DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[FWS–R9–MB–2010–0040]

[91200–1231–9BPP–L2]

RIN 1018–AX06

Migratory Bird Hunting; Proposed 2010–11 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals and Requests for 2011 Spring and Summer Migratory Bird Subsistence Harvest Proposals in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2010–11 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule, describes the proposed regulatory alternatives for the 2010–11 duck hunting seasons, requests proposals from Indian tribes that wish to establish special migratory game bird hunting regulations on Federal Indian reservations and ceded lands, and requests proposals for the 2011 spring and summer migratory bird subsistence season in Alaska. Migratory game bird hunting seasons provide opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory game bird population status and habitat conditions.

DATES: You must submit comments on the proposed regulatory alternatives for the 2010–11 duck hunting seasons by June 25, 2010. Following subsequent **Federal Register** notices, you will be given an opportunity to submit comments for proposed early-season frameworks by July 31, 2010, and for proposed late-season frameworks and subsistence migratory bird seasons in Alaska by August 31, 2010. Tribes must submit proposals and related comments by June 1, 2010. Proposals from the Co-management Council for the 2010 spring and summer migratory bird subsistence harvest season must be submitted to the Flyway Councils and the Service by June 15, 2010.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments on Docket No. FW-R9-MB-2010-0040.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: 1018-AX06; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

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

Send your proposals for the 2011 spring and summer migratory bird subsistence season in Alaska to the Executive Director of the Co-management Council, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503, or fax to (907) 786-3306, or email to *ambcc@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, at: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP-4107-ARLSQ, 1849 C Street, NW, Washington, DC 20240, (703) 358-1714. For information on the migratory bird subsistence season in Alaska, contact Fred Armstrong, (907) 786-3887, or Donna Dewhurst, (907) 786-3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

SUPPLEMENTARY INFORMATION:

Background and Overview

Migratory game birds are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when "hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any * * * bird, or any part, nest, or egg" of migratory game birds can take place, and to adopt regulations for this purpose. These regulations are written after giving due regard to "the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds" and are updated annually (16 U.S.C. 704(a)). This responsibility has been delegated to the Service as the lead Federal agency for managing and conserving migratory birds in the United States.

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

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

The process includes two separate regulations-development schedules, based on early and late hunting season regulations. Early hunting seasons pertain to all migratory game bird species in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; migratory game birds other than waterfowl (i.e., dove, woodcock, etc.); and special early waterfowl seasons, such as teal or resident Canada geese. Early hunting seasons generally begin before October 1. Late hunting seasons generally start on or after October 1 and include most waterfowl seasons not already established.

There are basically no differences in the processes for establishing either early or late hunting seasons. For each cycle, Service biologists gather, analyze, and interpret biological survey data and provide this information to all those involved in the process through a series of published status reports and presentations to Flyway Councils and other interested parties. Because the Service is required to take abundance of migratory game birds and other factors into consideration, the Service undertakes a number of surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, and State and

Provincial wildlife-management agencies. To determine the appropriate frameworks for each species, we consider factors such as population size and trend, geographical distribution, annual breeding effort, the condition of breeding and wintering habitat, the number of hunters, and the anticipated harvest.

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

Notice of Intent To Establish Open Seasons

This notice announces our intent to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 2010–11 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 2010–11 migratory game bird hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). We describe these proposals under **Proposed 2010–11 Migratory Game Bird Hunting Regulations (Preliminary)** in this document. We published definitions of waterfowl flyways and mourning dove management units, as well as a description of the data used in and the factors affecting the regulatory process, in the March 14, 1990, **Federal Register** (55 FR 9618).

Regulatory Schedule for 2010–11

This document is the first in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations. We will publish additional supplemental proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available. Because of the late dates when certain portions of these data become available, we anticipate abbreviated comment periods on some proposals. Special circumstances limit the amount of time we can allow for public comment on these regulations.

