

Services Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Author

The primary authors of this rule are the staff members of the New Mexico Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 31, 2009.

**James J. Slack,**

*Acting Deputy Director, Fish and Wildlife Service.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

[FWS-R9-MB-2008-0124; 91200-1231-9BPP-L2]

RIN 1018-AW31

#### **Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2009-10 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 2009-10 migratory bird hunting season.

**DATES:** We will accept all comments on the proposed regulations that are postmarked or received in our office by August 21, 2009.

**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.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: 1018-AW31, 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-mail or faxes. 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).

**FOR FURTHER INFORMATION CONTACT:** Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358-1714.

**SUPPLEMENTARY INFORMATION:** In the April 10, 2009, **Federal Register** (74 FR 16339), we requested proposals from Indian Tribes wishing to establish special migratory bird hunting regulations for the 2009-10 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 29 Indian Tribes, based on the input we received in response to the April 10, 2009, proposed rule. As described in that proposed 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 hunters on their reservations. The guidelines include possibilities for:

- (1) On-reservation hunting by both Tribal and nontribal hunters, with hunting by nontribal hunters 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 hunters 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 hunters 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 hunters 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 accommodate the reserved hunting rights and management authority of Indian Tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. The guidelines should not be viewed as inflexible. In this regard, we note that they have been employed successfully since 1985. We believe they have been tested adequately and, therefore, we made them final beginning with the 1988–89 hunting season. We should stress here, however, that use of the guidelines is not mandatory and no action is required if a Tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

#### Service Migratory Bird Regulations Committee Meetings

Participants at the June 24–25, 2009, meetings reviewed information on the current status of migratory shore and upland game birds and developed 2009–10 migratory game bird regulation recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the U.S. Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl. Participants at the previously announced July 29–30, 2009, meetings reviewed information on the current status of waterfowl and developed recommendations for the 2009–10 regulations pertaining to regular waterfowl seasons and other species and

seasons not previously discussed at the early-season meetings. In accordance with Department of the Interior policy, these meetings were open to public observation and you may submit comments to the Service as discussed in the Public Comments section below.

#### Population Status and Harvest

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web site at <http://www.fws.gov/migratorybirds/NewsPublicationsReports.html>.

#### Waterfowl Breeding and Habitat Survey

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft, helicopters, and ground crews and encompass principal breeding areas of North America, covering an area over 2.0 million square miles. The traditional survey area comprises Alaska, Canada, and the northcentral United States, and includes approximately 1.3 million square miles. The eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Overall, habitat conditions were characterized as near normal for most of the traditional survey area during the 2009 Waterfowl Breeding Population and Habitat Survey, with greatly improved wetlands conditions in portions of the prairies. Adequate moisture and good habitat conditions characterized much of the eastern survey area. The northernmost survey areas in both the traditional and eastern survey areas experienced an extremely late spring.

#### Traditional Survey Area (U.S. and Canadian Prairies)

Major improvements in wetlands conditions occurred across much of the traditional survey area in 2009. The prairie pothole region of southern Manitoba, most of the Dakotas and eastern Montana benefitted primarily from above average fall and winter precipitation. These areas were classified as good to excellent, with

mostly fair habitat conditions confined to west-central Montana and southeastern South Dakota. Above average precipitation improved wetlands conditions in the southern grasslands of Saskatchewan but the habitats along the Alberta and Saskatchewan border are suffering under drought conditions.

The parklands continued to receive below normal precipitation in 2009. Fortunately, habitat conditions remain classified as fair to good because of the holdover water that resulted during the extremely wet year in 2007.

Bush (Alaska, Northern Manitoba, Northern Saskatchewan, Northwest Territories, Yukon Territory, Western Ontario)

In the boreal forest, spring breakup was extremely late over most of the survey area in 2009. Most large lakes remained frozen into early June. Many smaller wetland habitats, such as beaver ponds, were open during the survey and those in northern Alberta and into the Northwest Territories were rated as good. Habitat conditions were drier across northern Saskatchewan and Manitoba but improved nearer to Hudson Bay. The majority of Alaska was rated as good.

#### Eastern Survey Area

From Maine through most of the Maritimes, an above average snowfall was experienced and average spring temperatures were recorded, resulting in fully charged wetlands with little flooding, which is in contrast to flooding in 2008. Despite below average snowfall and winter temperatures for Newfoundland and Labrador, habitat conditions are rated as fair to excellent, with poorer conditions found at higher elevation habitat. Through New York and much of Quebec and Ontario, generally good to excellent waterfowl habitat exists but a series of major storms during mid-May in southwest Ontario could hamper production because of flooding. The Nickel and Clay belts of east-central Ontario and points farther west were supporting good habitat at the time of the survey following average winter and spring precipitation. Good habitat conditions remained moving farther north but deteriorated approaching the James and Hudson Bay lowlands due to deep snows and a very late spring, while lowland habitats on the Quebec side were much drier than normal.

#### Status of Teal

The estimate of blue-winged teal numbers from the Traditional Survey Area is 7.4 million. This represents an

11.0 percent increase from 2008 and is 60 percent above the 1955–2008 average.

#### *Sandhill Cranes*

Compared to increases recorded in the 1970s, annual indices to abundance of the Mid-Continent Population (MCP) of sandhill cranes have been relatively stable since the early 1980s. The Central Platte River Valley, Nebraska, spring index for 2009, uncorrected for visibility bias, was 460,000 sandhill cranes. The photo-corrected, 3-year average for 2006–08 was 382,271, which is within the established population-objective range of 349,000–472,000 cranes.

All Central Flyway States, except Nebraska, allowed crane hunting in portions of their States during 2008–09. An estimated 10,293 hunters participated in these seasons, which was similar to the number that participated in the previous season. Hunters harvested a record-high 22,989 MCP cranes in the U.S. portion of the Central Flyway during the 2008–09 seasons, which was 24 percent higher than the estimated harvest for the previous year. The retrieved harvest of MCP cranes in hunt areas outside of the Central Flyway (Arizona, Pacific Flyway portion of New Mexico, Alaska, Canada, and Mexico combined) was 15,024 during 2008–09. The preliminary estimate for the North American MCP sport harvest, including crippling losses, was 42,536 birds, which was a record high and is 7 percent higher than the previous year's estimate. The long-term (1982–2004) trends for the MCP indicate that harvest has been increasing at a higher rate than population growth.

The fall 2008 pre-migration survey for the Rocky Mountain Population (RMP) resulted in a count of 21,156 cranes. The 3-year average for 2005, 2007, and 2008 (no survey was conducted in 2006) was 21,614 sandhill cranes, which is above the established population objective of 17,000–21,000 for the RMP. Hunting seasons during 2008–09 in portions of Arizona, Idaho, Montana, New Mexico, Utah, and Wyoming resulted in a record-high harvest of 936 RMP cranes, a 14 percent increase from the harvest of 820 in 2007–08. The Lower Colorado River Valley Population (LCRVP) survey results indicate an increase from 1,900 birds in 1998 to 2,401 birds in 2009. The 3-year average of 2,981 LCRVP cranes is based on counts from 2006, 2007 and 2009 (survey was not complete in 2008) and is above the population objective of 2,500.

#### *Woodcock*

Singing-ground and Wing-collection Surveys were conducted to assess the

population status of the American woodcock (*Scolopax minor*). The Singing-ground Survey is intended to measure long-term changes in woodcock population levels. Singing-ground Survey data for 2009 indicate that the number of displaying woodcock in the Eastern and Central Management Regions was unchanged from 2008. There was no significant 10-year trend in woodcock heard in both management regions during 1999–2009. This represents the sixth consecutive year that the 10-year trend estimate for the Eastern Region did not indicate a significant decline. The 10-year trend in the Central Region returned to stability after showing a significant decline last year. There were long-term (1968–2009) declines of 1.1 percent per year in both management regions.

Wing-collection Survey data indicate that the 2008 recruitment index for the U.S. portion of the Eastern Region (1.8 immatures per adult female) was 11 percent higher than the 2007 index, and 8 percent higher than the long-term average. The recruitment index for the U.S. portion of the Central Region (1.6 immatures per adult female) was 6 percent higher than the 2007 index and 1 percent below the long-term average.

#### *Band-tailed Pigeons and Doves*

Information on the abundance and harvest of band-tailed pigeons is collected annually in the western United States and British Columbia. Annual counts of Interior band-tailed pigeons seen and heard per route have not changed significantly since implementation of the Breeding Bird Survey (BBS) in 1966; however, they decreased significantly over the last 10 years. The 2008 harvest was estimated to be 4,700 birds. For Pacific Coast band-tailed pigeons, annual BBS counts of birds seen and heard per route have not changed significantly since 1966, but they have increased significantly over the last 10 years. According to the Pacific Coast Mineral Site Survey, annual counts of Pacific Coast band-tailed pigeons seen at each mineral site have increased significantly since the survey was experimentally implemented in 2001, but counts over the last 5 years appear stable. The 2008 estimate of harvest was 30,200 birds.

The status report summarizes information on the abundance and harvest of mourning doves collected annually in the United States. The focus is on results from the Mourning Dove Call-count Survey, but also includes results from the BBS and Migratory Bird Harvest Information Program. According to the Call-count survey, over the most recent 10 years (2000–09), there was no

significant trend in doves heard for either the Eastern or Western Management Units while the Central Unit declined significantly. Over the 44-year period (1966–2009), there was no significant change in doves heard for the Eastern Unit while the Central and Western Units declined significantly. Based on the mean number of doves seen per route, however, there was no significant change for any of the three Management Units during the recent 10-year period. Over 44 years, there was no change in doves seen for the Eastern and Central Units while the Western Unit declined significantly. The preliminary 2008 harvest estimate for the United States was 17,402,400 doves. A banding program is underway to obtain current information in order to develop mourning dove population models for each Management Unit to provide guidance for improving our decision-making process with respect to harvest management.

