

# Proposed Rules

Federal Register

Vol. 87, No. 212

Thursday, November 3, 2022

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

[Docket No. FWS-HQ-MB-2022-0090; FF09M30000-223-FXMB1231099BPP0]

RIN 1018-BF64

#### Migratory Bird Hunting; Proposed 2023–24 Migratory Game Bird Hunting Regulations (Preliminary)

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

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2023–24 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule and describes the proposed regulatory alternatives for the 2023–24 general duck seasons and preliminary proposals that vary from the 2022–23 hunting season regulations. Migratory 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:** *Comments:* You may comment on the general duck season regulatory alternatives and other preliminary proposals for the 2023–24 season until December 5, 2022.

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

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-HQ-MB-2022-0090.

- *U.S. Mail:* Public Comments Processing, Attn: FWS-HQ-MB-2022-0090; U.S. Fish and Wildlife Service;

MS; PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We will not accept emailed or faxed comments. We will post all comments on <https://www.regulations.gov>. This generally means that your entire submission—including any personal identifying information—will be posted on the website. See Public Comments, below, for more information.

**FOR FURTHER INFORMATION CONTACT:** Jerome Ford, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358–2606. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

#### SUPPLEMENTARY INFORMATION:

#### Promulgating Annual Migratory Game Bird Hunting Regulations

This proposed rule is the first in a series of proposed and final rules that establish regulations for the 2023–24 migratory bird hunting season. As part of the Department of the Interior’s 2015 retrospective regulatory review, we changed our process for developing migratory game bird hunting regulations with the goal of enabling the State agencies to select and publish their season dates earlier than was allowed under the prior process. We provided a detailed overview of this process in the August 6, 2015, **Federal Register** (80 FR 47388).

#### Background

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 (MBTA; 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 such bird, or any part, nest, or egg” of migratory game birds can take place, and to adopt regulations for this purpose (16 U.S.C. 704(a)). 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” (16 U.S.C. 704(a)) and are updated annually. This responsibility has been delegated to the Service as the lead Federal agency for managing and conserving migratory birds in the United States. However, migratory bird management is a cooperative effort of Federal, State, and Tribal governments.

The Service annually develops migratory game bird hunting regulations by establishing the frameworks, or outside limits, for season dates, season lengths, shooting hours, bag and possession limits, and areas where migratory game bird hunting may occur. These frameworks are necessary to allow harvest at levels compatible with migratory game bird population status and habitat conditions.

Acknowledging regional differences in hunting conditions, the Service has administratively divided the United States 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 within the Flyway, as well as Provinces in Canada that share migratory bird populations with the Flyway. The Flyway Councils, established through the Association of Fish and Wildlife Agencies, also assist in researching and providing migratory game bird management information for Federal, State, Tribal, and Provincial governments, as well as private conservation entities and the general public.

#### Overview of the Rulemaking Process

The process for adopting migratory game bird hunting regulations, which are set forth in title 50 of the Code of Federal Regulations in part 20 (50 CFR part 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.

For the regulatory 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 date limits for hunting seasons (which we refer to as frameworks) for each species, we consider factors such as population size and trend, geographical distribution, annual breeding effort, condition of breeding and wintering habitat, number of hunters, and anticipated harvest. After the frameworks are established, States may select migratory game bird hunting seasons within the Federal frameworks. States may always be more conservative in their selections than the Federal frameworks, but never more liberal.

We annually publish definitions of flyways and management units and a description of the data used in and the factors affecting the regulatory process. This information will be included in proposed and final rules later in the regulations-development process (see 87 FR 5946, February 2, 2022, for the latest definitions and descriptions).

#### *Service Regulations Committee Meetings*

Per the regulations at 50 CFR 20.153, the Service Regulations Committee conducted open meetings in April and October 2022 to discuss preliminary issues for the 2023–24 regulations, review information on the current status of migratory game birds and develop recommendations for 2023–24 regulations for these species. These meetings were open to public observation, and official transcripts will soon be available at <https://www.regulations.gov> in Docket No. FWS–HQ–MB–2022–0090. You may submit written comments to the Service on the matters discussed. See **DATES** and **ADDRESSES** for information about submitting comments.

