patently unfair because it was not available to all States in all Flyways. The State remains concerned about biological impacts on duck pair formation and acquisition of body reserves. Illinois believed this is an issue of national consequence and without time for a full public debate and analysis before the 1998 season, the Service should postpone implementation of any framework extensions until at least the 1999 season. However, if extensions are implemented, the offset penalty should be determined by the Service or third party and Illinois should be allowed to split the duck season in their three zones.

The Oklahoma Department of Wildlife Conservation was strongly opposed to the extension proposal. Oklahoma believed that the proposal seriously undermines the long-standing cooperative Flyway and Service process for establishing waterfowl hunting regulations and calls into question the Service's commitment to the AHM process. Oklahoma further recommended that the Service deny the framework extension until such time as the issue can be addressed through the AHM process and all States' interests are fairly and objectively considered.

The Wyoming Game and Fish Department opposed the framework extension because they believe that season recommendations should be based on Flyway/Service review and approval and not political considerations, the proposed extension threatens AHM, other States are not offered a similar opportunity, and the proposal creates animosity between States and erodes the cooperative framework of the Flyway Council system. They further encourage the Service to work with the Flyways to continue to develop and enhance AHM and believe that early and late framework issues should be addressed when the next round of AHM packages are developed.

The New Jersey Division of Fish, Game and Wildlife opposed implementation of framework extensions due to their commitment to the AHM process, concern regarding impacts on migrating wood ducks, and the potential to divide the flyway system.

The Wisconsin Conservation Congress opposed the framework extension proposal stating that it was in direct conflict with the principles of the Service to manage the resource for the benefit of all people.

The Delta Waterfowl Foundation did not support the framework extension proposal. While supporting the Service's goal of ensuring that nonparticipating States will not be impacted, they believed that reductions in bag limits and species restrictions should also be considered. They further stated that the Service should entertain other framework date extensions, such as opening dates.

The Alabama Waterfowl Association requested a January 31 extension in Alabama be experimental beginning in the 1998 season. The Association would accept a 10% penalty in hunting days. They cite conflicts between farmers and hunting-lease holders or hunters in mid-November when incomplete crop harvest prevents flooding of agricultural fields. The Association believed an extended framework would allow improved habitat management and availability at the start of the season and would have less impact on the resource than the additional hen in the bag recently offered.

Two individuals from Michigan, 45 from Wisconsin, 30 from Minnesota, 1 from Arkansas, 1 from Iowa, 1 from Florida, and 3 from Tennessee commented in opposition to the proposed extension of the framework closing date.

Three individuals from Alabama, 1 from Florida, 5 from Arkansas, 2 from Georgia, 31 from Tennessee, and 110 from Mississippi commented in favor of extending the framework closing date.

Service Response: Extensive comments were received regarding the May 29 proposal (63 FR 29518) to extend the framework closing date to January 31 in six States in the southern portion of the Mississippi Flyway (Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee). In the proposal, those States would be permitted a framework date extension, provided it was accompanied by a reduction in season length sufficient to offset the expected increase in harvest. The Service's goal was to provide a later hunting opportunity that had been requested by southern Mississippi

Flyway States, without increasing overall harvest in those States or affecting hunting opportunities in other States and Flyways.

The Service's proposal has been severely criticized by three Flyway Councils and numerous States. Based on a review of those comments, there appear to be three primary reasons for dissatisfaction with the proposal:

(1) the perception of inequity because most States would be excluded unilaterally from participation;

(2) a concern that the proposal was developed largely outside the Flyway Council consultation process, and that the proposal would be finalized before the Councils had an opportunity to meet and discuss concerns or suggest alternatives; and

(3) technical concerns about the ability to predict the effects of a framework-date extension on harvests or duck populations, and apprehension about whether the Service could guarantee that the season-length reduction would be sufficient to completely offset the expected increase in harvest.

For these reasons, the Service is withdrawing its proposal to extend the closing date of the duck-hunting season in the southern Mississippi Flyway. However, it is clear that the issue of framework extensions and expanding both early- and late-season hunting opportunity is an issue of strong and continuing interest among the States and the public. The Service acknowledges and shares this interest. Therefore, the Service will work with the Flyway Councils to consider these issues on a broader basis. The Service endorses the interest of the National Flyway Council to provide a forum for this discussion, especially because the issue inherently involves perceptions regarding the fair and equitable distribution of hunting opportunity among all States. The Service also believes that the design of acceptable regulatory alternatives, including the specification of framework dates, will require a structured process in which to explore common goals, conflicts, and possible solutions. In the interim the Service will continue to use the set of regulatory alternatives established in 1997 which includes framework dates of approximately October 1 and January 20.