The two key States with a white-winged dove population are Arizona and Texas. California and New Mexico have much smaller populations.

The Arizona Game and Fish Department (AGFD) has monitored white-winged dove populations by means of a call-count survey to provide an annual index to population size. It runs concurrently with the Service's Mourning Dove Call-count Survey. The index peaked at 52.3 mean number doves heard per route in 1968, but fell precipitously in the late 1970s. The index has stabilized to around 25 doves per route in the last few years; in 2009, the mean number of doves heard per route was 27.9. AGFD also monitors harvest. Harvest during the 15-day season (September 1–15) peaked in the late 1960s at approximately 740,000 birds (1968 AGFD estimate) and has since stabilized at around 100,000 birds; the preliminary 2008 Migratory Bird Harvest Information Program (HIP) estimate of harvest was 95,300 birds. In 2007, AGFD redesigned their dove harvest survey to sample only from hunters registered under HIP so that results from the AGFD survey would be comparable to those from HIP. The preliminary 2008 Arizona harvest estimate was 79,488.

In Texas, white-winged doves continue to expand their breeding range. Nesting by whitewings has been recorded in most counties, except for the northeastern part of the State. Nesting is essentially confined to urban areas, but appears to be expanding to exurban areas. Concomitant with this range expansion has been a continuing increase in whitewing abundance. A new DISTANCE sampling protocol was

implemented for central and south Texas for 2007, and expanded in 2008 so that coverage is almost Statewide. Once fully implemented, biologists should have the ability to obtain a good estimate of white-winged dove abundance in Texas. While 2008 and 2009 data are not available at this time, 2007 surveys indicated an estimated abundance throughout surveyed areas (representing about 20 percent of the State) of about 2,300,000 whitewings. Total Statewide harvest has averaged about 2 million birds annually.

The Texas Parks and Wildlife Department is working to improve management of white-winged doves in Texas in the following ways: (1) Expanding current surveys of spring populations to encompass areas throughout the State that now have breeding populations; (2) Completing the Tamaulipas-Texas White-winged Dove Strategic Plan so that there are consistent and comparable harvest management strategies, surveys, research, and data collection across the breeding range of the species; (3) Expanding operational banding in 2009 that was begun in 2007 to derive estimates of survival and harvest rates; (4) Implementing a wing-collection survey for recruitment rates in lieu of the feeding flight and production surveys; (5) Estimating probability of detection for more accurate estimates of breeding populations within urban environments; and (6) Evaluating and estimating reproductive success in urban areas to better estimate population increases.

In California, BBS data (although imprecise due to a small sample size) indicate that there has been a significant increase in the population between 1968 and 2008. According to HIP surveys, the preliminary harvest estimate for 2008 was 83,300. In New Mexico, BBS data (very imprecise due to a small sample size) also showed a significant increase over the long term. In 2008, the estimated harvest was 49,100.

White-tipped doves are believed to be maintaining a relatively stable population in the Lower Rio Grande Valley (LRGV) of Texas. DISTANCE sampling procedures in the LRGV include whitetips. However, until the sampling frame includes rural Rio Grande corridor habitats, not many whitetips will be reported. Sampling frame issues are expected to be resolved by next year. However, annual white-tipped dove harvest during the special season is only averaging 3,000–4,000 birds.

### Hunting Season Proposals From Indian Tribes and Organizations

For the 2009–10 hunting season, we received requests from 29 Tribes and Indian organizations. We actively solicit regulatory proposals from other Tribal groups that are interested in working cooperatively for the benefit of waterfowl and other migratory game birds. We encourage Tribes to work with us to develop agreements for management of migratory bird resources on Tribal lands.

It should be noted that this proposed rule includes generalized regulations for both early- and late-season hunting. A final rule will be published in a late-August 2009 **Federal Register** that will include Tribal regulations for the early-hunting season. Early seasons generally begin around September 1 each year and most commonly include such species as American woodcock, sandhill cranes, mourning doves, and white-winged doves. Late seasons generally begin on or around September 24 and most commonly include waterfowl species.

In this current rulemaking, because of the compressed timeframe for establishing regulations for Indian Tribes and because final framework dates and other specific information are not available, the regulations for many Tribal hunting seasons are described in relation to the season dates, season length, and limits that will be permitted when final Federal frameworks are announced for early- and late-season regulations. For example, daily bag and possession limits for ducks on some areas are shown as the same as permitted in Pacific Flyway States under final Federal frameworks, and limits for geese will be shown as the same permitted by the State(s) in which the Tribal hunting area is located.

The proposed frameworks for early-season regulations were published in the **Federal Register** on July 24, 2009 (74 FR 43290); early-season final frameworks will be published in late August. Proposed late-season frameworks for waterfowl and coots will be published in mid-August, and the final frameworks for the late seasons will be published in mid-September. We will notify affected Tribes of season dates, bag limits, *etc.*, as soon as final frameworks are established. As previously discussed, no action is required by Tribes wishing to observe migratory bird hunting regulations established by the State(s) where they are located. The proposed regulations for the 29 Tribes that have submitted proposals that meet the established criteria are shown below.

*(a) Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Nontribal Hunters)*

The Colorado River Indian Reservation is located in Arizona and California. The Tribes own almost all lands on the reservation, and have full wildlife management authority.

In their 2009–10 proposal, the Colorado River Indian Tribes requested split dove seasons. They propose that their early season begin September 1 and end September 15, 2009. Daily bag limits would be 10 mourning or white-winged doves in the aggregate. The late season for doves is proposed to open November 14, 2009, and close December 28, 2009. The daily bag limit would be 10 mourning doves. The possession limit would be twice the daily bag limit after the first day of the season. Shooting hours would be from one-half hour before sunrise to noon in the early season and until sunset in the late season. Other special *Tribally* set regulations would apply.

The Tribes also propose duck hunting seasons. The season would open October 10, 2009, and run until January 24, 2010. The Tribes propose the same season dates for mergansers, coots, and common moorhens. The daily bag limit for ducks, including mergansers, would be seven, except that the daily bag limits could contain no more than two hen mallards, two redheads, two Mexican ducks, two goldeneye, three scaup, one pintail, and two cinnamon teal. The season on canvasback is closed. The possession limit would be twice the daily bag limit after the first day of the season. The daily bag and possession limit for coots and common moorhens would be 25, singly or in the aggregate.

For geese, the Colorado River Indian Tribes propose a season of October 17, 2009, through January 24, 2010. The daily bag limit for geese would be three light geese and three dark geese. The possession limit would be six light geese and six dark geese after opening day.

In 1996, the Tribes conducted a detailed assessment of dove hunting. Results showed approximately 16,100 mourning doves and 13,600 white-winged doves were harvested by approximately 2,660 hunters who averaged 1.45 hunter-days. Field observations and permit sales indicate that fewer than 200 hunters participate in waterfowl seasons. Under the proposed regulations described here and, based upon past seasons, we and the Tribes estimate harvest will be similar.

Hunters must have a valid Colorado River Indian Reservation hunting permit and a Federal Migratory Bird Stamp in their possession while hunting. Other special *Tribally* set regulations would apply. As in the past, the regulations would apply both to Tribal and nontribal hunters, and nontoxic shot is required for waterfowl hunting.

We propose to approve the Colorado River Indian Tribes regulations for the 2009–10 hunting season, given the seasons dates fall within final flyway frameworks (applies to nontribal hunters only).

*(b) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal and Nontribal Hunters)*

For the past several years, the Confederated Salish and Kootenai Tribes and the State of Montana have entered into cooperative agreements for the regulation of hunting on the Flathead Indian Reservation. The State and the Tribes are currently operating under a cooperative agreement signed in 1990 that addresses fishing and hunting management and regulation issues of mutual concern. This agreement enables all hunters to utilize waterfowl hunting opportunities on the reservation.

As in the past, Tribal regulations for nontribal hunters would be at least as restrictive as those established for the Pacific Flyway portion of Montana. Goose season dates would also be at least as restrictive as those established for the Pacific Flyway portion of Montana. Shooting hours for waterfowl hunting on the Flathead Reservation are sunrise to sunset. Steel shot or other Federally approved nontoxic shots are the only legal shotgun loads on the reservation for waterfowl or other game birds.

For Tribal members, the Tribe proposes outside frameworks for ducks and geese of September 1, 2009, through March 9, 2010. Daily bag and possession limits were not proposed for Tribal members.

The requested season dates and bag limits are similar to past regulations. Harvest levels are not expected to change significantly. Standardized check station data from the 1993–94 and 1994–95 hunting seasons indicated no significant changes in harvest levels and that the large majority of the harvest is by nontribal hunters.

We propose to approve the Tribes' request for special migratory bird regulations for the 2009–10 hunting season.

*(c) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only)*

Since 1996, the Service and the Fond du Lac Band of Lake Superior Chippewa Indians have cooperated to establish special migratory bird hunting regulations for Tribal members. The Fond du Lac's May 19, 2009, proposal covers land set apart for the band under the Treaties of 1837 and 1854 in northeast and east-central Minnesota.

The band's proposal for 2009–10 is essentially the same as that approved last year except the Tribe has separate regulations for the 1854 and 1837 ceded territories and reservation lands. The proposed 2009–10 waterfowl hunting season regulations for Fond du Lac are as follows:

Ducks

A. 1854 and 1837 Ceded Territories

*Season Dates:* Begin September 19 and end November 29, 2009.

*Daily Bag Limit:* 18 ducks, including no more than 12 mallards (only 3 of which may be hens), 3 black ducks, 6 scaup, 6 wood ducks, 6 redheads, 3 pintails, and 3 canvasbacks.

B. Reservation

*Season Dates:* Begin September 5 and end November 29, 2009.

*Daily Bag Limit:* 12 ducks, including no more than 8 mallards (only 2 of which may be hens), 2 black ducks, 4 scaup, 4 redheads, 2 pintails, 4 wood ducks, and 2 canvasbacks.