#### **Rulemaking Process for the 2023–24 Season**

This document is the first in a series of proposed and final rulemaking documents for migratory game bird hunting regulations. This document announces our intent to establish open hunting seasons for certain designated groups or species of migratory game birds for 2023–24 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 2023–24 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, and gallinules); and Scolopacidae (woodcock and snipe).

The proposed regulatory alternatives for the 2023–24 duck hunting seasons are contained at the end of this document. We will publish additional proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available. Major steps in the 2023–24 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. Our goal is to publish final regulatory alternatives for duck seasons in fall 2022, proposed season frameworks in winter 2022, and final season frameworks near the end of February 2023.

#### *Subject Matter Organization*

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. Early Teal Seasons
    - ii. Early Teal/Wood Duck Seasons
    - iii. Black Ducks
    - iv. Canvasbacks
    - v. Pintails
    - vi. Scaup
    - vii. Mottled Ducks
    - viii. Wood Ducks
    - ix. Eastern mallards
    - x. Youth and Veterans—Active Military Personnel Hunting Days
    - xi. Mallard Management Units
    - xii. Other
2. Sea Ducks
3. Mergansers
4. Canada Geese
  - A. Special Early 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. Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Doves
17. Alaska
18. Hawaii
19. Puerto Rico
20. Virgin Islands
21. Falconry
22. Other

This and subsequent documents will refer only to numbered items requiring attention. Because we will omit those items not requiring attention, the remaining numbered items may be discontinuous and the list may appear incomplete.

The proposed regulatory alternatives for the 2023–24 duck hunting seasons are contained at the end of this document. We plan to publish the proposed season frameworks in late fall 2022 and final season frameworks in late-winter 2022.

#### *Tribal Regulations*

As part of this rulemaking improvement process, we will develop regulations pertaining to Tribes differently than we have in the past. Since the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23459) 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. While in past years we solicited Tribal proposals in the documents, like this one, that initiated the rulemaking process for all migratory bird hunting regulations for a specific season, for the 2023–24 season we will handle Tribal regulations via a separate rulemaking process. For inquiries on Tribal guidelines, Tribes should contact the address indicated under **FOR FURTHER INFORMATION CONTACT**.

#### **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 this proposed rule. We seek information and comments on the proposed regulatory alternatives for the

2023–24 general duck hunting seasons, other recommended changes or specific preliminary proposals that vary from the 2022–23 regulations, and issues requiring early discussion, action, or the attention of the States.

The Service believes that a 30-day comment period is warranted for this proposed rule as subsequent **Federal Register** documents will allow the public to submit comments on the overall hunting frameworks (see Schedule of Biological Information Availability, Regulations Meetings, and **Federal Register** Publications for the 2023–24 Hunting Season at the end of this proposed rule for further information). For each subsequent proposed rule associated with this rulemaking action, we will establish a specific comment period. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments we receive. We will summarize the comments received and publish responses to all proposals and written comments when we develop final frameworks for the 2023–24 season. Such comments, and any additional information we receive, may lead to final regulations that differ from the proposed rules.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. Finally, we will not consider mailed comments that are not postmarked by the date specified in **DATES**. We will post all comments in their entirety—including your personal identifying information—on <https://www.regulations.gov>. Before including your address, phone number, email 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 <https://www.regulations.gov>.

### Required Determinations

#### *National Environmental Policy Act (NEPA) Consideration*

The programmatic document, “Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139),” filed with the Environmental Protection Agency (EPA) on May 24, 2013, addresses NEPA compliance by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being “Duck Hunting Regulations for 2022–23,” with its corresponding April 2022 finding of no significant impact. 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 person listed above under **FOR FURTHER INFORMATION CONTACT**.

#### *Endangered Species Act Consideration*

Before issuance of the 2023–24 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 adversely modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under section 7 of the Act may cause us to change proposals in future supplemental proposed rulemaking documents.

