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Part III

Department of the Interior

Fish and Wildlife Service

**50 CFR Parts 25 and 32
2009–2010 Hunting and Sport Fishing
Regulations for the Upper Mississippi
River National Wildlife and Fish Refuge;
Proposed Rule**

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Parts 25 and 32**

[FWS-R3-NSR-2009-0007; 32579-1261-0000-4A]

RIN 1018-AW48

2009–2010 Hunting and Sport Fishing Regulations for the Upper Mississippi River National Wildlife and Fish Refuge**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) proposes to amend the regulations for the Upper Mississippi River National Wildlife and Fish Refuge (refuge) that pertain to existing programs for migratory game bird hunting, upland game hunting, and big game hunting. These changes would take effect with the 2009–2010 season, would implement portions of the Comprehensive Conservation Plan (CCP) for the refuge approved in 2006, and would amend other regulations. We also propose amendments to part 25 reflecting recent OMB approval of new hunting and fishing application forms and activity reports for national wildlife refuges.

DATES: We will accept comments on or before May 28, 2009.

ADDRESSES: You may submit comments 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: RIN 1018-AW48; 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 information on this specific refuge's public use programs and the conditions that apply to them or for copies of compatibility determinations for any refuge(s), contact individual the programs at the addresses/phone numbers given in "Available Information for Specific Districts of the Refuge" under

SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: Don Hultman, (507) 452-4232; Fax (507) 452-0851.

SUPPLEMENTARY INFORMATION: The Upper Mississippi River National Wildlife and Fish Refuge (refuge) encompasses 240,000 acres in a more-or-less continuous stretch of 261 miles of Mississippi River floodplain in Minnesota, Wisconsin, Iowa, and Illinois. The refuge was established by Congress in 1924 to provide a refuge and breeding ground for migratory birds, fish, other wildlife, and plants. The refuge is perhaps the most important corridor of habitat in the central United States due to its species diversity and abundance and is the most visited refuge in the United States with 3.7 million annual visitors. Approximately 187,000 acres of the refuge is open to all hunting, and approximately 140,000 acres of surface water is open to year-round fishing.

On July 11, 2006, we published a notice of availability of our Final Environmental Impact Statement (EIS) and CCP (71 FR 39125), and we accepted public comments on the Final EIS for 30 days. On August 24, 2006, the Regional Director of the Midwest Region of the Fish and Wildlife Service signed the Record of Decision that documented the selection of Alternative E, the Preferred Alternative presented in the Final EIS. We published a notice of availability of that Record of Decision on November 2, 2006 (71 FR 64553).

In accordance with the Record of Decision, we prepared a CCP based on Alternative E. The CCP was approved on October 24, 2006. The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee, as amended by the National Wildlife Refuge Improvement Act of 1997), requires the Secretary of the Interior (Secretary) to manage each refuge in a manner consistent with a completed CCP. The Final EIS and CCP are available at <http://www.fws.gov/midwest/planning/uppermiss/>.

We completed hunting and fishing regulations in 2007 to implement the goals, objectives, and strategies described in the CCP pertaining to hunting and fishing and related uses. We published a proposed rule in the **Federal Register** on June 28, 2007 (72 FR 35380) and a final rule was effective on September 7, 2007 (72 FR 51534).

This proposal would make four changes to existing refuge regulations (see our final rule of September 7, 2007 (72 FR 51534) for more details on closure restrictions). It would modify the refuge's Waterfowl Hunting Closed Areas and/or No Hunting Zones in refuge Pool 4; add a new No Hunting Zone in Pool 5A as scheduled in the CCP; make permanent an interim No Hunting or Trapping Zone on the

recently acquired Mathy Tract (75 acres) on Brice Prairie near Pool 7 which would be used as a future office and visitor contact facility; and add an additional regulation on the immediate retrieval of waterfowl taken during hunting that would be applicable refuge-wide.