Specifically, two considerations compress the time for the rulemaking process: the need, on one hand, to establish final rules early enough in the summer to allow resource agencies to select and publish season dates and bag limits before the beginning of hunting seasons and, on the other hand, the lack of current status data on most migratory game birds until later in the summer. Because the regulatory process is strongly influenced by the times when information is available for consideration, we divide the regulatory process into two segments: early seasons and late seasons (further described and discussed above in the **Background and Overview** section).

Major steps in the 2010–11 regulatory cycle relating to open public meetings and **Federal Register** notifications are illustrated in the diagram at the end of this proposed rule. All publication dates of **Federal Register** documents are target dates.

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

1. Ducks
   A. General Harvest Strategy
   B. Regulatory Alternatives
   C. Zones and Split Seasons
   D. Special Seasons/Species Management
      i. September Teal Seasons
      ii. September Teal/Wood Duck Seasons
      iii. Black Ducks
      iv. Canvasbacks
      v. Pintails
      vi. Scaup
      vii. Mottled Ducks
      viii. Wood Ducks
      ix. Youth Hunt
2. Sea Ducks
3. Mergansers
4. Canada Geese
   A. Special Seasons
   B. Regular Seasons
   C. Special Late Seasons
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Later sections of this and subsequent documents will refer only to numbered items requiring your attention. Therefore, it is important to note that we will omit those items requiring no attention, and remaining numbered items will be discontinuous and appear incomplete.

We will publish final regulatory alternatives for the 2010–11 duck hunting seasons in mid-July. We will publish proposed early season frameworks in mid-July and late season frameworks in mid-August. We will publish final regulatory frameworks for early seasons on or about August 16, 2010, and those for late seasons on or about September 15, 2010.

Request for 2011 Spring and Summer Migratory Bird Subsistence Harvest Proposals in Alaska

Background

The 1916 Convention for the Protection of Migratory Birds between the United States and Great Britain (for Canada) established a closed season for the taking of migratory birds between March 10 and September 1. Residents of northern Alaska and Canada traditionally harvested migratory birds for nutritional purposes during the spring and summer months. The 1916 Convention and the subsequent 1936 Mexico Convention for the Protection of Migratory Birds and Game Mammals provide for the legal subsistence harvest of migratory birds and their eggs in Alaska and Canada during the closed season by indigenous inhabitants.

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

This proposed rule calls for proposals for regulations that will expire on August 31, 2011, for the spring and

summer subsistence harvest of migratory birds in Alaska. Each year, seasons will open on or after March 11 and close before September 1.

Alaska Spring and Summer Subsistence Harvest Proposal Procedures

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

(a) *Alaska Migratory Bird Co-Management Council.* The public may submit proposals to the Co-management Council during the period of November 1–December 15, 2010, to be acted upon for the 2011 migratory bird subsistence harvest season. Proposals should be submitted to the Executive Director of the Co-management Council, listed above under the caption **ADDRESSES**.

(b) *Flyway Councils.*

(1) The Co-management Council will submit proposed 2011 regulations to all Flyway Councils for review and comment. The Council's recommendations must be submitted before the Service Regulations Committee's last regular meeting of the calendar year in order to be approved for spring and summer harvest beginning March 11 of the following calendar year.

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

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

Because of the time required for review by us and the public, proposals from the Co-management Council for the 2011 spring and summer migratory bird subsistence harvest season must be submitted to the Flyway Councils and the Service by June 15, 2010, for Council comments and Service action at the late-season SRC meeting.

Review of Public Comments

This proposed rulemaking contains the proposed regulatory alternatives for the 2010–11 duck hunting seasons. This proposed rulemaking also describes other recommended changes or specific preliminary proposals that vary from the 2009–10 final frameworks (see August 25, 2009, **Federal Register** (74 FR 43008) for early seasons and September 24, 2009, **Federal Register** (74 FR 48822) for late seasons) and issues requiring early discussion, action, or the attention of the States or tribes. We will publish responses to all proposals and written comments when we develop final frameworks for the 2010–11 season. We seek additional information and comments on this proposed rule.

Consolidation of Notices

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

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

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

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

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

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

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

Region 7 (Alaska)—Russ Oates, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503; (907) 786–3423.

Requests for Tribal Proposals

Background

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to tribal requests for our recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, tribal regulations established under the guidelines must be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Convention). The guidelines are applicable to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also may be applied to the establishment of migratory game bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected

States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory game bird hunting by nonmembers on Indian-owned reservation lands, subject to our approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing migratory bird hunting by non-Indians on these lands. In such cases, we encourage the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands. It is incumbent upon the tribe and/or the State to request consultation as a result of the proposal being published in the **Federal Register**. We will not presume to make a determination, without being advised by either a tribe or a State, that any issue is or is not worthy of formal consultation.

One of the guidelines provides for the continuation of tribal members' harvest of migratory game birds on reservations where such harvest is a customary practice. We do not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory game bird resource. Since the inception of these guidelines, we have reached annual agreement with tribes for migratory game bird hunting by tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

Tribes should not view the guidelines as inflexible. We believe that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while also ensuring that the migratory game bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 2010–11 migratory game bird hunting season should submit a proposal that includes:

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

(2) Harvest anticipated under the proposed regulations;

(3) Methods employed to monitor harvest (mail-questionnaire survey, bag checks, etc.);

(4) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory game bird resource; and

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

A tribe that desires the earliest possible opening of the migratory game bird season for nontribal members should specify this request in its proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit for nontribal members, the proposal should request the same daily bag and possession limits and season length for migratory game birds that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

Tribal Proposal Procedures

We will publish details of tribal proposals for public review in later **Federal Register** documents. Because of the time required for review by us and the public, Indian tribes that desire special migratory game bird hunting regulations for the 2010–11 hunting season should submit their proposals as soon as possible, but no later than June 1, 2010.

Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed above under the caption **Consolidation of Notices**. Tribes that request special migratory game bird hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments we receive. Such comments, and any additional information we receive, may lead to final regulations that differ from these proposals.

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

We will post all comments in their entirety—including your personal identifying information—on *http://www.regulations.gov*. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

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

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments we receive during the comment period and respond to them after the closing date in any final rules.

NEPA Consideration

NEPA considerations are covered by the programmatic document "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14),'' filed with the Environmental Protection Agency on June 9, 1988. We published notice of availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR

31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the address indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

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

Endangered Species Act Consideration

Before issuance of the 2010–11 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under section 7 of the Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order 12866

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule under Executive Order 12866. OMB bases its determination of regulatory significance upon the following four criteria:

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

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

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

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

An economic analysis was prepared for the 2008–09 season. This analysis was based on data from the 2006 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) Issue restrictive regulations allowing fewer days than those issued during the 2007–08 season, (2) Issues moderate regulations allowing more days than those in alternative 1, and (3) Issue liberal regulations identical to the regulations in the 2007–08 season. For the 2008–09 season, we chose alternative 3, with an estimated consumer surplus across all flyways of $205–$270 million. At this time, we are proposing no changes to the season frameworks for the 2010–11 season, and as such, we will again consider these three alternatives. However, final frameworks will be dependent on population status information available later this year. For these reasons, we have not conducted a new economic analysis, but the 2008–09 analysis is part of the record for this rule and is available at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov*.

Regulatory Flexibility Act

The regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5–year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2008. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **FOR FURTHER INFORMATION CONTACT**) or from our website at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov*.

Clarity of the Rule

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

(a) Be logically organized;

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

(c) Use clear language rather than jargon;

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

(e) Use lists and tables wherever possible.

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

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 2/28/2011). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine

levels of subsistence take in Alaska, and assigned control number 1018–0124 (expires 1/31/2010). A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

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

Civil Justice Reform—Executive Order 12988

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

Takings Implication Assessment

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

Energy Effects—Executive Order 13211

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

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in this proposed rule, we solicit proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2010-11 migratory bird hunting season. The resulting proposals will be contained in a separate proposed rule. By virtue of these actions, we have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

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

Authority

The rules that eventually will be promulgated for the 2010–11 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: April 1, 2010

Thomas L. Strickland

Assistant Secretary for Fish Wildlife and Parks.