In considering its decision regarding the framework date issue, the Service recognized that there are existing species-specific regulatory strategies, most notably for blue-winged teal, that must be considered within the context of a comprehensive framework date review. Particular reference is made to

the special September duck hunting season currently offered to Iowa. Unlike other Mississippi Flyway States, Iowa is allowed to hold up to 5 days of its regular duck hunting season in September, with the second segment not to begin prior to October 10. The Iowa September season focuses on providing additional hunting opportunity for lightly harvested teal, and is a version of special September teal seasons offered to all other Mississippi Flyway States south of Iowa. The Iowa season is discontinued along with all other September teal seasons when warranted by poor teal status. Iowa's harvest during their early 5-day segment is predominately teal (53% in 1997), and thus the regulation has been successful at targeting additional hunting opportunity on an underutilized resource.

Iowa first had the option of the September season on an experimental basis during 1979-84, and has conducted the season on an operational basis during 1985-87 and 1994-present. The season was not offered during 1988-93 pending a comprehensive review of teal season criteria, which was precipitated by a declining teal population. The Iowa season has been examined on several occasions, and reviewed and supported by Flyway Councils, including both the Upper and Lower Regulations Committees of the Mississippi Flyway Council. Given the upcoming evaluation of special September teal seasons in 1998/99 and the comprehensive review of the framework dates by the Flyway Councils over the next 2 years, all special species-specific seasons, including the Iowa season, will be further reviewed during these processes.

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

#### Endangered Species Act Considerations

As in the past, the Service designs hunting regulations to remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of

endangered and threatened species. Consultations are currently being conducted to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations will be included in a biological opinion and may cause modification of some regulatory measures previously proposed. The final frameworks will reflect any modifications. The Service's biological opinions resulting from its Section 7 consultation are public documents and will be available for public inspection in the Service's Division of Endangered Species and MBMO, at the address indicated under the caption **ADDRESSES**.

#### Regulatory Flexibility Act

In the March 20, 1998, **Federal Register**, the Service reported measures it took to comply with requirements of the Regulatory Flexibility Act. One measure was to prepare a Small Entity Flexibility Analysis (Analysis) in 1996 documenting the significant beneficial economic effect on a substantial number of small entities. The Analysis estimated that migratory bird hunters would spend between \$254 and \$592 million at small businesses. Copies of the Analysis are available upon request from the Office of Migratory Bird Management. The Service is currently updating the 1996 Analysis with information from the 1996 National Hunting and Fishing Survey.

#### Executive Order (E.O.) 12866

This rule establishing the frameworks (early- and late-season) for hunting seasons is economically significant and will be reviewed by the Office of Management and Budget (OMB) under E.O. 12866. This rule establishes the regulatory alternatives for the 1998-99 duck hunting season.

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

the preamble helpful in understanding the proposed rule? What else could the Service do to make the rule easier to understand?

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

#### **Paperwork Reduction Act**

The Service examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR Part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, the information collection requirements of the Migratory Bird Harvest Information Program have been approved by OMB and assigned clearance number 1018-0015 (expires 08/31/1998). This information is used to provide a sampling frame for voluntary national surveys to improve Service harvest estimates for all migratory game birds in order to better manage these populations. The information collection requirements of the Sandhill Crane Harvest Questionnaire have been approved by OMB and assigned clearance number 1018-0023 (expires 09/30/2000). The information from this survey is used to estimate the magnitude, the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. The Service may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

#### **Unfunded Mandates Reform Act**

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State government or private entities.

#### **Civil Justice Reform—Executive Order 12988**

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

#### **Taking Implication Assessment**

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

#### **Federalism Effects**

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. The Service annually prescribes frameworks from which the States make selections and employs guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulation. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

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

#### **Regulations Promulgation**

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, the Service established what it believed were the longest periods possible for public comment. However, special circumstances involved in the establishment of these regulations limit the amount of time the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes allowing comment periods past the dates specified is contrary to public interest.

#### **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 1998-99 hunting season are authorized under 16 U.S.C. 703-712 and 16 U.S.C. 742 a-j.

Dated: July 30, 1998.