The proposed retrieval regulation resulted from discussions we had with State law enforcement personnel and was endorsed by 33 of 35 participants at a public waterfowl hunting workshop in February 2007. This regulation is designed to reduce the loss of downed waterfowl by adding a time element (i.e., "immediately") to existing State retrieval regulations and to reduce the crippling loss of waterfowl by discouraging hunters from shooting at birds that are beyond effective shotgun range. The proposed change in Pool 5A is the addition of a 24-acre Fountain City Bay No Hunting Zone encompassing a backwater bay adjacent to Merrick State Park, Wisconsin. This new zone, identified in the CCP, is designed to reduce conflicts with park users and will also provide a resting and feeding area for migrating puddle ducks such as mallards and blue-winged teal.

The most significant of the proposed changes above is the modification of the Waterfowl Hunting Closed Areas in Pool 4 of the refuge, a change described and scheduled for the 2009–2010 season in the CCP. This pool currently has 6,884 acres designated as closed areas, and under this proposal the acreage will drop to 3,500 acres designated as closed areas or no hunting zones. The entire Nelson-Trevino closed area will be open to hunting (3,773 acres), and a new closed area will be established that encompasses Big Lake (2,210 acres). The current Peterson Lake closed area of 3,111 acres will be reduced to 1,290 acres and also divided into more recognizable subunits, namely Peterson Lake closed area (572 acres), Rieck's Lake closed area (499 acres), and Buffalo River no hunting zone (219 acres). These proposed changes, although resulting in more acreage open to hunting in Pool 4, are predicted to dramatically improve the effectiveness of Pool 4 in providing waterfowl secure resting and feeding areas based on an analysis completed for the Final EIS and CCP. An effective system of strategically located waterfowl closed areas on the 261-mile-long refuge is critical to waterfowl using the Mississippi Flyway, and allows hunting to remain compatible. The Service will monitor the effectiveness of the modification to Pool 4 and will make future changes if warranted by waterfowl use surveys.

Finally, we propose corrections to some acreage figures for the “No Entry – Sanctuary,” “Area Closed,” “Area Closed – No Motors,” “No Hunting Zone” and “No Hunting or Trapping Zone” listings in the respective sections of this proposed rule to reflect increased accuracy based on actual signing and mapping in the field and subsequent Geographic Information System or GIS analysis since we published the 2007–08 Hunting and Fishing final rule. These are considered administrative changes since the corrections match the areas shown on maps provided to the public since 2007. We have summarized these administrative changes below:

No Entry – Sanctuary Areas

Pool Slough, Pool 9, Minnesota/Iowa, from 1,112 to 1,126 acres

Spring Lake, Pool 13, Illinois, from 3,686 to 3,697 acres

Areas Closed and Areas Closed – No Motors

Big Lake, Pool 4, Wisconsin, from 2,626 to 2,210 acres

Peterson Lake, Pool 4, Wisconsin, from 672 to 572 acres

Spring Lake, Pool 5, Wisconsin, from 243 to 254 acres

Polander Lake, Pool 5A, Minnesota/Wisconsin, from 1,907 to 1,873 acres

Lake Onalaska, Pool 7, Wisconsin, from 7,369 acres to 7,366 acres

Wisconsin Islands, Pool 8, Minnesota/Wisconsin, from 6,510 to 6,538 acres

Wisconsin River Delta, Pool 10, Wisconsin, from 1,406 to 1,414 acres

12-Mile Island, Pool 11, Iowa, from 1,145 to 1,139 acres

Kehough Slough, Pool 12, Illinois, from 343 to 333 acres

Pleasant Creek, Pool 13, Iowa, from 2,067 to 2,191 acres

Elk River, Pool 13, Iowa, from 1,237 to 1,248 acres

Beaver Island, Pool 14, Iowa, from 717 to 864 acres

No Hunting or No Hunting or Trapping Zones

Upper Halfway Creek Marsh, Pool 7, Wisconsin, from 141 to 143 acres

Goose Island, Pool 8, Wisconsin, from 986 to 984 acres

Goetz Island Trail, Pool 11, Iowa, from 32 to 31 acres

Crooked Slough Backwater, Pool 13, Illinois, from 2,467 to 2,453 acres

Crooked Slough Proper, Pool 13, Illinois, from 192 to 270 acres

The National Wildlife Refuge System Administration Act of 1966 authorizes the Secretary to allow uses of refuge areas, including hunting and/or sport fishing, upon a determination that such uses are compatible with the purposes

of the refuge and National Wildlife Refuge System (Refuge System) mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), and consistent with the principles of sound fish and wildlife management and administration. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