#### *Regulatory Planning and Review—Executive Orders 12866 and 13563*

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rulemaking action is economically significant because the annual migratory bird hunting regulations have an annual effect of \$100 million or more on the economy.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation’s regulatory system to promote predictability, to

reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

An economic analysis was prepared for the 2023–24 migratory bird hunting season. This analysis was based on data from the 2016 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (National Survey), the most recent year for which data are available. See discussion under Required Determinations, *Regulatory Flexibility Act*, below. This analysis estimated consumer surplus for three alternatives for duck hunting regulations. As defined by the U.S. Office of Management and Budget in Circular A–4, consumers’ surplus is the difference between what a consumer pays for a unit of a good or service and the maximum amount the consumer would be willing to pay for that unit. The duck hunting regulatory alternatives are (1) issue restrictive regulations allowing fewer days than those issued during the 2022–23 season, (2) issue moderate regulations allowing more days than those in Alternative 1, and (3) issue liberal regulations similar to the regulations in the 2022–23 season. For the 2022–23 season, we chose Alternative 3, with an estimated consumer surplus across all flyways of \$329 million. We also chose Alternative 3 for the 2009–10 through 2021–22 seasons. The 2023–24 analysis is part of the record for this rulemaking action and is available at <https://www.regulations.gov> at Docket No. FWS–HQ–MB–2022–0090.

#### *Regulatory Flexibility Act*

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis was prepared to analyze the economic impacts of the annual hunting regulations on small business entities. This analysis is updated annually. The primary source of information about hunter expenditures for migratory game bird hunting is the National Survey,

which is generally conducted at 5-year intervals. The 2022 analysis is based on the 2016 National Survey and the U.S. Department of Commerce's County Business Patterns, from which it is estimated that migratory bird hunters would spend approximately \$2.2 billion at small businesses in 2022. Copies of the analysis are available upon request from the person listed above under **FOR FURTHER INFORMATION CONTACT** or from <https://www.regulations.gov> at Docket No. FWS-HQ-MB-2022-0090.

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

Pursuant to subtitle E of the Small Business Regulatory Enforcement Fairness Act (also known as the Congressional Review Act or CRA), 5 U.S.C. 801 *et seq.*, OIRA designated this action as a major rule, as defined by 5 U.S.C. 804(2), because it is likely to result in an annual effect on the economy of \$100 million or more. However, because this rule would establish a regulatory program for activity related to hunting and because hunting seasons are time sensitive, we do not plan to defer the effective date under the exemption in the CRA, 5 U.S.C. 808(1).

#### *Clarity of the Rule*

We are required by E.O. 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 **ADDRESSES**. 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.

#### *Paperwork Reduction Act*

This rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has previously approved the information collection requirements associated with migratory bird surveys

and the procedures for establishing annual migratory bird hunting seasons under the following OMB control numbers:

- 1018-0019, "North American Woodcock Singing Ground Survey" (expires 02/29/2024).
- 1018-0023, "Migratory Bird Surveys, 50 CFR 20.20" (expires 04/30/2023). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.
- 1018-0171, "Establishment of Annual Migratory Bird Hunting Seasons, 50 CFR part 20" (expires 10/31/2024).

You may view the information collection request(s) at <https://www.reginfo.gov/public/do/PRAMain>. An 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. 1501 *et seq.*, that this proposed rulemaking does not include any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted for inflation) in any one year and does not significantly or uniquely affect small governments.

#### *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 E.O. 12988.

#### *Takings Implication Assessment—Executive Order 12630*

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

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

E.O. 13211 requires agencies to prepare statements of energy effects

when undertaking certain actions. While this proposed rule is a significant regulatory action under E.O. 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy and has not been designated by OIRA as a significant energy action. Therefore, 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), E.O. 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are de minimis effects on Indian trust resources. Through this process to establish annual hunting regulations, we regularly coordinate with Tribes that are affected by this rulemaking action. As noted previously, for the 2023-24 season, we will handle Tribal regulations via a separate rulemaking in later **Federal Register** documents.

#### *Federalism Effects—Executive Order 13132*

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 Tribe may be more restrictive in its regulations 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 substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 13132, these regulations do not have federalism implications and do not warrant the preparation of a federalism summary impact statement.

## 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 2023–24 hunting season are authorized under 16 U.S.C. 703–711, 712, and 742 a–j.