Proposed 2010–11 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific regulatory proposals. At this time, we are proposing no changes from the final 2009–10 frameworks established on August 25 and September 24, 2009 (74 FR 43008 and 74 FR 48822). Other issues requiring early discussion, action, or the attention of the States or tribes are contained below:

1. Ducks

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

A. General Harvest Strategy

We propose to continue using adaptive harvest management (AHM) to help determine appropriate duck-hunting regulations for the 2010–11 season. AHM permits sound resource decisions in the face of uncertain regulatory impacts and provides a mechanism for reducing that uncertainty over time. We use AHM to evaluate four alternative regulatory levels for duck hunting based on the population status of mallards. (We enact special hunting restrictions for species of special concern, such as canvasbacks, scaup, and pintails).

1. Pacific, Central and Mississippi Flyways

Until 2008, we based the prescribed regulatory alternative for the Pacific, Central, and Mississippi Flyways on the status of mallards and breeding-habitat conditions in central North America. (Federal survey strata 1–18, 20–50, and 75–77, and State surveys in Minnesota, Wisconsin, and Michigan.) In 2008, we based hunting regulations upon the breeding stock that contributes primarily to each Flyway, as follows:

(1) We set hunting regulations in the Pacific Flyway based on the status and dynamics of a newly defined stock of "western" mallards. (Western mallards are those breeding in Alaska (as based on Federal surveys in strata 1–12), and in California and Oregon (as based on State-conducted surveys).) (2) We set

hunting regulations for the Central and Mississippi Flyways based on the status and dynamics of mid-continent mallards. (Mid-continent mallards are those breeding in central North America not included in the Western mallard stock, as defined above.)

For the 2010–11 season, we recommend continuing to use independent optimization to determine the optimum regulations. This means that we would develop regulations for mid-continent mallards and western mallards independently, based upon the breeding stock that contributes primarily to each Flyway. We detailed implementation of this new AHM decision framework in the July 24, 2008, **Federal Register** (73 FR 43290).

2. Atlantic Flyway

Since 2000, we have prescribed a regulatory alternative for the Atlantic Flyway based on the population status of mallards breeding in eastern North America (Federal survey strata 51–54 and 56, and State surveys in New England and the mid-Atlantic region). We recommend continuation of this protocol for the 2010–11 season.

3. Final 2010-2011 AHM Protocol

We will detail the final AHM protocol for the 2010–11 season in the early-season proposed rule, which we will publish in mid-July (see **Schedule of Regulations Meetings and Federal Register Publications** at the end of this proposed rule for further information). We will propose a specific regulatory alternative for each of the Flyways during the 2010–11 season after survey information becomes available in late summer. More information on AHM is located at *http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/AHM/AHM-intro.htm*.

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:

(1) Changing the opening date from the Saturday nearest October 1 to the Saturday nearest September 24; and

(2) Changing the closing date from the Sunday nearest January 20 to the last Sunday in January.

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

For 2010–11, we are proposing to maintain the same regulatory alternatives that were in effect last year (see accompanying table for specifics of the proposed regulatory alternatives). Alternatives are specified for each Flyway and are designated as ''RES'' for the restrictive, ''MOD'' for the moderate, and ''LIB'' for the liberal alternative. We will announce final regulatory alternatives in mid-July. We will accept public comments until June 25, 2010, and you should send your comments to an address listed under the caption **ADDRESSES**.

C. Zones and Split Seasons

In 1990, because of concerns about the proliferation of zones and split seasons for duck hunting, we conducted a cooperative review and evaluation of the historical use of zone/split options. This review did not show that the proliferation of these options had increased harvest pressure; however, the ability to detect the impact of zone/split configurations was poor because of unreliable response variables, the lack of statistical tests to differentiate between real and perceived changes, and the absence of adequate experimental controls. Consequently, we established guidelines to provide a framework for controlling the proliferation of changes in zone/split options. The guidelines identified a limited number of zone/split configurations that could be used for duck hunting and restricted the frequency of changes in these configurations to 5–year intervals.