The Secretary is required to prepare a CCP for each refuge and shall manage each refuge consistent with the CCP. Each CCP must identify and describe the refuge’s purposes; fish, wildlife, and plant populations; cultural resources; areas for administrative or visitor facilities; significant problems affecting resources and actions necessary; and opportunities for compatible wildlife-dependent recreation. Each CCP must also be developed through consultation with the States, other Federal agencies, and the public, and be coordinated with applicable State conservation plans.

Each CCP is guided by the overarching requirement that refuges are to be managed to fulfill their purposes for which established and the mission of the Refuge System. In addition, the National Wildlife Refuge System Improvement Act requires that the Refuge System be administered to provide for the conservation of fish, wildlife, and plants and their habitats; and to ensure their biological integrity, diversity, and environmental health.

We developed the CCP for the refuge in accordance with all requirements and in accordance with the consultation and public involvement provisions of the National Wildlife Refuge System Improvement Act. This includes new compatibility determinations for hunting and fishing, which are referenced and listed in Appendix E of the Final EIS (which includes recreational and commercial fishing, migratory bird and big game hunting, wildlife observation and photography). We based these compatibility determinations on all changes anticipated in the CCP, including the changes included in this proposed rule, and remain valid as approved in 2006. We then developed this proposed rule to complete implementation of the hunting- and fishing-related portions of the CCP. Even after we enact the proposed changes, opportunities for waterfowl hunting on the 240,000-acre refuge will remain abundant with 49,239 acres closed to waterfowl or other hunting compared to a pre-CCP total of 48,099 acres.

Plain Language Mandate

In this proposed rule, we comply with a Presidential mandate to use plain language in regulations. As examples, we use “you” to refer to the reader and “we” to refer to the Service, the word “allow” instead of “permit” when we do not require the use of a permit for an activity, and we use active voice whenever possible (i.e., “We allow hunting of upland game on designated areas” vs. “Upland game hunting in designated areas is allowed”).

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee, as amended by the National Wildlife Refuge System Improvement Act of 1977 [Improvement Act]) (Administration Act) and the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4) (Recreation Act) govern the administration and public use of refuges. In addition, the Migratory Bird Treaty Act (16 U.S.C. 703–711) grants authority for management of migratory birds and the closing of any areas to migratory bird hunting.

The Migratory Bird Treaty Act (MBTA) designates the protection of migratory birds as a Federal responsibility. The MBTA enables the setting of seasons, and other regulations including the closing of areas, Federal and non-Federal, to the hunting of migratory birds. You can find regulations stemming from the MBTA pertaining to migratory bird hunting in 50 CFR part 20.

This document proposes to codify in the Code of Federal Regulations amended hunting and sport fishing regulations that are applicable to the Upper Mississippi River National Wildlife and Fish Refuge. We are proposing these amended regulations to implement the refuge CCP, better inform the general public of the regulations at the refuge, increase understanding and compliance with these regulations, and make enforcement of these regulations more efficient. In addition to finding these regulations in 50 CFR part 32, visitors will find them reiterated in literature distributed by the refuge and posted on signs at major access points. Visitors will also find the boundaries of closed areas or other restricted-use areas referenced in this document marked by specific signs.

Information Collection Changes

On January 15, 2009, OMB approved the use of nine new hunting and fishing application forms and activity reports for use on national wildlife refuges

(control #1018–0140). We are also proposing to amend 50 CFR 25.23 to reflect the addition of these forms to those already used on national wildlife refuges.

Fish Advisory

For health reasons, anglers should review and follow State-issued consumption advisories before enjoying recreational sport fishing opportunities on Service-managed waters. You can find information about current fish consumption advisories on the internet at: <http://www.epa.gov/waterscience/fish/>.