Mergansers

A. 1854 and 1837 Ceded Territories

*Season Dates:* Begin September 19 and end November 29, 2009.

*Daily Bag Limit:* 15 mergansers, including no more than 6 hooded mergansers.

B. Reservation

*Season Dates:* Begin September 5 and end November 29, 2009.

*Daily Bag Limit:* 10 mergansers, including no more than 4 hooded mergansers.

Canada Geese

All Areas

*Season Dates:* Begin September 1 and end November 29, 2009.

*Daily Bag Limit:* 20 geese.

Coots and Common Moorhens (Common Gallinules)

A. 1854 and 1837 Ceded Territories

*Season Dates:* Begin September 19 and end November 29, 2009.

*Daily Bag Limit:* 20 coots and common moorhens, singly or in the aggregate.

B. Reservation

*Season Dates:* Begin September 5 and end November 29, 2009.

*Daily Bag Limit:* 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails

A. 1854 and 1837 Ceded Territories

*Season Dates:* Begin September 1 and end November 29, 2009.

*Daily Bag Limit:* 25 sora and Virginia rails, singly or in the aggregate.

B. Reservation

*Season Dates:* Begin September 1 and end December 2, 2009.

*Daily Bag Limit:* 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe

All Areas

*Season Dates:* Begin September 1 and end November 29, 2009.

*Daily Bag Limit:* Eight common snipe.

Woodcock

All Areas

*Season Dates:* Begin September 1 and end November 29, 2009.

*Daily Bag Limit:* Three woodcock.

Mourning Dove

All Areas

*Season Dates:* Begin September 1 and end October 30, 2009.

*Daily Bag Limit:* 30 mourning dove.

The following general conditions apply:

1. While hunting waterfowl, a Tribal member must carry on his/her person a valid Ceded Territory License.

2. Shooting hours for migratory birds are one-half hour before sunrise to one-half hour after sunset.

3. Except as otherwise noted, Tribal members will be required to comply with Tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

4. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

5. There are no possession limits on any species, unless otherwise noted

above. For purposes of enforcing bag limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a Tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

The band anticipates harvest will be fewer than 500 ducks and geese.

We propose to approve the request for special migratory bird hunting regulations for the Fond du Lac Band of Lake Superior Chippewa Indians.

*(d) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)*

In the 1995–96 migratory bird seasons, the Grand Traverse Band of Ottawa and Chippewa Indians and the Service first cooperated to establish special regulations for waterfowl. The Grand Traverse Band is a self-governing, Federally recognized Tribe located on the west arm of Grand Traverse Bay in Leelanau County, Michigan. The Grand Traverse Band is a signatory Tribe of the Treaty of 1836. We have approved special regulations for Tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 2009–10 season, the Tribe requests that the Tribal member duck season run from September 20, 2009, through January 18, 2010. A daily bag limit of 15 would include no more than 3 pintail, 2 canvasback, 1 hooded merganser, 3 black ducks, 5 wood ducks, 3 redheads, and 7 mallards (only 3 of which may be hens).

For Canada and snow geese, the Tribe proposes a September 1 through November 30, 2009, and a January 1 through February 8, 2010, season. For white-fronted geese and brant, the Tribe proposes a September 20 through November 30, 2009, season. The daily bag limit for Canada and snow geese would be 10 and the daily bag limit for white-fronted geese and including brant would be 5 birds. We further note that based on available data (of major goose migration routes), it is unlikely that any Canada geese from the Southern James Bay Population will be harvested by the Tribe.

For woodcock, the Tribe proposes a September 1 through November 14, 2009, season. The daily bag limit will not exceed five birds. For mourning doves, snipe, and rails, the Tribe proposes a September 1 through November 14, 2009, season. The daily bag limit would be 10 per species.

All other Federal regulations contained in 50 CFR part 20 would apply. The Tribe proposes to monitor harvest closely through game bag checks, patrols, and mail surveys. Harvest surveys from the 2006–07 hunting season indicated that approximately 15 Tribal hunters harvested an estimated 112 ducks and 50 Canada geese.

We propose to approve the Grand Traverse Band of Ottawa and Chippewa Indians requested 2009–10 special migratory bird hunting regulations.

*(e) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)*

Since 1985, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized off-reservation hunting rights for migratory birds in Wisconsin. The specific regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wildlife Commission (GLIFWC, which represents the various bands). Beginning in 1986, a Tribal season on ceded lands in the western portion of the State's Upper Peninsula was developed in coordination with the Michigan Department of Natural Resources, and we have approved special regulations for Tribal members in both Michigan and Wisconsin since the 1986–87 hunting season. In 1987, the GLIFWC requested, and we approved, special regulations to permit Tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The States of Michigan and Wisconsin originally concurred with the regulations, although Wisconsin has raised concerns in the past and Michigan now annually raises objections. Minnesota did not concur with the original regulations, stressing that the State would not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. We acknowledge all of the States' concerns, but point out that the U.S. Government has recognized the Indian hunting rights decided in the *Lac Courte Oreilles v. State of Wisconsin (Voigt)* case, and that acceptable hunting regulations have been negotiated successfully in both Michigan and Wisconsin even though the Voigt decision did not specifically address ceded land outside Wisconsin. We believe this is appropriate because the treaties in question cover ceded lands in Michigan (and Minnesota), as well as in Wisconsin.

Consequently, in view of the above, we have approved special regulations since the 1987–88 hunting season on ceded lands in all three States. In fact, this recognition of the principle of reserved treaty rights for band members to hunt and fish was pivotal in our decision to approve a special 1991–92 season for the 1836 ceded area in Michigan.

For 2009, the GLIFWC proposed off-reservation special migratory bird hunting regulations on behalf of the member Tribes of the Voigt Intertribal Task Force of the GLIFWC (for the 1837 and 1842 Treaty areas) and the Bay Mills Indian Community (for the 1836 Treaty area). Member Tribes of the Task Force are: The Bad River Band of the Lake Superior Tribe of Chippewa Indians, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, the Lac du Flambeau Band of Lake Superior Chippewa Indians, the Red Cliff Band of Lake Superior Chippewa Indians, the St. Croix Chippewa Indians of Wisconsin, the Sokaogon Chippewa Community (Mole Lake Band), all in Wisconsin; the Mille Lacs Band of Chippewa Indians in Minnesota; the Lac Vieux Desert Band of Chippewa Indians and the Keweenaw Bay Indian Community in Michigan.

The GLIFWC 2009 proposal is generally similar to last year's regulations, except that it includes minor season date adjustment to the woodcock season to keep the opening day after Labor Day.

GLIFWC is still completing a waterfowl harvest survey for the 2008 season; however, the Tribe expects harvest would likely remain below 5,000 ducks and 1,000 geese, which is similar to anticipated levels in previous years.

Recent GLIFWC harvest surveys (1996–98, 2001, and 2004) indicate that Tribal off-reservation waterfowl harvest has averaged less than 1,000 ducks and 120 geese annually. In the latest survey year (2004), an estimated 53 hunters took an estimated 421 trips and harvested 645 ducks (1.5 ducks per trip) and 84 geese (0.2 geese per trip). Further, in the last 5 years of harvest surveys, only 1 hunter reported harvesting 20 ducks in a single day. Analysis of hunter survey data over the period in question (1996–2004) indicates a general downward trend in both harvest and hunter participation.

The proposed 2009–10 waterfowl hunting season regulations for GLIFWC are as follows:

## Ducks

## A. Wisconsin and Minnesota 1837 and 1842 Treaty Areas

*Season Dates:* Begin September 15 and end December 31, 2009.

*Daily Bag Limit:* 30 ducks, including no more than 5 black ducks, 5 pintails, and 5 canvasbacks.

## B. Michigan 1836 Treaty Area

*Season Dates:* Begin September 15 and end December 31, 2009.

*Daily Bag Limit:* 20 ducks, including no more than 5 black ducks, 5 pintails, and 5 canvasbacks.

## Mergansers

## All Ceded Areas

*Season Dates:* Begin September 15 and end December 31, 2009.

*Daily Bag Limit:* 10 mergansers.

## Geese

## All Ceded Areas

*Season Dates:* Begin September 1 and end December 31, 2009. In addition, any portion of the ceded territory that is open to State-licensed hunters for goose hunting outside of these dates will also be open concurrently for Tribal members.

*Daily Bag Limit:* 20 geese in aggregate.

## Other Migratory Birds

## A. Coots and Common Moorhens (Common Gallinules)

*Season Dates:* Begin September 15 and end December 31, 2009.

*Daily Bag Limit:* 20 coots and common moorhens (common gallinules), singly or in the aggregate.

## B. Sora and Virginia Rails

*Season Dates:* Begin September 15 and end December 31, 2009.

*Daily Bag Limit:* 20, singly or in the aggregate.

## C. Common Snipe

*Season Dates:* Begin September 15 and end December 31, 2009.

*Daily Bag Limit:* 16 common snipe.

## D. Woodcock

*Season Dates:* Begin September 8 and end December 1, 2009.

*Daily Bag Limit:* 10 woodcock.

## E. Mourning Dove

## 1837 and 1842 Ceded Territories.

*Season Dates:* Begin September 1 and end November 9, 2009.

*Daily Bag Limit:* 15.

## General Conditions

A. All Tribal members will be required to obtain a valid Tribal waterfowl hunting permit.

B. Except as otherwise noted, Tribal members will be required to comply with Tribal codes that will be no less restrictive than the model ceded territory conservation codes approved by Federal courts in the *Lac Courte Oreilles v. State of Wisconsin (Voigt)* and *Mille Lacs Band v. State of Minnesota* cases. Chapter 10 in each of these model codes regulates ceded territory migratory bird hunting. Both versions of Chapter 10 parallel Federal requirements as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting. They also automatically incorporate by reference the Federal migratory bird regulations adopted in response to this proposal.