In 1996, we revised the guidelines to provide States greater flexibility in using their zone/split arrangements. In 2005, in further response to recommendations from the Flyway Councils, we considered changes to the zone/split guidelines. After our review, however, we concluded that the current guidelines continue to achieve their intended objectives while allowing States sufficient flexibility to address differences in physiography, climate, and other factors and that the guidelines need not be changed. We further stated that the guidelines would be used for all future open seasons (70 FR 55667).

Open seasons for changes occurred in 1991, 1996, 2001, and 2006. The next open season for changes to zone/split configurations will be in 2011, for the 2011–15 period. We are providing the guidelines here in order to allow sufficient time for States to solicit public input regarding their selections of zone/split configurations in 2011. The guidelines are as follows:

Guidelines for Duck Zones and Split Seasons

The following zone/split-season guidelines apply only for the *regular* duck season:

a. A zone is a geographic area or portion of a State, with a contiguous boundary, for which independent dates may be selected for the regular duck season.

b. Consideration of changes for management-unit boundaries is not subject to the guidelines and provisions governing the use of zones and split seasons for ducks.

c. Only minor (less than a county in size) boundary changes will be allowed for any grandfathered arrangement, and changes are limited to the open season.

d. Once a zone/split option is selected during an open season, it must remain in place for the following 5 years.

Any State may continue the configuration used in the previous 5–year period. If changes are made, the zone/split-season configuration must conform to one of the following options:

1. Three zones with no splits,

2. Split seasons (no more than 3 segments) with no zones, or

3. Two zones with the option for 2-way (2-segment) split seasons in one or both zones.

Grandfathered Zone/Split Arrangements

When we first implemented the zone/split guidelines in 1991, several States had completed experiments with zone/split arrangements different from Options 1–3 above. We offered those States a one-time opportunity to continue ("grandfather") those arrangements, with the stipulation that only minor changes could be made to zone boundaries;. If any of those States now wish to change their zone/split arrangement:

1. The new arrangement must conform to one of the 3 options identified above; and

2. The State cannot go back to the grandfathered arrangement that it previously had in place.

D. Special Seasons/Species Management

v. Pintails

Since 1997, we have used a prescriptive strategy to determine pintail regulations. However, as we have continually stated over the past several years, we remain committed to developing a framework for pintail harvest management based on a formal,

derived strategy and clearly articulated management objectives.

Over the past 2 years, scientists from the U.S. Geological Survey (USGS) and the Service, in consultation with the Flyway Councils, have collaborated in developing an adaptive, derived framework for pintail harvest management. This draft framework was offered for Flyway consideration via presentations made at the AHM Working Group meeting in November 2007, the Service Regulations Committee (SRC) meeting in January 2008, and Flyway Technical Committee meetings in March 2008. The draft framework was revised a number of times in response to comments by the Flyways.

Last year, we again expressed a desire to re-engage with the Flyways to address unresolved issues with the goal of implementing a derived, adaptive strategy for pintail harvest management during the 2010–11 regulatory cycle. In the September 24, 2009, **Federal Register** (74 FR 48822), we stated that, for the implementation of the new derived strategy to be successful, the Service and Flyway Councils must reach agreement on several key issues. These issues included: (1) Determination of the harvest management objective, (2) identification of any constraints that would be included in the strategy (e.g., closure constraint), and (3) a decision regarding specific inclusion of a harvest allocation process. To that end, we made technical information regarding aspects of the derived strategy available at the December 2009 AHM Working Group Meeting.

In January 2010, we distributed to the Flyways a report entitled "**Proposal for a Derived and Adaptive Harvest Strategy for Northern Pintails**" (available at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html*). The report was also presented and discussed at the February 3, 2010, SRC meeting in Denver. In this report, we have attempted to reframe the issue in a multiple-objective decision making context. We hope this will refocus the discussion on the fundamental objectives of pintail harvest management, allow acceptance of the inherent tradeoffs, and result in a harvest strategy that best balances the objectives of the Flyways, the Service, the States, and the public. We hope that the Flyways will discuss this proposal at upcoming 2010 Winter meetings and provide specific feedback on the draft process.

If there is reasonable agreement between what the individual Flyways propose and the combined results from all four Flyways, the draft strategy could be reviewed at the June 2010 SRC meeting, and potentially published in the proposed early season regulations as a proposal for use during this regulatory cycle. Alternately, if this schedule is too compressed for adequate consultation, or if disagreements arise that require a longer period of discussion, implementation could wait until the 2011–12 hunting season.

14. Woodcock

In 2008, we completed a review of available woodcock population databases to assess their utility for developing a woodcock harvest strategy. Concurrently, we requested that the Atlantic, Mississippi, and Central Flyway Councils appoint members to a working group to cooperate with us on developing a woodcock harvest strategy. In February 2010, the working group completed a draft interim harvest strategy for consideration by the Flyway Councils at their March meetings.

The working group's draft interim harvest strategy provides a transparent framework for making regulatory decisions for woodcock season length and bag limit while we work to improve monitoring and assessment protocols for this species. While the strategy's objective is to set woodcock harvest at a level commensurate with population, data limitations preclude accurately assessing harvest potential at this time. Thus, the strategy's thresholds for regulations changes are based on the premise that further population declines would result in decreased harvest, while population increases would allow for additional harvest. Specifics of the draft interim harvest strategy can be found at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html*.

The working group recommended that the interim harvest strategy be implemented for the 2011–12 hunting season and be in effect for 5 years (2011–15). They further recommended that the Service and Flyway Councils evaluate the strategy after 5 years and continue to assess the feasibility of developing a derived harvest strategy. Following review and comment by the Flyway Councils, we will announce our intentions whether to propose the strategy following the June 23-24, 2010, SRC meeting.

16. Mourning Doves

In 2006 (see July 28, 2006, **Federal Register**, 71 FR 43008), we approved guidelines for the use of zone/split seasons for doves with implementation beginning in the 2007–08 season. While the initial period was for 4 years (2007–10), we further stated that beginning in 2011, zoning would conform to a 5–year period.

The next open season for changes to dove zone/split configurations will be in 2011, for the 2011–15 period. We are providing the guidelines here in order to allow sufficient time for States to solicit public input regarding their selections of zone/split configurations in 2011. The guidelines are as follows:

Guidelines for Dove Zones and Split Seasons in the Eastern and Central Mourning Dove Management Units

1. A zone is a geographic area or portion of a State, with a contiguous boundary, for which independent seasons may be selected for dove hunting.

2. States may select a zone/split option during an open season. The option must remain in place for the following 5 years except that States may make a one-time change and revert to their previous zone/split configuration in any year of the 5–year period. Formal approval will not be required, but States must notify the Service before making the change.

3. Zoning periods for dove hunting will conform to those years used for ducks, e.g., 2006–10.

4. The zone/split configuration consists of two zones with the option for 3-way (3-segment) split seasons in one or both zones. As a grandfathered arrangement, Texas will have three zones with the option for 2-way (2-segment) split seasons in one, two, or all three zones.

5. States that do not wish to zone for dove hunting may split their seasons into no more than 3 segments.

For the 2011–15 period, any State may continue the configuration used in 2007–10. If changes are made, the zone/split-season configuration must conform to one of the options listed above.

