

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 20**

RIN 1018-AI93

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2003-04 Season**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) proposes special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2003-04 migratory bird hunting season.

DATES: We will accept all comments on the proposed regulations that are postmarked or received in our office by August 18, 2003.

ADDRESSES: Send your comments on these proposals to the Chief, 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 or fax comments to (703) 358-2272. All comments received will become part of the public record. You may inspect comments during normal business hours in room 4107, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Tina Chouinard, (318) 201-0400, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358-1714.

SUPPLEMENTARY INFORMATION: In the May 6, 2003, *Federal Register* (68 FR 24324), we requested proposals from Indian Tribes wishing to establish special migratory bird hunting regulations for the 2003-04 hunting season, under the guidelines described in the June 4, 1985, *Federal Register* (50 FR 23467). In this supplemental proposed rule, we propose special migratory bird hunting regulations for 28 Indian Tribes, based on the input we received in response to the May 6, 2003, proposed rule. As described in that rule, the promulgation of annual migratory bird hunting regulations involves a series of rulemaking actions each year. This proposed rule is part of that series.

We developed the guidelines for establishing special migratory bird hunting regulations for Indian Tribes in response to tribal requests for recognition of their reserved hunting

rights and, for some Tribes, recognition of their authority to regulate hunting by both tribal and nontribal members on 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 the 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, the regulations established under the guidelines must be consistent with the 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 (Treaty). The guidelines apply to those Tribes having recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory 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 lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service 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 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 wish to establish special hunting regulations for tribal members on ceded lands.

Because of past questions regarding interpretation of what events trigger the

consultation process, as well as who initiates it, we provide the following clarification. We routinely provide copies of *Federal Register* publications pertaining to migratory bird management to all State Directors, Tribes, and other interested parties. It is the responsibility of the States, Tribes, and others to notify us of any concern regarding any feature(s) of any regulations. When we receive such notification, we will initiate consultation.

Our guidelines provide for the continued harvest of waterfowl and other migratory game birds by tribal members on reservations where such harvest has been a customary practice. We do not oppose this harvest, provided it does not take place during the closed season defined by the Treaty, and does not adversely affect the status of the migratory bird resource.

Before developing the guidelines, we reviewed available information on the current status of migratory bird populations; reviewed the current status of migratory bird hunting on Federal Indian reservations; and evaluated the potential impact of such guidelines on migratory birds. We concluded that the impact of migratory bird harvest by tribal members hunting on their reservations is minimal.

One area of interest in Indian migratory bird hunting regulations relates to hunting seasons for nontribal members on dates that are within Federal frameworks, but which are different from those established by the State(s) where the reservation is located. A large influx of nontribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse population impacts on one or more migratory bird species. The guidelines make this unlikely, however, because tribal proposals must include:

(a) Harvest anticipated under the requested regulations;

(b) Methods that will be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

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

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

We may modify regulations or establish experimental special hunts, after evaluation and confirmation of harvest information obtained by the Tribes.

We believe the guidelines provide appropriate opportunity to