C. Particular regulations of note include:

1. Nontoxic shot will be required for all off-reservation waterfowl hunting by Tribal members.

2. Tribal members in each zone will comply with Tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

3. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds that are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession and custody of Tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a Tribal or State conservation warden as taken on reservation lands. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

4. The baiting restrictions included in the respective sections 10.05(2)(h) of the model ceded territory conservation codes will be amended to include language which parallels that in place for nontribal members as published at 64 FR 29799, June 3, 1999.

5. The shell limit restrictions included in the respective sections 10.05(2)(b) of the model ceded territory conservation codes will be removed.

6. Hunting hours shall be from a half hour before sunrise to 15 minutes after sunset.

D. Michigan—Duck Blinds and Decoys. Tribal members hunting in Michigan will comply with Tribal codes that contain provisions parallel to

Michigan law regarding duck blinds and decoys.

We propose to approve the GLIFWC regulations for the 2009–10 hunting season.

(f) *Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Nontribal Hunters)*

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for Tribal members and nonmembers since the 1986–87 hunting season. The Tribe owns all lands on the reservation and has recognized full wildlife management authority. In general, the proposed seasons would be more conservative than allowed by the Federal frameworks of last season and by States in the Pacific Flyway.

The Tribe proposed a 2009–10 waterfowl and Canada goose season beginning October 10, 2009, and a closing date of November 30, 2009. Daily bag and possession limits for waterfowl would be the same as Pacific Flyway States. The Tribe proposes a daily bag limit for Canada geese of two. Other regulations specific to the Pacific Flyway guidelines for New Mexico would be in effect.

During the Jicarilla Game and Fish Department's 2008–09 season, estimated duck harvest was 548, which is within the historical harvest range. The species composition in the past has included mainly mallards, gadwall, wigeon, and teal. Northern pintail comprised 2 percent of the total harvest in 2008. The estimated harvest of geese was 12 birds.

The proposed regulations are essentially the same as were established last year. The Tribe anticipates the maximum 2009–10 waterfowl harvest would be around 550–600 ducks and 25–30 geese.

We propose to approve the Tribe's requested 2009–10 hunting seasons.

(g) *Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)*

The Kalispel Reservation was established by Executive Order in 1914, and currently comprises approximately 4,600 acres. The Tribe owns all Reservation land and has full management authority. The Kalispel Tribe has a fully developed wildlife program with hunting and fishing codes. The Tribe enjoys excellent wildlife management relations with the State. The Tribe and the State have an operational Memorandum of Understanding with emphasis on fisheries but also for wildlife.

The nontribal member seasons described below pertain to a 176-acre waterfowl management unit and 800

acres of reservation land with a guide for waterfowl hunting. The Tribe is utilizing this opportunity to rehabilitate an area that needs protection because of past land use practices, as well as to provide additional waterfowl hunting in the area. Beginning in 1996, the requested regulations also included a proposal for Kalispel-member-only migratory bird hunting on Kalispel-ceded lands within Washington, Montana, and Idaho.

For the 2009–10 migratory bird hunting seasons, the Kalispel Tribe proposed Tribal and nontribal member waterfowl seasons. The Tribe requests that both duck and goose seasons open at the earliest possible date and close on the latest date under Federal frameworks.

For nontribal hunters on reservation, the Tribe requests the seasons open at the earliest possible date and remain open, for the maximum amount of open days. Specifically, the Tribe requests that the season for ducks begin September 18, 2009, and end January 31, 2010. In that period, nontribal hunters would be allowed to hunt approximately 101 days. Hunters should obtain further information on specific hunt days from the Kalispel Tribe.

The Tribe also requests the season for geese run from September 1 to September 13, 2009, and from October 2, 2009, to January 31, 2010. Total number of days should not exceed 107. Nontribal hunters should obtain further information on specific hunt days from the Tribe. Daily bag and possession limits would be the same as those for the State of Washington.

The Tribe reports a 2007–08 nontribal harvest of 55 ducks. Under the proposal, the Tribe expects harvest to be similar to last year and less than 100 geese and 200 ducks.

All other State and Federal regulations contained in 50 CFR part 20, such as use of nontoxic shot and possession of a signed migratory bird hunting stamp, would be required.

For Tribal members on Kalispel-ceded lands, the Kalispel propose season dates consistent with Federal flyway frameworks. Specifically, the Tribe requests outside frameworks for ducks of October 1, 2009, through January 31, 2010, and geese of September 1, 2009, through January 31, 2010. The Tribe requests that both duck and goose seasons open at the earliest possible date and close on the latest date under Federal frameworks. During that period, the Tribe proposes that the season run continuously. Daily bag and possession limits would be concurrent with the Federal rule.

The Tribe reports that there was no Tribal harvest. Under the proposal, the Tribe expects harvest to be less than 200 birds for the season with less than 100 geese. Tribal members would be required to possess a signed Federal migratory bird stamp and a Tribal ceded lands permit.

We propose to approve the regulations requested by the Kalispel Tribe, provided that the nontribal seasons conform to Treaty limitations and final Federal frameworks for the Pacific Flyway.

*(h) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only)*

The Klamath Tribe currently has no reservation, per se. However, the Klamath Tribe has reserved hunting, fishing, and gathering rights within its former reservation boundary. This area of former reservation, granted to the Klamaths by the Treaty of 1864, is over 1 million acres. Tribal natural resource management authority is derived from the Treaty of 1864, and carried out cooperatively under the judicially enforced Consent Decree of 1981. The parties to this Consent Decree are the Federal Government, the State of Oregon, and the Klamaths. The Klamath Indian Game Commission sets the seasons. The Tribal biological staff and Tribal Regulatory Enforcement Officers monitor Tribal harvest by frequent bag checks and hunter interviews.

For the 2009–10 season, the Tribe requests proposed season dates of October 1, 2009, through January 31, 2010. Daily bag limits would be 9 for ducks, 9 for geese, and 25 for coot, with possession limits twice the daily bag limit. Shooting hours would be one-half hour before sunrise to one-half hour after sunset. Steel shot is required.

Based on the number of birds produced in the Klamath Basin, this year's harvest would be similar to last year's. Information on Tribal harvest suggests that more than 70 percent of the annual goose harvest is local birds produced in the Klamath Basin.

We propose to approve the Klamath Tribe's requested 2009–10 special migratory bird hunting regulations.

*(i) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only)*

The Leech Lake Band of Ojibwe is a Federally recognized Tribe located in Cass Lake, Minnesota. The reservation employs conservation officers to enforce conservation regulations. The Service and the Tribe have cooperatively established migratory bird hunting regulations since 2000.

For the 2009–10 season, the Tribe requests a duck season starting on

September 19 and ending December 31, 2009, and a goose season to run from September 1 through December 31, 2009. Daily bag limits for both ducks and geese would be 10. Possession limits would be twice the daily bag limit. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

The annual harvest by Tribal members on the Leech Lake Reservation is estimated at 500–1,000 birds.

We propose to approve the Leech Lake Band of Ojibwe's special migratory bird hunting season.

*(j) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only)*

The Little River Band of Ottawa Indians is a self-governing, Federally recognized Tribe located in Manistee, Michigan, and a signatory Tribe of the Treaty of 1836. We have approved special regulations for Tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season. Ceded lands are located in Lake, Mason, Manistee, and Wexford Counties. The Band proposes the following regulations to govern the hunting of migratory birds by Tribal members within the 1836 Ceded Territory as well as on the Band's Reservation.

For the 2009–10 season, we assume the Little River Band of Ottawa Indians would propose a duck and merganser season from September 15, 2009, through January 20, 2010. A daily bag limit of 12 ducks would include no more than 2 pintail, 2 canvasback, 3 black duck, 3 wood ducks, 3 redheads, 6 mallards (only 2 of which may be a hen), and 1 hooded merganser. Possession limits would be twice the daily bag limit.

For white-fronted geese, snow geese, and brant, the Tribe usually proposes a September 20 through November 30, 2009, season. Daily bag limits would be five geese.

For Canada geese only, the Tribe usually proposes a September 1, 2009, through February 8, 2010, season with a daily bag limit of five Canada geese. The possession limit would be twice the daily bag limit.

For snipe, woodcock, rails, and mourning doves, the Tribe usually proposes a September 1 to November 14, 2009, season. The daily bag limit would be 10 common snipe, 5 woodcock, 10 rails, and 10 mourning doves. Possession limits for all species would be twice the daily bag limit.

The Tribe monitored harvest through mail surveys. General Conditions were as follows:



A. All Tribal members will be required to obtain a valid Tribal resource card and 2009–10 hunting license.

B. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20.

C. Particular regulations of note include:

(1) Nontoxic shot will be required for all waterfowl hunting by Tribal members.

(2) Tribal members in each zone will comply with Tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

D. Tribal members hunting in Michigan will comply with Tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

We plan to approve Little River Band of Ottawa Indians' special migratory bird hunting seasons upon receipt of their proposal based on the provisions described above.

*(k) The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only)*

The Little Traverse Bay Bands of Odawa Indians is a self-governing, Federally recognized Tribe located in Petoskey, Michigan, and a signatory Tribe of the Treaty of 1836. We have approved special regulations for Tribal members of the 1836 treaty's signatory Tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 2009–10 season, the Little Traverse Bay Bands of Odawa Indians propose regulations similar to those of other Tribes in the 1836 treaty area. The Tribal member duck, merganser, coot, and gallinule season would run from September 15, 2009, through December 31, 2009. A daily bag limit of 20 would include no more than 5 pintail, 5 canvasback, 5 hooded merganser, 5 black ducks, 5 wood ducks, and 5 redheads.

For Canada geese, the Tribe proposes a September 1, 2009, through February 8, 2010, season. The daily bag limit for Canada geese would be 20 birds. We further note that based on available data (of major goose migration routes), it is unlikely that any Canada geese from the Southern James Bay Population would be harvested by the Tribe. Possession limits are twice the daily bag limit.

