

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AI93

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

SUMMARY: This rule prescribes special late-season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands and ceded lands. This responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on September 27, 2003.

ADDRESSES: You may inspect comments on the special hunting regulations and tribal proposals during normal business hours in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Tina Chouinard, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (318/305-0643), or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703/358-1967).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In a proposed rule published in the August 8, 2003, **Federal Register** (68 FR 47424), we proposed special migratory bird hunting regulations for the 2003-04 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal

requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, 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, the regulations established under the guidelines must be consistent with the March 10-September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In a proposed rule published in the May 6, 2003, **Federal Register** (68 FR 24324), we requested that tribes desiring special hunting regulations in the 2003-04 hunting season submit a proposal including details on:

(a) Harvest anticipated under the requested regulations;

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

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

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

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985-86 hunting season. We finalized the guidelines beginning with the 1988-89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

Although the August 8, 2003, proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the late-season proposals. Early-season proposals were addressed in a final rule published in the August 29 **Federal Register** (68 FR 55660). As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged

dove. Late seasons begin about September 24 or later each year and have a primary emphasis on waterfowl.

Status of Populations

In the August 8, 2003, proposed rule, we reviewed the status for various populations for which seasons were proposed. This information included brief summaries of the May Breeding Waterfowl and Habitat Survey and population status reports for blue-winged teal, sandhill cranes, woodcock, mourning doves, white-winged doves, white-tipped doves, and band-tailed pigeons. The tribal seasons established below are commensurate with the population status.

Comments and Issues Concerning Tribal Proposals

For the 2003-04 migratory bird hunting season, we proposed regulations for 29 tribes and/or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements. However, as noted earlier, only those with late-season proposals are included in this final rulemaking; 19 tribes have proposals with late seasons. Proposals are addressed in the following section. The comment period for the proposed rule, published on August 8, 2003, closed on August 18, 2003, however, we did not receive any comments. We received one comment regarding the notice of intent published on May 6, 2003, which announced rulemaking on regulations for migratory bird hunting by American Indian tribal members. We responded to this comment in the August 29 final rule.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES-75-74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975, (40 FR 25241). A supplement to the final environmental statement, the "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88-14)" was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR