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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS-HQ-MB-2018-0030; FF09M21200-189-FXMB1231099BPP0]

RIN 1018-BD10

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations for the 2019-20 Hunting Season; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), proposed in an earlier document this year to establish annual hunting regulations for certain migratory game birds for the 2019-20 hunting season. This supplement to that proposed rule provides the regulatory alternatives for the 2019-20 duck hunting seasons, announces the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings, and provides Flyway Council recommendations resulting from their March meetings.

DATES: *Comments:* We will accept comments on this proposed rule and any subsequent proposed rules resulting from upcoming SRC meetings until January 15, 2019.

Meetings: The SRC will meet to consider and develop proposed regulations for the 2019–20 migratory game bird hunting seasons on October 16–17, 2018. Meetings on both days are open to the public and will commence at approximately 8:30 a.m.

ADDRESSES: *Comments:* 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. FWS–HQ–MB–2018–0030.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–HQ–MB–2018–0030; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041.

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

Meetings: The October 16–17, 2018, SRC meetings will be at the U.S. Fish and Wildlife Service, 5600 American Boulevard, Bloomington, MN 55437.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel at: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041; (703) 358–1714.

SUPPLEMENTARY INFORMATION:

New Process for the Annual Migratory Game Bird Hunting Regulations

As part of DOI's retrospective regulatory review, 3 years ago we developed a schedule for migratory game bird hunting regulations that is more efficient and provides for States' selection of hunting season dates earlier than was possible under the old process. The new process makes planning easier for the States and all parties interested in migratory bird hunting. Beginning in the summer of 2015, with the development of the 2016–17 hunting seasons, we started promulgating our annual migratory game bird hunting regulations using a new schedule that combines the previously used early- and late-season regulatory processes into a single process. We make decisions for harvest management based on predictions derived from long-term biological information and established harvest strategies and, therefore, can establish migratory bird hunting seasons earlier than the system we used for many years. Under the new process, we develop proposed hunting season frameworks for a given year in the fall of the prior year. We then finalize those frameworks a few months later, thereby enabling the State agencies to select and publish their season dates in early summer. We provided a detailed overview of the new process in the August 3, 2017, *Federal Register* (82 FR 36308). This proposed rule is the second in a series of proposed and final rules for the establishment of the 2019–20 hunting seasons.

Service Migratory Bird Regulations Committee Meetings

The SRC will conduct open meetings on October 16–17, 2018, to review information on the current status of migratory game birds and develop 2019–20 migratory game bird

regulations recommendations for these species. In accordance with Departmental policy, these meetings are open to public observation. You may submit written comments to the Service on the matters discussed. See **DATES** and **ADDRESSES**, above, for information about these meetings.

Regulatory Schedule for 2019–20

On June 14, 2018, we published a proposal to amend title 50 of the Code of Federal Regulations (CFR) at part 20 (83 FR 27836). The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. This document is the second in a series of proposed, supplemental, and final rules 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. Major steps in the 2019–20 regulatory cycle relating to open public meetings and *Federal Register* notifications were illustrated in the diagram at the end of the June 14, 2018, proposed rule (83 FR 27836).

All sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under the numbered headings set forth in the June 14, 2018, proposed rule (83 FR 27836). Later sections of this and subsequent documents will refer only to numbered items requiring attention. Therefore, it is important to note that we will omit those items requiring no attention, and remaining numbered items will be discontinuous, thereby making the list appear incomplete.

The regulatory alternatives for the 2019–20 duck hunting seasons are shown at the end of this document. We plan to publish proposed season frameworks in mid-December 2018. We plan to publish final season frameworks in late February 2019.

Review of Public Comments

This proposed rulemaking describes recommended changes to or specific preliminary proposals that vary from the 2018–19 regulations and issues requiring 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 2019–20 season. We seek additional information and comments on this supplemental proposed rule.

New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items identified in the June 14, 2018, proposed rule (83 FR 27836). Only those categories requiring attention or for which we received Flyway Council recommendations are discussed below.

1. Ducks

Duck harvest management categories are: (A) General Harvest Strategy; (B) Regulatory Alternatives, including specification of framework dates, season length, and bag limits; (C) Zones and Split Seasons; and (D) Special Seasons/Species Management.

A. General Harvest Strategy

Council Recommendations: The Atlantic Flyway Council recommended that we adopt and implement a multi-stock decision framework for the annual setting of duck hunting seasons in the Atlantic Flyway starting in the 2019–20 season. Derivation of an annual optimal policy would consider a weighting method for each of four species (green-winged teal (*Anas crecca*), common goldeneye (*Bucephala clangula*), ring-necked duck (*Aythya collaris*), and wood duck (*Aix sponsa*)) utilizing hunter days and relative harvest of each of the four species, by regions within the Flyway. The harvest objective would be no more than 98 percent of maximum sustainable long-term yield for any of the four species.

The Mississippi Flyway Council recommended that regulation changes be restricted to one step per year, both when restricting as well as liberalizing hunting regulations.

Service Response: As we stated in the June 14, 2018, proposed rule (83 FR 27836), we intend to continue use of Adaptive Harvest Management (AHM) to help determine appropriate duck-hunting regulations for the 2019–20 season. AHM is a tool that permits sound resource decisions in the face of uncertain regulatory impacts, as well as providing a mechanism for reducing that uncertainty over time. We use AHM to evaluate four alternative regulatory levels for duck hunting in the Mississippi, Central, and Pacific Flyways based on the population status of mallards (see below). We will use AHM based on the population status of a suite of four species in the Atlantic Flyway (see below). We have specific hunting strategies for species of special concern, such as black ducks, scaup, and pintails.

Mississippi, Central, and Pacific Flyways

The prescribed regulatory alternative for the Mississippi, Central, and Pacific Flyways is

based on the status of mallard populations that contribute primarily to each Flyway. In the Central and Mississippi Flyways, we set hunting regulations based on the status and dynamics of mid-continent mallards. Mid-continent mallards are those breeding in central North America (Federal survey strata 13–18, 20–50, and 75–77, and State surveys in Minnesota, Wisconsin, and Michigan). In the Pacific Flyway, we set hunting regulations based on the status and dynamics of western mallards. Western mallards are those breeding in Alaska and the northern Yukon Territory (as based on Federal surveys in strata 1–12), and in California, Oregon, Washington, and British Columbia (as based on State- or Province-conducted surveys).

For the 2019–20 season, we will continue to use independent optimization to determine the optimal regulatory choice for each mallard stock. 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 AHM decision framework for western and mid-continent mallards in the July 24, 2008, *Federal Register* (73 FR 43290).

Atlantic Flyway

Since 2000, the Service has used an AHM protocol based on the status of eastern mallards to establish the annual framework regulations for duck hunting seasons in the Atlantic Flyway. This protocol assumes that the mallard is an appropriate surrogate for other duck species in the Atlantic Flyway. By 2010, it was apparent that the biological models used in the AHM protocol were performing poorly in terms of accurately predicting the following year's eastern mallard breeding population, and this performance problem led to a

comprehensive review of duck harvest management in the Atlantic Flyway. Following that review, the Atlantic Flyway Council (AFC) determined that eastern mallards do not adequately represent duck harvest dynamics throughout the entire Flyway; they do not represent the breeding ecology and habitat requirements of other important Atlantic Flyway duck species because their breeding range does not overlap with that of other ducks that breed in the flyway; and their breeding and/or wintering habitat needs differ from many of the other duck species in the Flyway. Thus, although mallards comprise nearly 20 percent of the Atlantic Flyway's duck harvest, the status of eastern mallards does not necessarily reflect that of other Atlantic Flyway duck species. For example, mallards in eastern North America have declined at an annual rate of 1 percent since 1998, whereas over the same time period all other duck species in eastern North America for which robust population estimates are available are stable or increasing.