**Stephen C. Saunders,**

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

BILLING CODE 4310-55-P

FINAL REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 1998-99 SEASON

	ATLANTIC FLYWAY			MISSISSIPPI FLYWAY			CENTRAL FLYWAY (a)			PACIFIC FLYWAY (b)(c)																																																																																																																																														
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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																																																																																																																																												
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset																																																																																																																																												
Opening Date	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1	Oct. 1																																																																																																																																												
Closing Date	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20	Jan. 20																																																																																																																																												
Season Length	20	30	45	60	60	60	60	60	74	60	66	107																																																																																																																																												
Daily Bag/Possession	3 6	3 6	6 12	6 12	6 12	6 12	6 12	6 12	6 12	6 12	7 14	7 14																																																																																																																																												
Species/Sex Limits within the Overall Daily Bag Limit	<table border="1"> <tr> <td>Mallard (Total/Female)</td> <td>3/1</td> <td>3/1</td> <td>4/2</td> <td>4/2</td> <td>4/2</td> <td>4/2</td> <td>4/2</td> <td>5/1</td> <td>5/2</td> <td>3/1</td> <td>3/1</td> <td>5/2</td> <td>7/2</td> </tr> <tr> <td>Pintail</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> </tr> <tr> <td>Black Duck</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> </tr> <tr> <td>H. Merganser</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> </tr> <tr> <td>Canvasback</td> <td>2</td> <td>2</td> <td>2</td> <td>2</td> <td>2</td> <td>2</td> <td>2</td> <td>2</td> <td>2</td> <td>2</td> <td>2</td> <td>2</td> <td>2</td> </tr> <tr> <td>Redhead</td> <td>2</td> <td>2</td> <td>2</td> <td>2</td> <td>2</td> <td>2</td> <td>2</td> <td>2</td> <td>2</td> <td>2</td> <td>2</td> <td>2</td> <td>2</td> </tr> <tr> <td>Wood Duck</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> </tr> <tr> <td>Whistling Ducks</td> <td>Closed</td> <td>Closed</td> <td>Closed</td> <td>Closed</td> <td>Closed</td> <td>Closed</td> <td>Closed</td> <td>Closed</td> <td>Closed</td> <td>Closed</td> <td>Closed</td> <td>Closed</td> <td>Closed</td> </tr> <tr> <td>Harlequin</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> </tr> <tr> <td>Mottled Duck</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> <td>1</td> </tr> </table>												Mallard (Total/Female)	3/1	3/1	4/2	4/2	4/2	4/2	4/2	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	Black Duck	1	1	1	1	1	1	1	1	1	1	1	1	1	H. Merganser	1	1	1	1	1	1	1	1	1	1	1	1	1	Canvasback	2	2	2	2	2	2	2	2	2	2	2	2	2	Redhead	2	2	2	2	2	2	2	2	2	2	2	2	2	Wood Duck	1	1	1	1	1	1	1	1	1	1	1	1	1	Whistling Ducks	Closed	Closed	Closed	Closed	Closed	Closed	Closed	Closed	Closed	Closed	Closed	Closed	Closed	Harlequin	1	1	1	1	1	1	1	1	1	1	1	1	1	Mottled Duck	1	1	1	1	1	1	1	1	1	1	1	1	1
Mallard (Total/Female)	3/1	3/1	4/2	4/2	4/2	4/2	4/2	5/1	5/2	3/1	3/1	5/2	7/2																																																																																																																																											
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Black Duck	1	1	1	1	1	1	1	1	1	1	1	1	1																																																																																																																																											
H. Merganser	1	1	1	1	1	1	1	1	1	1	1	1	1																																																																																																																																											
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Whistling Ducks	Closed	Closed	Closed	Closed	Closed	Closed	Closed	Closed	Closed	Closed	Closed	Closed	Closed																																																																																																																																											
Harlequin	1	1	1	1	1	1	1	1	1	1	1	1	1																																																																																																																																											
Mottled Duck	1	1	1	1	1	1	1	1	1	1	1	1	1																																																																																																																																											

(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 options as follows:  
 very restrictive - 8, restrictive - 12, moderate and liberal - 23. Under all options, 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 options except the liberal option, an additional 7 days would be allowed.  
 (c) In Alaska, framework dates, bag limits, and season length would be different than the remainder of the Pacific Flyway. The bag limit would be 5-7 under the very restrictive and restrictive options, and 8-10 under the moderate and liberal options. There would be no restrictions on pintails, and canvasback limits would follow those for the remainder of the Pacific Flyway. Under all options, season length would be 107 days and framework dates would be Sep 1 - Jan 26.