### Shannon A. Estenoz,

*Assistant Secretary for Fish and Wildlife and Parks.*

## Proposed 2023–24 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. Issues requiring early discussion, action, or the attention of the States or Tribes are described below.

### 1. Ducks

As mentioned earlier in this document, the 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 categories containing substantial recommendations are discussed below.

#### A. General Harvest Strategy

We will continue to use adaptive harvest management (AHM) to help determine appropriate duck-hunting regulations for the 2023–24 season. AHM is a tool that permits sound resource decisions in the face of uncertain regulatory impacts and provides a mechanism for reducing that uncertainty over time. We use an AHM protocol (decision framework) to evaluate four regulatory alternatives, each with a different expected harvest level, and choose the optimal regulation for duck hunting based on the status and demographics of mallards for the Mississippi, Central, and Pacific Flyways, and based on the status and demographics of a suite of four species (eastern waterfowl) in the Atlantic Flyway. We have specific AHM protocols that guide appropriate bag limits and season lengths for species of special concern, including black ducks, scaup, pintails, and mallards in the Atlantic Flyway (eastern mallards), within the general duck season. These protocols use the same outside season dates and lengths as those regulatory

alternatives for the 2023–24 general duck seasons.

For the 2023–24 hunting season, we will continue to use independent optimizations to determine the appropriate regulatory alternative for mallard stocks in the Mississippi, Central, and Pacific Flyways and for eastern waterfowl in the Atlantic Flyway. This means that we will develop regulations for mid-continent mallards, western mallards, and eastern waterfowl independently based on the breeding stock that contributes primarily to each Flyway. We detailed implementation of AHM protocols for mid-continent and western mallards in the July 24, 2008, **Federal Register** (73 FR 43290), and for eastern waterfowl in the September 21, 2018, **Federal Register** (83 FR 47868).

#### B. Regulatory Alternatives

The basic structure of the current regulatory alternatives for AHM was adopted in 1997. In 2002, based upon recommendations from the Flyway Councils, we 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 by 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. In 2018, we adopted a closing duck framework date of January 31 for the “moderate” and “liberal” alternatives in the Atlantic Flyway as part of the Atlantic Flyway’s eastern waterfowl AHM protocol (83 FR 47868, September 21, 2018). We subsequently extended the framework closing date to January 31 across all four Flyways for the 2019–20 hunting season (84 FR 16152, April 17, 2019).

More recently, the John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019 (Pub. L. 116–9, Dingell Act) amended the Migratory Bird Treaty Act to establish that the closing framework date for duck seasons will be January 31, unless a flyway chooses an earlier closing date. Thus, in 2019, as directed by the Dingell Act, we adjusted the framework closing date under each regulatory alternative for all four Flyways to January 31 (84 FR 42996; August 19, 2019). In 2020, we agreed to move the opening framework date to 1 week earlier in the restrictive regulatory alternative for the Mississippi and Central Flyways beginning with the 2021–22 season based on their recommendations (85 FR 15870, March 19, 2020).

For the 2023–24 general duck season, we propose to use the same regulatory alternatives that are in effect for the 2022–23 season (see table at the end of this proposed rule for specifics of the 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 plan to finalize AHM regulatory alternatives for the 2023–24 season in a supplemental proposed rule, which we plan to publish by late fall of 2022 (see Schedule of Biological Information Availability, Regulations Meetings, and **Federal Register** Publications for the 2023–24 Hunting Season at the end of this proposed rule for further information).

#### D. Special Seasons/Species Management

##### ix. Eastern Mallards

In 2019 when we implemented the AHM protocol for eastern waterfowl, there was concern about the adequacy of existing data and models to reflect the dynamics of mallards in the Atlantic flyway (eastern mallards). The protocol did not specifically address appropriate bag limits for mallards. Consequently, the Service and the Atlantic Flyway Council developed an interim harvest strategy for eastern mallards as detailed in the August 19, 2019, **Federal Register** (84 FR 42996). The interim strategy is based on a potential take limit analysis that determined a sustainable daily-bag limit assuming a 60-day general duck season. The result of the assessment prescribed a daily bag limit of two mallards, one of which could be female. The interim strategy had limited functionality in that it did not allow for changes in the daily bag limit in response to changes in eastern mallard abundance or the general duck season length determined by the eastern waterfowl AHM protocol. Thus, at the time of implementing the interim harvest strategy, the Service and Council agreed to develop a State-dependent harvest strategy that would determine the daily bag limit for eastern mallards based on the status of these birds.