The AFC decided that a decision framework based upon a suite of duck species that better represents the habitat needs and harvest distribution of ducks in the Atlantic Flyway would be superior to the current eastern mallard AHM framework, and we concur. Accordingly, the Service and the AFC began working in 2013 to develop a multi-stock AHM protocol for setting annual duck hunting season frameworks for the Atlantic Flyway.

The development of multi-stock protocols has now been completed, and we adopt multi-stock AHM as a replacement for eastern mallard AHM. The protocols are based on a suite of four species that represents the dynamics of duck harvest in the Atlantic Flyway and the various habitat types used by waterfowl throughout the Atlantic Flyway: green-winged teal (*Anas crecca*), common goldeneye (*Bucephala clangula*), ring-necked duck (*Aythya collaris*),

and wood duck (*Aix sponsa*). These species comprise more than 40 percent of the Atlantic Flyway's total duck harvest, and they reflect regional variation in harvest composition. The selected species represent upland nesters in boreal and southern Canada (green-winged teal), over-water nesters in boreal Canada (ring-necked duck), cavity nesters in the United States and southern Canada (wood duck), and cavity nesters in boreal Canada (goldeneye). The most important winter waterfowl habitats in the Atlantic Flyway (salt marsh, freshwater marsh, tidal waters, freshwater ponds and lakes, rivers and streams) are important to at least one of these four species.

Species selection was also influenced by our need for sufficient time series of estimates of annual abundance and estimates of harvest rate or annual harvest. The protocol has a harvest objective of no more than 98 percent of maximum sustainable long-term yield for any of the four species. Regulatory alternatives would be the same as those used in the eastern mallard AHM, except that the mallard bag limit would not be prescribed by the optimal regulatory alternative as determined by the multi-stock AHM protocol. Further details on biological models used in the protocol, data sources, optimization methods, and simulation results are available at <http://www.regulations.gov> and on our website at <https://www.fws.gov/birds/index.php>.

Although season length in the Atlantic Flyway would be determined by the proposed multi-stock protocol, the daily bag limit for black ducks will still be determined by the international black duck AHM harvest strategy. The mallard bag limit in the Atlantic Flyway will be based on a separate assessment of the harvest potential of eastern mallards.

Regarding the Mississippi Flyway Council recommendation to limit regulatory changes to

one step per year, we recognize the longstanding interest by the Council to impose a one-step constraint on regulatory changes. We note that the Central and Mississippi Flyways have worked with Service staff during the past 3 years to revisit the AHM protocol for managing harvest of mid-continent mallards. This effort has included a discussion of appropriate management objectives, regulatory packages, and management of non-mallard stocks. These discussions are the appropriate venue to discuss what role, if any, a one-step constraint might play in management of waterfowl in the Central and Mississippi Flyways. Such discussions should include the potential impact of a one-step constraint on the frequency of when the liberal, moderate, and restrictive packages would be recommended. On a final note, while we recognize the Council's concern about potentially communicating a large regulatory change to hunters, we have concerns about the appropriateness of a one-step constraint in situations when the status of the waterfowl resource may warrant a regulatory change larger than one-step. Furthermore, it is unclear how the AHM protocol can accommodate a one-step constraint in the Mississippi Flyway if the Central Flyway does not impose a similar constraint. Technical work on the double-looping process tentatively should be completed by March 2019, with any potential changes to regulatory packages and harvest strategy approved in June 2019 for the 2020–21 season. We look forward to continued work with the Flyway Councils on this issue.

B. Regulatory Alternatives

Council Recommendations: The Atlantic Flyway Council recommended that the AHM regulations packages used in 2018–19 be used in 2019–20, with the exception that mallards be removed from the prescribed daily bag limit (addressed above) and that the ending framework

date be moved from the last Sunday in January to January 31 for the “moderate” and “liberal” alternatives.