For woodcock, the Tribe proposes a September 1, 2009, to December 1, 2009, season. The daily bag limit will not

exceed 10 birds. For snipe the Tribe proposes a September 1 to December 31, 2009, season. The daily bag limit will not exceed 16 birds per species. For mourning doves, the Tribe proposes a September 1 to November 9, 2009, season. The daily bag limit will not exceed 15 birds per species. For Virginia and sora rail, the Tribe proposes a September 1 to December 31, 2009, season. The daily bag limit will not exceed 20 birds per species. For coots and gallinules, the Tribe proposes a September 1 to December 31, 2009, season. The daily bag limit will not exceed 20 birds per species. The possession limit will not exceed two days' bag limit for all birds.

All other Federal regulations contained in 50 CFR part 20 would apply.

The Tribe proposes to monitor harvest closely through game bag checks, patrols, and mail surveys. In particular, the Tribe proposes monitoring the harvest of Southern James Bay Canada geese to assess any impacts of Tribal hunting on the population.

We propose to approve the Little Traverse Bay Bands of Odawa Indians' requested 2009–10 special migratory bird hunting regulations.

*(l) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Nontribal Hunters)*

The Lower Brule Sioux Tribe first established Tribal migratory bird hunting regulations for the Lower Brule Reservation in 1994. The Lower Brule Reservation is about 214,000 acres in size and is located on and adjacent to the Missouri River, south of Pierre. Land ownership on the reservation is mixed, and until recently, the Lower Brule Tribe had full management authority over fish and wildlife via an MOA with the State of South Dakota. The MOA provided the Tribe jurisdiction over fish and wildlife on reservation lands, including deeded and Corps of Engineers-taken lands. For the 2009–10 season, the two parties have come to an agreement that provides the public a clear understanding of the Lower Brule Sioux Wildlife Department license requirements and hunting season regulations. The Lower Brule Reservation waterfowl season is open to Tribal and nontribal hunters.

For the 2009–10 migratory bird hunting season, the Lower Brule Sioux Tribe proposes a nontribal member duck, merganser, and coot season length of 97 days, or the maximum number of days allowed by Federal frameworks in the High Plains Management Unit for this season. The Tribe proposes a season from October 10, 2009, through January

14, 2010. The daily bag limit would be five birds, including no more than five mallards (only one of which may be a hen), one pintail, two redheads, one canvasback, two wood ducks, two scaup, and one mottled duck. The daily bag limit for mergansers would be five, only one of which could be a hooded merganser. The daily bag limit for coots would be 15. Possession limits would be twice the daily bag limits.

The Tribe's proposed nontribal member Canada goose season would run from October 24, 2009, through February 7, 2010 (107-day season length), with a daily bag limit of three Canada geese. The Tribe's proposed nontribal member white-fronted goose season would run from October 10, 2009, through December 20, 2009, with a daily bag limit of two white-fronted geese. The Tribe's proposed nontribal member light goose season would run from October 10, 2009, through January 10, 2010, and February 26 through March 10, 2010. The light goose daily bag limit would be 20. Possession limits would be twice the daily bag limits.

For Tribal members, the Lower Brule Sioux Tribe proposes a duck, merganser, and coot season from September 19, 2009, through March 10, 2010. The daily bag limit would be five birds, including no more than five mallards (only one of which may be a hen), one pintail, two redheads, one canvasback, two wood ducks, two scaup, and one mottled duck. The daily bag limit for mergansers would be five, only two of which could be hooded mergansers. The daily bag limit for coots would be 15. Possession limits would be twice the daily bag limits.

The Tribe's proposed Canada goose season for Tribal members would run from October 10, 2009, through March 10, 2010, with a daily bag limit of three Canada geese. The Tribe's proposed white-fronted goose Tribal season would run from October 3, 2009, through March 10, 2010, with a daily bag limit of two white-fronted geese. The Tribe's proposed light goose Tribal season would run from October 10, 2009, through March 10, 2010. The light goose daily bag limit would be 20. Possession limits would be twice the daily bag limits.

In the 2007–08 season, hunters harvested an estimated 810 geese and 550 ducks. In the 2007–08 season, duck harvest species composition was primarily mallard (88 percent), gadwall (5 percent), green-winged teal (3 percent), blue-winged teal (1 percent), and wigeon (2 percent).

Goose harvest species composition in 2007–08 at Mni Sho Sho was approximately 96 percent Canada geese,

3 percent snow geese, and 1 percent white-fronted geese. Harvest of geese harvested by other hunters was approximately 97 percent Canada geese and 3 percent snow geese.

The Tribe anticipates a duck harvest similar to those of the previous 3 years and a goose harvest below the target harvest level of 3,000 to 4,000 geese. All basic Federal regulations contained in 50 CFR part 20, including the use of non-toxic shot, Migratory Waterfowl Hunting and Conservation Stamps, *etc.*, would be observed by the Tribe's proposed regulations. In addition, the Lower Brule Sioux Tribe has an official Conservation Code that was established by Tribal Council Resolution in June 1982 and updated in 1996.

We plan to approve the Tribe's requested regulations for the Lower Brule Reservation given the seasons dates fall within final Federal flyway frameworks (applies to nontribal hunters only).

*(m) Lower Elwha Klallam Tribe, Port Angeles, Washington (Tribal Members Only)*

Since 1996, the Service and the Point No Point Treaty Tribes, of which Lower Elwha was one, have cooperated to establish special regulations for migratory bird hunting. The Tribes are now acting independently and the Lower Elwha Klallam Tribe would like to establish migratory bird hunting regulations for Tribal members for the 2009–10 season. The Tribe has a reservation on the Olympic Peninsula in Washington State and is a successor to the signatories of the Treaty of Point No Point of 1855.

For the 2009–10 season, the Lower Elwha Klallam Tribe requests a duck and coot season from September 19, 2009, to December 31, 2009. The daily bag limit will be seven ducks including no more than two hen mallards, one pintail, one canvasback, and two redheads. The daily bag and possession limit on harlequin duck will be one per season. The coot daily bag limit will be 25. The possession limit will be twice the daily bag limit, except as noted above.

For geese, the Tribe requests a season from September 19, 2009, to December 31, 2009. The daily bag limit will be four, including no more than four light geese. The season on Aleutian Canada geese will be closed.

For brant, the Tribe proposes a season from November 1, 2009, to February 15, 2010, with a daily bag limit of two. The possession limit will be twice the daily bag limit.

For mourning doves, band-tailed pigeon, and snipe, the Tribe requests a

season from September 19, 2009, to December 31, 2009, with a daily bag limit of 10, 2, and 8, respectively. The possession limit will be twice the daily bag limit.

All Tribal hunters authorized to hunt migratory birds are required to obtain a Tribal hunting permit from the Lower Elwha Klallam Tribe pursuant to Tribal law. Hunting hours would be from one-half hour before sunrise to sunset. Only steel, tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is unlawful to use or possess lead shot while hunting waterfowl.

The Tribe typically anticipates harvest to be fewer than 20 birds. Tribal reservation police and Tribal Fisheries enforcement officers have the authority to enforce these migratory bird hunting regulations.

The Service proposes to approve the request for special migratory bird hunting regulations for the Lower Elwha Klallam Tribe.

*(n) Makah Indian Tribe, Neah Bay, Washington (Tribal Members Only)*

The Makah Indian Tribe and the Service have been cooperating to establish special regulations for migratory game birds on the Makah Reservation and traditional hunting land off the Makah Reservation since the 2001–02 hunting season. Lands off the Makah Reservation are those contained within the boundaries of the State of Washington Game Management Units 601–603 and 607.

The Makah Indian Tribe usually proposes a duck and coot hunting season from September 27, 2009, to January 25, 2010. The daily bag limit is seven ducks, including no more than one canvasback, one pintail, three scaup, and one redhead. The daily bag limit for coots is 25. The Tribe has a year-round closure on wood ducks and harlequin ducks. Shooting hours for all species of waterfowl are one-half hour before sunrise to sunset.

For geese, the Tribe usually proposes the season open on September 27, 2009, and close January 25, 2010. The daily bag limit for geese is four and one brant. The Tribe notes that there is a year-round closure on Aleutian and Dusky Canada geese.

For band-tailed pigeons, the Tribe usually proposes the season open September 20, 2009, and close October 31, 2009. The daily bag limit for band-tailed pigeons is two.

The Tribe usually anticipates that harvest under this regulation will be relatively low since there are no known dedicated waterfowl hunters and any harvest of waterfowl or band-tailed

pigeons is usually incidental to hunting for other species, such as deer, elk, and bear. The Tribe expects fewer than 50 ducks and 10 geese to be harvested during the 2009–10 migratory bird hunting season.

All other Federal regulations contained in 50 CFR part 20 would apply. The following restrictions are also usually proposed by the Tribe:

(1) As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 0.25 miles of an occupied area;

(2) Hunters must be eligible, enrolled Makah Tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl;

(3) The Cape Flattery area is open to waterfowl hunting, except in designated wilderness areas, or within 1 mile of Cape Flattery Trail, or in any area that is closed to hunting by another ordinance or regulation;

(4) The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited;

(5) Steel or bismuth shot only for waterfowl is allowed; the use of lead shot is prohibited; and

(6) The use of dogs is permitted to hunt waterfowl.

We plan to approve the Makah Indian Tribe's requested 2009–10 special migratory bird hunting regulations, upon receipt of their proposal based on the provisions described above.

*(o) Point No Point Treaty Council Tribes, Kingston, Washington (Tribal Members Only)*

We are establishing uniform migratory bird hunting regulations for Tribal members on behalf of the Point No Point Treaty Council Tribes, consisting of the Port Gamble S'Klallam and Jamestown S'Klallam Tribes. The two Tribes have reservations and ceded areas in northwestern Washington State and are the successors to the signatories of the Treaty of Point No Point of 1855. These proposed regulations will apply to Tribal members both on and off reservations within the Point No Point Treaty Areas.