The development of the State-dependent eastern mallard harvest strategy has now been completed, and we propose to adopt it in place of the interim harvest strategy beginning with the 2023–24 season.

The new eastern mallard harvest strategy is the result of 3 years of technical work and policy decisions developed and agreed upon by the Service and State agencies in the

Atlantic Flyway. The goals of the eastern mallard harvest strategy are to: (1) maintain the eastern mallard stock at sustainable levels, and (2) provide consumptive and nonconsumptive uses indefinitely. The harvest strategy is based on an integrated population model that uses current data and understanding of system dynamics. The new harvest strategy is an improvement over the interim strategy because it allows the Service to make more informed harvest management decisions based on the current status of the resource and uncertainty, including the effects of harvest on mallard survival. The harvest strategy will be reviewed and revised as necessary on an approximately 5- to 10-year interval. A copy of the strategy is available at the address indicated under **FOR FURTHER INFORMATION CONTACT**, or at <https://www.regulations.gov>, or from our website at <https://www.fws.gov/media/eastern-mallard-adaptive-harvest-management-strategy-2022>.

xii. Other

Although not part of any current harvest management strategy, we

propose to allow South Dakota and Nebraska to continue to conduct a pilot study during the 2023–24 duck season of a two-tier regulatory system as described in the March 19, 2020, proposed rule (85 FR 15870). This would be the second year of a planned 4-year pilot study. The intent of the two-tier license study is to evaluate whether regulations that relax hunters' requirement to identify duck species can improve waterfowl hunter recruitment and retention.<sup>1</sup> Declines in waterfowl hunter numbers have been of

<sup>1</sup>The Service's primary goal is to ensure that waterfowl sport harvest management conforms to the MBTA and ensures the long-term conservation of bird populations. The various harvest strategies reflect this goal by ensuring that harvest does not exceed maximum sustainable yield (MSY). Secondly to the MBTA, the Service has adopted policies to promote wildlife-based recreation, including migratory bird harvest. To the extent that management actions designed to promote hunter recruitment and retention do not result in harvest greater than the biological capacity of a population (*i.e.*, does not exceed MSY), the Service deems these actions to be in accordance with the MBTA. Management actions that result in harvest equal to or less than MSY will result in stable or increasing populations and provide consumptive and nonconsumptive uses indefinitely.

concern to the Service and the Flyway Councils, prompting the development of recruitment, retention, and reactivation (R3) efforts in the conservation community. The study would allow a person to obtain one of two license types during the duck season. The first license type would allow a daily bag limit as specified in the current duck regulations (six ducks), along with attendant species and sex restrictions. The second license type would allow a daily bag limit of only three ducks, but they could be of any species or sex. Additional years of study would be contingent on whether preliminary results from the first two duck seasons (2021–22 and 2022–23) warrant additional investigation. Memoranda of agreement between the Service and the two States specify the purpose of the study and the roles and responsibilities of each party while conducting the pilot study.

**BILLING CODE 4333–15–P**

## PROPOSED REGULATORY ALTERNATIVES FOR THE 2023–24 GENERAL DUCK SEASONS

	ATLANTIC FLYWAY			MISSISSIPPI FLYWAY			CENTRAL FLYWAY (a)			PACIFIC FLYWAY (b)(c)		
	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB
Beginning Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24
Closing Date	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31
Season Length (in days)	30	45	60	30	45	60	39	60	74	60	86	107
Daily Bag	3	6	6	3	6	6	3	6	6	4	7	7
<b>Species/Sex Limits within the Overall Daily Bag Limit</b>												
Mallard (Total/Female)	(d)	(d)	(d)	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 (depending on the area) 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.
- (d) Under the multi-stock AHM protocol for the Atlantic Flyway, the mallard bag limit is not prescribed by the regulatory alternative.

# SCHEDULE OF BIOLOGICAL INFORMATION AVAILABILITY, REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS FOR THE 2023-24 HUNTING SEASON