The Mississippi and Central Flyway Councils recommended that regulatory alternatives for duck hunting seasons remain the same as those used in 2017–18.

Service Response: We support the Atlantic Flyway’s new multi-stock AHM protocol, including removal of mallards from the prescribed daily bag limits. The multi-stock AHM protocol incorporated the harvest rate increases expected to result from extending the ending framework date to January 31; therefore, we support that change to the Atlantic Flyway’s regulatory alternatives.

Consistent with Flyway recommendations, the regulatory alternatives proposed for the Mississippi, Central, and Pacific Flyways in the June 14, 2018, *Federal Register* (83 FR 27836) will be used for the 2019–20 hunting season (see accompanying table at the end of this document for specific information). In 2005, the AHM regulatory alternatives were modified to consist only of the maximum season lengths, framework dates, and bag limits for total ducks and mallards. Restrictions for certain species within these frameworks that are not covered by existing harvest strategies will be addressed in the proposed frameworks rule in early December 2018. For those species with specific harvest strategies (pintails, black ducks, scaup, and mallards in the Atlantic Flyway), those strategies will again be used for the 2019–20 hunting season.

D. Special Seasons/Species Management

i. September Teal Seasons

Council Recommendations: The Atlantic Flyway Council recommended that Florida be

granted operational status for the 4-day, teal-only season, beginning with the 2019 season.

The Mississippi Flyway Council recommended that Tennessee be granted operational 4-day, teal-only seasons when 16-day teal seasons are offered for the 2019–20 season and beyond.

Service Response: In 2014, the States of Florida, Kentucky, and Tennessee initiated an experimental teal-only season comprised of 4 additional days of teal hunting that would follow the States' operational September wood duck/teal seasons. Memorandums of agreement (MOAs) were cooperatively developed between each State and the Service to specify criteria for annual and total sample sizes (number of non-target shooting opportunities each year for 3 years and overall for the experiment), non-target attempt rates (must not be greater than 25 percent [0.25]), and non-target kill rates (must not be greater than 10 percent [0.10]). Criteria for non-target attempt rates and kill rates were the same for all States; however, sample sizes among States were based on prior information for each State and thus could vary among States. Kentucky was granted operational status in 2017, after successfully meeting the above criteria. However, Florida and Tennessee failed to meet sample size requirements and requested an additional year of data collection in 2017.

In Florida, non-target attempt rates were similar for the pre- and post-sunrise periods (average 0.06), as were non-target kill rates (average 0.03). However, annual sample size requirements for non-target opportunities ($n=25/\text{year}$) were not met for the pre-sunrise period in any year ($n=4, 14, 17, \text{ and } 12$). For the post-sunrise period, annual sample size requirements were met in 3 of the 4 years ($n= 12, 44, 34, \text{ and } 39$). Thus, annual and total sample size requirements specified in the MOA for the experiment were met for the post-sunrise period, but not for the pre-sunrise period.

In Tennessee, non-target attempt rates for the pre- and post-sunrise periods were 0.0 and 0.03, respectively. Non-target kill rates for pre- and post-sunrise periods were 0.0 and 0.04, respectively. Annual sample size requirements for non-target opportunities ($n=20$ /year) were met in only 2 of 4 years during both the pre-sunrise period ($n= 14, 10, 23$ and 24) and the post-sunrise period ($n= 21, 4, 14, 30$). However, total sample size requirements specified in the MOA for the experiment were met for both the pre- and post-sunrise periods. As such, and seeing no biological concerns, we recommend that Tennessee's additional 4 days of teal-only hunting be granted operational status.