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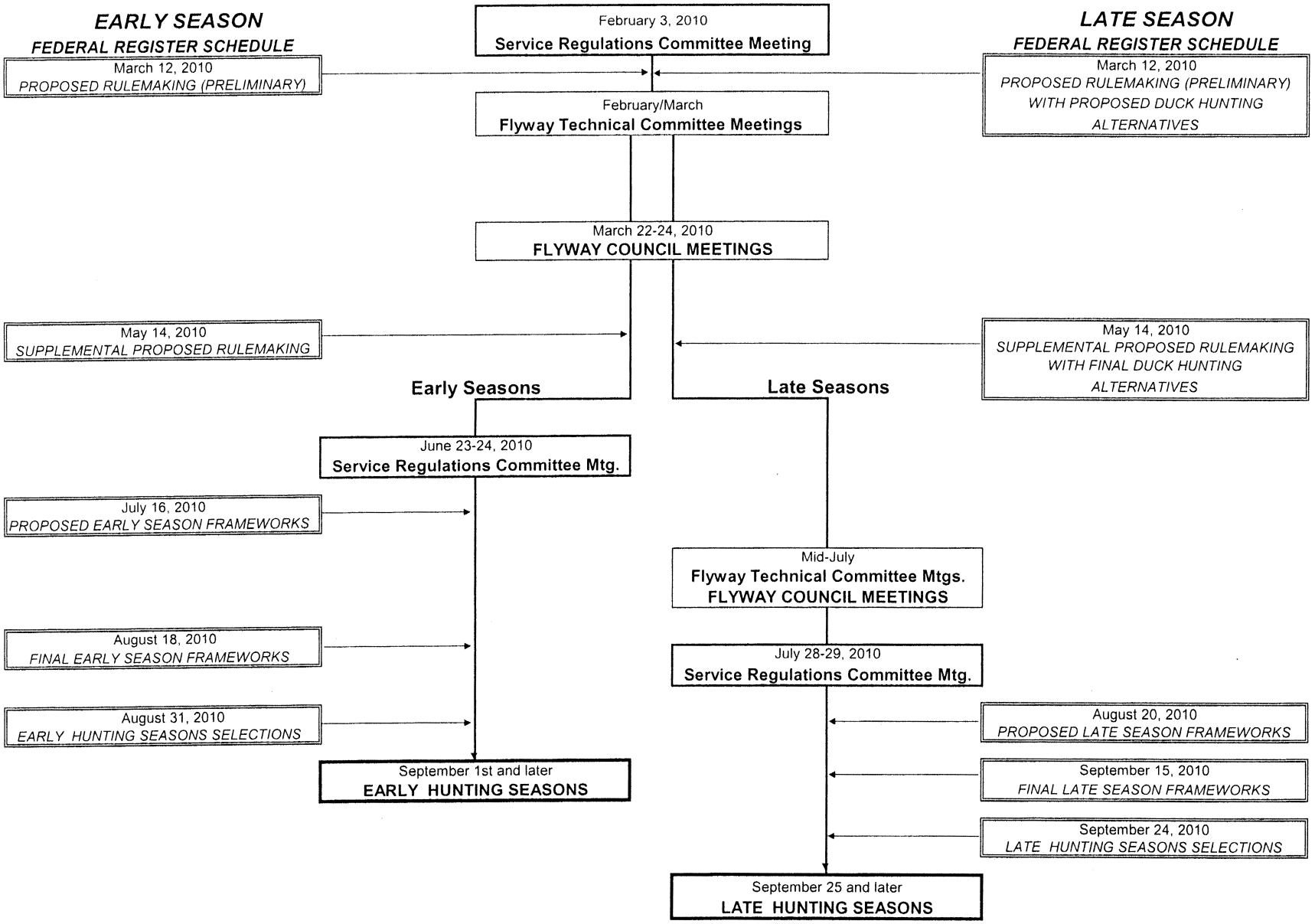
2010 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS



PROPOSED REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2010-11 SEASON

	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 Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24
Closing Date	Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.
Season Length (in days)	30	45	60	30	45	60	39	60	74	60	86	107
Daily Bag/ Possession Limit	3 6	6 12	6 12	3 6	6 12	6 12	3 6	6 12	6 12	4 8	7 14	7 14
Species/Sex Limits within the Overall Daily Bag Limit												
Mallard (Total/Female)	3/1	4/2	4/2	2/1	4/1	4/2	3/1	5/1	5/2	3/1	5/2	7/2

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway, with the exception of season length. Additional days would be allowed under the various alternatives as follows: restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different from the remainder of the Pacific Flyway. The bag limit would be 5-8 under the restrictive alternative, and 7-10 under the moderate and liberal alternatives. Under all alternatives, season length would be 107 days and framework dates would be Sep. 1 - Jan. 26.

[FR Doc. 2010–11032 Filed 5–12–10; 8:45 am]
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