For the 2009–10 season, the Point No Point Treaty Council requests special migratory bird hunting regulations for the 2009–10 hunting season for a duck and coot hunting season from September 1, 2009, to March 10, 2010. The daily bag limit is seven ducks, including no more than two hen mallards, one canvasback, one pintail, two redheads, and four scoters. The daily bag limit for coots is 25. The daily bag

limit and possession limit on harlequin ducks is one per season. The daily possession limits are double the daily bag limits except where noted.

For geese, the Tribe proposes the season open on September 15, 2009, and close March 10, 2010. The daily bag limit for geese is four, not to include more than 3 light geese. The Tribe notes that there is a year-round closure on Aleutian and Cackling Canada geese. For brant, the Tribe proposes the season open on November 1, 2009, and close March 10, 2010. The daily bag limit for brant is two.

For band-tailed pigeons, the Tribe proposes the season open September 1, 2009, and close March 10, 2010. The daily bag limit for band-tailed pigeons is two. For mourning dove, the Tribe proposes the season open September 1, 2009, and close January 31, 2010. The daily bag limit for mourning dove is 10.

The Tribe anticipates a total harvest of fewer than 200 birds for the 2009–10 season. The Tribal Fish and Wildlife enforcement officers have the authority to enforce these Tribal regulations.

We propose to approve the Point No Point Treaty Council Tribes special migratory bird seasons.

*(p) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)*

Since 1991–92, the Oneida Tribe of Indians of Wisconsin and the Service have cooperated to establish uniform regulations for migratory bird hunting by Tribal and nontribal hunters within the original Oneida Reservation boundaries. Since 1985, the Oneida Tribe's Conservation Department has enforced the Tribe's hunting regulations within those original reservation limits. The Oneida Tribe also has a good working relationship with the State of Wisconsin and the majority of the seasons and limits are the same for the Tribe and Wisconsin.

In a May 28, 2009, letter, the Tribe proposed special migratory bird hunting regulations. For ducks, the Tribe described the general outside dates as being September 19 through December 6, 2009, with a closed segment of November 21 to 29, 2009. The Tribe proposes a daily bag limit of six birds, which could include no more than six mallards (three hen mallards), six wood duck, one redhead, two pintail, and one hooded merganser.

For geese, the Tribe requests a season between September 1 and December 31, 2009, with a daily bag limit of three Canada geese. Hunters will be issued three Tribal tags for geese in order to monitor goose harvest. An additional three tags will be issued each time birds

are registered. The Tribe will close the season November 21 to 29, 2009. If a quota of 300 geese is attained before the season concludes, the Tribe will recommend closing the season early.

For woodcock, the Tribe proposes a season between September 5 and November 8, 2009, with a daily bag and possession limit of 5 and 10, respectively.

For mourning dove, the Tribe proposes a season between September 1 and November 8, 2009, with a daily bag and possession limit of 10 and 20, respectively.

The Tribe proposes shooting hours be one-half hour before sunrise to one-half hour after sunset. Nontribal hunters hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including shooting hours of one-half hour before sunrise to sunset, season dates, and daily bag limits.

Tribal members and nontribal hunters hunting on the Reservation or on lands under the jurisdiction of the Tribe must observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: Oneida members would be exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells. Tribal member shooting hours will be from one-half hour before sunset to one-half hour after sunset.

The Service proposes to approve the request for special migratory bird hunting regulations for the Oneida Tribe of Indians of Wisconsin.

*(q) Sault Ste. Marie Tribe of Chippewa Indians, Sault Ste. Marie, Michigan (Tribal Members Only)*

The Sault Ste. Marie Tribe of Chippewa Indians is a Federally recognized self-governing Indian Tribe, distributed throughout the eastern Upper Peninsula and northern Lower Peninsula of Michigan. The Tribe has retained the right to hunt, fish, trap, and gather on the lands ceded in Treaty of Washington (1836).

In a May 29, 2009, letter, the Tribe proposed special migratory bird hunting regulations. For ducks, mergansers, and common snipe, the Tribe proposes outside dates as September 15 through December 31, 2009. The Tribe proposes a daily bag limit of 20 ducks, which could include no more than 10 mallards (5 hen mallards), 5 wood duck, 5 black duck, and 5 canvasback. The merganser daily bag limit is 10 in the aggregate and common snipe of 16.

For geese, coot, gallinule, sora and Virginia rail, the Tribe requests a season

from September 1 to December 31, 2009. The daily bag limit for geese is 20, in the aggregate. The daily bag limit for coot, gallinule, sora and Virginia rail is 20 in the aggregate.

For woodcock, the Tribe proposes a season between September 2 and December 1, 2009, with a daily bag and possession limit of 10 and 20, respectively.

For mourning dove, the Tribe proposes a season between September 1 and November 14, 2009, with a daily bag and possession limit of 10 and 20, respectively.

All Sault Tribe members exercising hunting treaty rights within the 1836 Ceded Territory are required to submit annual harvest reports including date of harvest, number and species harvested, and location of harvest. Hunting hours would be from one-half hour before sunrise to 15 minutes after sunset. Only non-toxic shot are allowed for hunting waterfowl.

The Service proposes to approve the request for special migratory bird hunting regulations for the Sault Ste. Marie Tribe of Chippewa Indians.

*(r) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Nontribal Hunters)*

Almost all of the Fort Hall Indian Reservation is Tribally owned. The Tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed Tribal jurisdiction, especially for hunting by nontribal members on reservation lands owned by non-Indians. As a compromise, since 1985, we have established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation State zone. The regulations were requested by the Tribes and provided for different season dates than in the remainder of the State. We agreed to the season dates because they would provide additional protection to mallards and pintails. The State of Idaho concurred with the zoning arrangement. We have no objection to the State's use of this zone again in the 2009–10 hunting season, provided the duck and goose hunting season dates are the same as on the reservation.

In a proposal for the 2009–10 hunting season, the Shoshone-Bannock Tribes requested a continuous duck (including mergansers) season, with the maximum number of days and the same daily bag and possession limits permitted for Pacific Flyway States under the final Federal frameworks. The Tribes propose that, if the same number of hunting days is permitted as last year, the season

would have an opening date of October 3, 2009, and a closing date of January 17, 2010. Coot and snipe season dates would be the same as for ducks, with the same daily bag and possession limits permitted for Pacific Flyway States. The Tribes anticipate harvest will be between 2,000 and 5,000 ducks.

The Tribes also requested a continuous goose season with the maximum number of days and the same daily bag and possession limits permitted in Idaho under Federal frameworks. The Tribes propose that, if the same number of hunting days is permitted as in previous years, the season would have an opening date of October 3, 2009, and a closing date of January 17, 2010. The Tribes anticipate harvest will be between 4,000 and 6,000 geese.

The Tribe requests a common snipe season with the maximum number of days and the same daily bag and possession limits permitted in Idaho under Federal frameworks. The Tribes propose that, if the same number of hunting days is permitted as in previous years, the season would have an opening date of October 3, 2009, and a closing date of January 17, 2010.

Nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours, use of steel shot, and manner of taking. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

We note that the requested regulations are nearly identical to those of last year and propose they be approved for the 2009–10 hunting season given the seasons dates fall within the final Federal flyway frameworks (applies to nontribal hunters only).

*(s) Skokomish Tribe, Shelton, Washington (Tribal Members Only)*

Since 1996, the Service and the Point No Point Treaty Tribes, of which the Skokomish Tribe was one, have cooperated to establish special regulations for migratory bird hunting. The Tribes have been acting independently since 2005, and the Skokomish Tribe would like to establish migratory bird hunting regulations for Tribal members for the 2009–10 season. The Tribe has a reservation on the Olympic Peninsula in Washington State and is a successor to the signatories of the Treaty of Point No Point of 1855.

The Skokomish Tribe requests a duck and coot season from September 16, 2009, to February 28, 2010. The daily bag limit is seven ducks, including no more than two hen mallards, one pintail, one canvasback, and two redheads. The daily bag and possession

limit on harlequin duck is one per season. The coot daily bag limit is 25. The possession limit is twice the daily bag limit except as noted above.

For geese, the Tribe requests a season from September 16, 2009, to February 28, 2010. The daily bag limit is four, including no more than three light geese. The season on Aleutian Canada geese is closed. For brant, the Tribe proposes a season from November 1, 2009, to February 15, 2010, with a daily bag limit of two. The possession limit is twice the daily bag limit.

For mourning doves, band-tailed pigeon, and snipe, the Tribe requests a season from September 16, 2009, to February 28, 2010, with a daily bag limit of 10, 2, and 8, respectively. The possession limit is twice the daily bag limit.

All Tribal hunters authorized to hunt migratory birds are required to obtain a Tribal hunting permit from the Skokomish Tribe pursuant to Tribal law. Hunting hours would be from one-half hour before sunrise to sunset. Only steel, tungsten-iron, tungsten-polymer, tungsten-matrix, and tin shot are allowed for hunting waterfowl. It is unlawful to use or possess lead shot while hunting waterfowl.

The Tribe anticipates harvest to be fewer than 150 birds. The Skokomish Public Safety Office enforcement officers have the authority to enforce these migratory bird hunting regulations.

We propose to approve the Skokomish Tribe's requested migratory bird hunting season.

*(t) Spokane Tribe of Indians, Spokane Indian Reservation, Wellpinit, Washington (Tribal Members Only)*

The Spokane Tribe of Indians wishes to establish waterfowl seasons on their respective reservation for its membership to access to an additional resource. An established waterfowl season on the reservation will allow access to a resource for members to continue practicing a subsistence lifestyle.

The Spokane Indian Reservation is located in northeastern Washington State. The reservation comprises approximately 157,000 acres. The boundaries of the Reservation are the Columbia River to the west, the Spokane River to the south (now Lake Roosevelt), Tshimikn Creek to the east, and the 48th Parallel as the north boundary. Tribal membership comprises approximately 2,300 enrolled Spokane Tribal Members. Prior to 1939, the Spokane Tribe was primarily a salmon people; upon completion of Grand Coulee Dam creating Lake Roosevelt, the

development of hydroelectricity without passage ultimately removed salmon access from historical fishing areas for the Spokane Tribe for the past 70 years.

These proposed regulations would allow Tribal Members, spouses of a Spokane Tribal Member and first-generation descendants of a Spokane Tribal Member with a Tribal permit and Federal Waterfowl stamps an opportunity to utilize the reservation and ceded lands. It will also benefit Tribal membership through access to this resource throughout Spokane Tribal ceded lands in eastern Washington. By Spokane Tribal Referendum, spouses of Spokane Tribal Members and children of Spokane Tribal Members not enrolled are allowed to harvest game animals within the Spokane Indian Reservation with the issuance of hunting permits.

For the 2009–10 season, the Tribe requests to establish duck seasons that would run from September 1, 2009, through January 31, 2010. The Tribe is requesting the daily bag limit for ducks to be consistent with the State of Washington. The possession limit is twice the daily bag limit.

The Tribe proposes a season on geese starting September 1, 2009, and ending on January 31, 2010. The Tribe is requesting the daily bag limit for geese to be consistent with the State of Washington. The possession limit is twice the daily bag limit.

Based on the quantity of requests the Spokane Tribe of Indians has received, the Tribe anticipates harvest levels for the 2009–10 season for both ducks and geese to be below 300 total birds with goose harvest at less than 100. Hunter success will be monitored through mandatory harvest reports returned within 30 days of the season closure.

We propose to approve the Spokane Tribe's requested 2009–10 special migratory bird hunting regulations.

*(u) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only)*

The Squaxin Island Tribe of Washington and the Service have cooperated since 1995 to establish special Tribal migratory bird hunting regulations. These special regulations apply to Tribal members on the Squaxin Island Reservation, located in western Washington near Olympia, and all lands within the traditional hunting grounds of the Squaxin Island Tribe.

For the 2009–10 season, the Tribe requests to establish duck and coot seasons that would run from September 1, 2009, through January 15, 2010. The daily bag limit for ducks is five per day and could include only one canvasback. The season on harlequin ducks is

closed. For coots, the daily bag limit is 25. For snipe, the Tribe proposes the season start on September 15, 2009, and end on January 15, 2010. The daily bag limit for snipe is eight. For band-tailed pigeon, the Tribe proposes the season start on September 1, 2009, and end on December 31, 2009. The daily bag limit is five. The possession limit is twice the daily bag limit.

The Tribe proposes a season on geese starting September 15, 2009, and ending on January 15, 2010. The daily bag limit for geese is four, including no more than two snow geese. The season on Aleutian and Cackling Canada geese is closed. For brant, the Tribe proposes the season start on September 1, 2009, and end on December 31, 2009. The daily bag limit for brant is two. The possession limit is twice the daily bag limit.

We propose to approve the Squaxin Island Tribe's requested 2009–10 special migratory bird hunting regulations.

*(v) Stillaguamish Tribe of Indians, Arlington, Washington (Tribal Members Only)*

The Stillaguamish Tribe of Indians and the Service have cooperated to establish special regulations for migratory game birds since 2001. The Tribe is proposing regulations to hunt all open and unclaimed lands under the Treaty of Point Elliott of January 22, 1855, including their main hunting grounds around Camano Island, Skagit Flats, and Port Susan to the border of the Tulalip Tribes Reservation. Ceded lands are located in Whatcom, Skagit, Snohomish, and Kings Counties, and a portion of Pierce County, Washington. The Stillaguamish Tribe of Indians is a Federally recognized Tribe and reserves the Treaty Right to hunt (*U.S. v. Washington*).

The Tribe proposes that duck (including mergansers) and goose seasons run from October 1, 2009, to February 15, 2010. The daily bag limit on ducks (including sea ducks and mergansers) is 10 and must include no more than 7 mallards (only 3 of which can be hens), 3 pintail, 3 redhead, 3 scaup, and 3 canvasback. For geese, the daily bag limit is six. Possession limits are totals of these two daily bag limits.

The Tribe proposes that coot, brant, and snipe seasons run from October 1, 2009, to January 31, 2010. The daily bag limit for coot is 25. The daily bag limit on brant is three. The daily bag limit for snipe is 10. Possession limits are twice the daily bag limit.

Harvest is regulated by a punch card system. Tribal members hunting on lands under this proposal will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20,

which will be enforced by the Stillaguamish Tribal Law Enforcement. Tribal members are required to use steel shot or a nontoxic shot as required by Federal regulations.

The Tribe anticipates a total harvest of 200 ducks, 100 geese, 50 mergansers, 100 coots, and 100 snipe. Anticipated harvest needs include subsistence and ceremonial needs. Certain species may be closed to hunting for conservation purposes, and consideration for the needs of certain species will be addressed.

The Service proposes to approve the request for special migratory bird hunting regulations for the Stillaguamish Tribe of Indians.

*(w) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)*

In 1996, the Service and the Swinomish Indian Tribal Community began cooperating to establish special regulations for migratory bird hunting. The Swinomish Indian Tribal Community is a Federally recognized Indian Tribe consisting of the Suiattle, Skagit, and Kikialos. The Swinomish Reservation was established by the Treaty of Point Elliott of January 22, 1855, and lies in the Puget Sound area north of Seattle, Washington.

For the 2009–10 season, the Tribe usually requests to establish a migratory bird hunting season on all areas that are open and unclaimed and consistent with the meaning of the treaty. The Tribe usually requests to establish duck, merganser, Canada goose, brant, and coot seasons opening on the earliest possible date allowed by the final Federal frameworks for the Pacific Flyway and closing 30 days after the State of Washington closes its season. The Swinomish Tribe requests an additional three birds of each species over that allowed by the State for daily bag and possession limits.

The Community normally anticipates that the regulations will result in the harvest of approximately 300 ducks, 50 Canada geese, 75 mergansers, 100 brant, and 50 coot. The Swinomish utilize a report card and permit system to monitor harvest and will implement steps to limit harvest where conservation is needed. All Tribal regulations will be enforced by Tribal fish and game officers.

On reservation, the Tribal Community usually proposes a hunting season for the abovementioned species beginning on the earliest possible opening date and closing March 9, 2010. The Swinomish manage harvest by a report card and permit system, and we

anticipate harvest will be similar to that expected off reservation.

We believe the estimated harvest by the Swinomish will be minimal and will not adversely affect migratory bird populations. Upon receipt of the 2009–10 Swinomish hunting proposal, we propose to approve the Tribe's requested 2009–10 special migratory bird hunting regulations.

*(x) The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Nontribal Hunters)*

The Tulalip Tribes are the successors in interest to the Tribes and bands signatory to the Treaty of Point Elliott of January 22, 1855. The Tulalip Tribes' government is located on the Tulalip Indian Reservation just north of the City of Everett in Snohomish County, Washington. The Tribes or individual Tribal members own all of the land on the reservation, and they have full wildlife management authority. All lands within the boundaries of the Tulalip Tribes Reservation are closed to nonmember hunting unless opened by Tulalip Tribal regulations.

For the 2009–10 season, the Tribe proposes Tribal and nontribal hunting regulations for the 2009–10 season. Migratory waterfowl hunting by Tulalip Tribal members is authorized by Tulalip Tribal Ordinance No. 67. For ducks, mergansers, coot, and snipe, the proposed season for Tribal members would be from September 15, 2009, through February 28, 2010. In the case of nontribal hunters hunting on the reservation, the season would be the latest closing date and the longest period of time allowed under the final Pacific Flyway Federal frameworks. Daily bag and possession limits for Tulalip Tribal members would be 7 and 14 ducks, respectively, except that for blue-winged teal, canvasback, harlequin, pintail, and wood duck, the bag and possession limits would be the same as those established in accordance with final Federal frameworks. For nontribal hunters, bag and possession limits would be the same as those permitted under final Federal frameworks. For coot, daily bag and possession limits are 25 and 50, respectively, and for snipe 8 and 18, respectively. Nontribal hunters should check with the Tulalip Tribal authorities regarding additional conservation measures that may apply to specific species managed within the region. Ceremonial hunting may be authorized by the Department of Natural Resources at any time upon application of a qualified Tribal member. Such a hunt must have a bag limit designed to

limit harvest only to those birds necessary to provide for the ceremony.

For geese, Tribal members propose a season from September 15, 2009, through February 28, 2010. Nontribal hunters would be allowed the longest season and the latest closing date permitted by the Pacific Flyway Federal frameworks. For Tribal hunters, the goose daily bag and possession limits would be 7 and 14, respectively, except that the bag limits for brant, cackling Canada geese, and dusky Canada geese would be those established in accordance with final Federal frameworks. For nontribal hunters hunting on reservation lands, the daily bag and possession limits would be those established in accordance with final Federal frameworks for the Pacific Flyway. The Tulalip Tribes also set a maximum annual bag limit for those Tribal members who engage in subsistence hunting of 365 ducks and 365 geese.

All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special Tribal permit requirements, and a number of other Tribal regulations enforced by the Tribe. Each nontribal hunter 16 years of age and older hunting pursuant to Tulalip Tribes' Ordinance No. 67 must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Each hunter must validate stamps by signing across the face.

Although the season length requested by the Tulalip Tribes appears to be quite liberal, harvest information indicates a total take by Tribal and nontribal hunters under 1,000 ducks and 500 geese annually.

We propose approval of the Tulalip Tribe's request to have a special season.

*(y) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal members only)*

The Upper Skagit Indian Tribe and the Service have cooperated to establish special regulations for migratory game birds since 2001. The Tribe has jurisdiction over lands within Skagit, Island, and Whatcom Counties, Washington. The Tribe issues Tribal hunters a harvest report card that will be shared with the State of Washington.