In the case of Florida, although no biological concerns for non-target species have been raised during these experiments, the MOAs governing harvest management experiments have not been met. Sample sizes outlined in the MOA have not been met for multiple years despite an additional experimental year to attempt to meet sample size requirements. When years are pooled, Florida does meet total sample size requirements for the post-sunrise period, but not the pre-sunrise period. We have concerns about the role of MOAs in the conduct of harvest management experiments, and situations in which MOA requirements are not met. If MOAs are to have any meaningful role in the conduct of harvest management experiments, the consequences of not meeting MOA requirements need to be upheld. Further, not adhering to the MOA criteria has potential ramifications beyond the issue of teal and beyond the Atlantic Flyway. Therefore, we do not grant operational status to the Florida 4-day, teal-only season for the pre-sunrise period.

8. Swans

Council Recommendations: The Atlantic Flyway Council recommended that Delaware be allowed to implement an experimental tundra swan hunt beginning with the 2019–20 season. The Council recommends a reallocation of existing permits to Delaware from within the wintering zone per the guidelines included in the Eastern Population Tundra Swan Hunt Plan. All other requirements for experimental seasons (e.g., hunter reporting, harvest and population monitoring) specified in the Plan also will be met.

Service Response: We support the establishment of an experimental tundra swan season in Delaware beginning with the 2019–20 season. The proposed hunt request follows the guidelines provided in the Eastern Population Tundra Swan Hunt Plan and is not expected to increase the overall harvest of tundra swans. Rather, the existing allowable harvest will be reallocated among the States that hunt them.

14. Woodcock

Council Recommendations: The Atlantic and Mississippi Flyway Councils recommended that the Woodcock Harvest Strategy be modified to allow the liberal harvest package at a level of 3.0 birds/route (from 3.25 birds/route) and that the framework opening date for the Central Management Region be changed from the Saturday nearest September 22 to a fixed date of September 13.

Service Response: Only two of the three Flyways that are signatories to this strategy passed recommendations supporting the changes. The current Woodcock Harvest Strategy was first implemented in 2011. Although we have gained experience with the strategy, we have not adequately evaluated how the proposed changes may impact woodcock populations

and hunting opportunities in the future. Therefore, we recommend that the Woodcock Harvest Strategy Working Group, who developed this strategy, be re-convened to discuss a comprehensive review of the harvest strategy and evaluate any proposed changes. The Working Group should involve the Service and all three Flyway Councils that are current signatories to the existing harvest strategy.

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 the proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by e-mail or fax or to an address not listed in **ADDRESSES**. 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 **DATES**. 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 the 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, 5275 Leesburg Pike, Falls Church, VA.

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.

Required Determinations

Based on our most current data, we are affirming our required determinations made in the June 14, 2018, proposed rule (83 FR 27836); see that document for descriptions of our actions to ensure compliance with the following statutes and Executive Orders:

- National Environmental Policy Act;
- Endangered Species Act;
- Regulatory Flexibility Act;
- Small Business Regulatory Enforcement Fairness Act;
- Paperwork Reduction Act;
- Unfunded Mandates Reform Act; and
- Executive Orders 12630, 12866, 12988, 13132, 13175, 13211, 13563, and 13771.

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 2019–20 hunting season are authorized under 16 U.S.C. 703–711, 712, and 742 a–j.

Dated: __September 6, 2018_____.

Andrea Travnicek,

Principal Deputy Assistant Secretary - Water and Science,

Exercising the Authority of the Assistant Secretary for Fish and Wildlife and Parks

FINAL REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2019-20 SEASON

	ATLANTIC FLYWAY			MISSISSIPPI FLYWAY			CENTRAL FLYWAY (a)			PACIFIC FLYWAY (b)(c)		
	RES	MOD	LIB									
Beginning Shooting Time	1/2 hr. before sunrise											
Ending Shooting Time	Sunset											
Opening Date	Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	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	Jan. 31	Jan. 31	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	3	6	6	3	6	6	3	6	6	4	7	7
Species/Sex Limits within the Overall Daily Bag Limit												
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 proposed multi-stock AHM protocol for the Atlantic Flyway, the mallard bag limit would not be prescribed by the regulatory alternative.

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