For the 2009–10 season, the Tribe requests a duck season starting October 1, 2009, and ending February 28, 2010. The Tribe proposes a daily bag limit of 15 with a possession limit of 20. The Tribe requests a coot season starting October 15, 2009, and ending February

15, 2010. The coot daily bag limit is 20 with a possession limit of 30.

The Tribe proposes a goose season from October 15, 2009, to February 28, 2010, with a daily bag limit of seven geese and five brant. The possession limit for geese and brant are 10 and 7, respectively.

The Tribe proposes a mourning dove season between September 1 to December 31, 2009, with a daily bag limit of 12 and possession limit of 15.

The anticipated migratory bird harvest under this proposal would be 100 ducks, 5 geese, 2 brant, and 10 coots. Tribal members must have the Tribal identification and Tribal harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, except shooting hours would be 15 minutes before official sunrise to 15 minutes after official sunset.

The Service proposes to approve the request for special migratory bird hunting regulations for the Upper Skagit Indian Tribe.

*(z) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)*

The Wampanoag Tribe of Gay Head is a Federally recognized Tribe located on the island of Martha's Vineyard in Massachusetts. The Tribe has approximately 560 acres of land, which it manages for wildlife through its natural resources department. The Tribe also enforces its own wildlife laws and regulations through the natural resources department.

For the 2009–10 season, the Tribe proposes a duck season of October 29, 2009, through February 25, 2010. The Tribe proposes a daily bag limit of six birds, which could include no more than two hen mallards, six drake mallards, two black ducks, two mottled ducks, one fulvous whistling duck, four mergansers, three scaup, one hooded merganser, two wood ducks, one canvasback, two redheads, one pintail, and four of all other species not listed. The season for harlequins would be closed. The Tribe proposes a teal (green-winged and blue) season of October 13, 2009, through January 26, 2010. A daily bag limit of six teal would be in addition to the daily bag limit for ducks.

For sea ducks, the Tribe proposes a season between October 12, 2009, and February 28, 2010, with a daily bag limit of seven, which could include no more than one hen eider and four of any one species unless otherwise noted above.

For Canada geese, the Tribe requests a season between September 14 to

September 28, 2009, and October 29, 2009, through February 25, 2010, with a daily bag limit of 5 Canada geese during the first period, 3 Canada geese during the second period. For snow geese, the Tribe requests a season between September 8 to September 22, 2009, and October 29, 2009, to February 25, 2010, with a daily bag limit of 15 snow geese.

For woodcock, the Tribe proposes a season between October 13 and November 28, 2009, with a daily bag limit of three.

Prior to 2009, the Tribe had 22 registered Tribal hunters, and estimates harvest to be no more than 15 geese, 25 mallards, 25 teal, 50 black ducks, and 50 of all other species combined. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20. The Tribe requires hunters to register with the Harvest Information Program.

The Service proposes to approve the request for special migratory bird hunting regulations for the Wampanoag Tribe of Gay Head.

*(aa) White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only)*

The White Earth Band of Ojibwe is a Federally recognized Tribe located in northwest Minnesota and encompasses all of Mahnom County and parts of Becker and Clearwater Counties. The reservation employs conservation officers to enforce migratory bird regulations. The Tribe and the Service first cooperated to establish special Tribal regulations in 1999.

For the 2009–10 migratory bird hunting season, the White Earth Band of Ojibwe usually requests a duck and merganser season to start September 20 and end December 19, 2009. For ducks, they usually request a daily bag limit of 10, including no more than 2 mallards and 1 canvasback. The merganser daily bag limit would be five with no more than two hooded mergansers. For geese, the Tribe usually proposes an early season from September 1 through September 26, 2009, and a late season from September 27, 2009, through December 19, 2009. The early season daily bag limit is eight geese and the late season daily bag limit is five geese.

For coots, dove, rail, woodcock, and snipe, the Tribe usually proposes a September 1 through November 30, 2009, season with daily bag limits of 20 coots, 25 doves, 25 rails, 10 woodcock, and 10 snipe. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required.

Based on past harvest surveys, the Tribe anticipates harvest of 1,000 to

2,000 Canada geese and 1,000 to 1,500 ducks. The White Earth Reservation Tribal Council employs four full-time Conservation Officers to enforce migratory bird regulations.

We propose to approve the White Earth Band of Ojibwe's request to have a special season upon receipt of the 2009–10 proposal.

*(bb) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters)*

The White Mountain Apache Tribe owns all reservation lands, and the Tribe has recognized full wildlife management authority. The White Mountain Apache Tribe has requested regulations that are essentially unchanged from those agreed to since the 1997–98 hunting year.

The hunting zone for waterfowl is restricted and is described as: The length of the Black River west of the Bonito Creek and Black River confluence and the entire length of the Salt River forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 5, 6, and 7. Tanks located below the Mogollon Rim, within Wildlife Management Units 2 and 3, will be open to waterfowl hunting during the 2009–10 season. The length of the Black River east of the Black River/Bonito Creek confluence is closed to waterfowl hunting. All other waters of the reservation would be closed to waterfowl hunting for the 2009–10 season.

For nontribal and Tribal hunters, the Tribe proposes a continuous duck, coot, merganser, gallinule, and moorhen hunting season, with an opening date of October 10, 2009, and a closing date of January 31, 2010. The Tribe proposes a separate scap season, with an opening date of October 10, 2009, and a closing date of December 6, 2009. The Tribe proposes a daily duck (including mergansers) bag limit of seven, which may include no more than two redheads, one pintail, and seven mallards (including no more than two hen mallards). The season on canvasback is closed. The daily bag limit for coots, gallinules, and moorhens would be 25, singly or in the aggregate. For geese, the Tribe is proposing a season from October 10, 2009, through January 31, 2010. Hunting would be limited to Canada geese, and the daily bag limit would be three.

Season dates for band-tailed pigeons and mourning doves would run concurrently from September 1 through

September 15, 2009, in Wildlife Management Unit 10 and all areas south of Y–70 and Y–10 in Wildlife Management Unit 7, only. Proposed daily bag limits for band-tailed pigeons and mourning doves would be 3 and 10, respectively.

Possession limits for the above species are twice the daily bag limits. Shooting hours would be from one-half hour before sunrise to sunset. There would be no open season for sandhill cranes, rails, and snipe on the White Mountain Apache lands under this proposal. A number of special regulations apply to Tribal and nontribal hunters, which may be obtained from the White Mountain Apache Tribe Game and Fish Department.

We propose to approve the regulations requested by the Tribe for the 2009–10 season.

*(cc) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Nontribal Hunters)*

The Yankton Sioux Tribe has yet to submit a waterfowl hunting proposal for the 2009–10 season. The Yankton Sioux Tribal waterfowl hunting season usually would be open to both Tribal members and nontribal hunters. The waterfowl hunting regulations would apply to Tribal and trust lands within the external boundaries of the reservation.

For ducks (including mergansers) and coots, the Yankton Sioux Tribe usually proposes a season starting October 9, 2009, and running for the maximum amount of days allowed under the final Federal frameworks. Daily bag and possession limits would be 6 ducks, which may include no more than 5 mallards (no more than 2 hens), 1 canvasback (when open), 2 redheads, 3 scaup, 1 pintail, or 2 wood ducks. The bag limit for mergansers is 5, which would include no more than 1 hooded merganser. The coot daily bag limit is 15.

For geese, the Tribe usually requests a dark goose (Canada geese, brant, white-fronts) season starting October 29, 2009, and closing January 31, 2010. The daily bag limit would be three geese (including no more than one white-fronted goose or brant). Possession limits would be twice the daily bag limit. For white geese, the proposed hunting season would start October 29, 2009, and run for the maximum amount of days allowed under the final Federal frameworks for the State of South Dakota. Daily bag and possession limits would equal the maximum allowed under Federal frameworks.

All hunters would have to be in possession of a valid Tribal license

while hunting on Yankton Sioux trust lands. Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and the manner of taking. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

During the 2005–06 hunting season, the Tribe reported that 90 nontribal hunters took 400 Canada geese, 75 light geese, and 90 ducks. Forty-five Tribal members harvested fewer than 50 geese and 50 ducks.

We plan to approve the Yankton Sioux 2009–10 hunting seasons upon receipt of their proposal based on the provisions described above.

#### 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 received. Such comments, and any additional information received, 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 consider 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 your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, 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 received 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 (FSSES 88-14)," filed with the Environmental Protection Agency on June 9, 1988. We published a 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 have 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 Web site at <http://www.fws.gov/migratorybirds/>.

### Endangered Species Act Consideration

Prior to issuance of the 2009-10 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 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. A

regulatory cost-benefit analysis has been prepared and is available at <http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs> or at <http://www.regulations.gov>. 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.

### 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.*

### 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 address indicated under **ADDRESSES** or from our Web site at <http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs> or at <http://www.regulations.gov>.

### 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.

### 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 the

April 10 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2009–10 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.

Based on the results of migratory game bird studies, and having due consideration for any data or views submitted by interested parties, this proposed rulemaking may result in the adoption of special hunting regulations for migratory birds beginning as early as September 1, 2009, on certain Federal Indian reservations, off-reservation trust lands, and ceded lands. Taking into account both reserved hunting rights and the degree to which Tribes have full wildlife management authority, the regulations only for Tribal members or for both Tribal and nontribal hunters may differ from those established by States in which the reservations, off-reservation trust lands, and ceded lands are located. The regulations will specify open seasons, shooting hours, and bag and possession limits for rails, coot, gallinules, woodcock, common snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks, mergansers, and geese.

The rules that eventually will be promulgated for the 2009–10 hunting season are authorized under the Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), as amended. The MBTA authorizes and directs the Secretary 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.

Dated: August 4, 2009.

**Jane Lyder,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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