Public Comments

You may submit comment and materials on this proposed rule by any one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. 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 on <http://www.regulations.gov>. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment - including your personal identifying information - may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will also post all hardcopy comments on <http://www.regulations.gov>.

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. During preparation of the refuge CCP, from which the major changes in this proposed rule originate, we used an extensive public information, outreach, and comment process, including 46 public meetings or workshops attended by 4,500 persons and 80 other meetings with State department of natural resources agencies, other agencies, interest groups, elected officials, and other Service and Department of Interior offices. We received and responded to a total of 3,230 written comments in the Final EIS. We also received and responded to 23 written comments received on the 2007 proposed comprehensive hunting and fishing rule as documented in the final rule in the **Federal Register** (72 FR 51534, September 7, 2007). This proposal, and

its publication as a proposed rule in the **Federal Register**, will provide an additional opportunity for comment during the 30-day comment period (see **DATES** section).

In addition, we held two public open houses in September 2008 to provide information and gather comments on the changes to the Waterfowl Hunting Closed Areas and No Hunting Zones in Pool 4. The open houses were attended by 60 people, and we contacted over 200 people at landings during the 2008–09 hunting season. We used input from these open houses and follow-up contacts to make several boundary adjustments in the closed area and no hunting zones in this proposed rule.

We also prepared a separate Environmental Assessment (EA) for the proposed No Hunting and Trapping Zone for the refuge's Mathy Tract on Brice Prairie, Wisconsin, near Pool 7. We sent a news release announcing the assessment to local media, distributed the assessment widely, and posted it on the refuge website. We provided the public 30 days to review and comment. We received 14 comments (9 supporting the closure, 4 opposed, and 1 on another topic) and responded to them in the Final EA. In our response to comments, we addressed opportunities for hunting elsewhere on the refuge, the potential conflicts between hunting and use of the tract as an administrative site, and the new opportunities for wildlife observation, photography, interpretation and environmental education. The one other commenter advocated for Henslow's sparrow conservation; we plan to restore native grasslands which should benefit it and other grassland species.

We believe that a 30-day comment period on this proposed rule, through this broader publication following the earlier public involvement, gives the public sufficient time to comment before the upcoming seasons. In addition, in order to continue to provide for previously authorized hunting and fishing opportunities while at the same time providing for adequate resource and visitor protection, we must be timely in providing modifications to hunting and fishing programs on refuges.

If adopted, we will incorporate these proposed regulations into 50 CFR 32.42 (Minnesota). Part 32 contains general provisions and § 32.42 contains refuge-specific regulations for hunting and sport fishing on refuges located or headquartered in Minnesota.

Clarity of This 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 Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination on 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, use fees, loan programs, or the rights and obligations of their recipients.
- (d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601, *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a

threshold for “significant impact” and a threshold for a “substantial number of small entities.” See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule does not increase the number of recreation types allowed on the refuge but amends hunting and fishing regulations on the refuge. As a result, opportunities for hunting and fishing recreation on the refuge will remain abundant and increase over time

based on analysis done in the Final EIS and CCP for the refuge.

Many small businesses within the retail trade industry (such as hotels, gas stations, taxidermy shops, bait and tackle shops, etc.) may benefit from some increased refuge visitation. A large percentage of these retail trade establishments in the majority of affected counties qualify as small businesses (see table below).

We expect that the incremental recreational opportunities will be scattered, and so we do not expect that the rule will have a significant economic effect (benefit) on a substantial number of small entities in

any given community or county. We expect recreationists to spend an additional \$2 million annually in total in the refuges’ local economies. As shown in the table below, this represents 0.02 percent of the total amount of retail expenditures in the 19-county area. For comparison purposes, the county with the smallest retail expenditure total, Buffalo County in Wisconsin, is shown. If the entire retail trade expenditures associated with the hunting and fishing regulations occurred in Buffalo County, this would amount to 3.4 percent increase in annual retail expenditures.

TABLE 1—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION 2009–2010 HUNTING AND FISHING REGULATIONS

Area	Retail trade in 2002	Change due to 2009–2010 hunting and fishing regulations (15-year span of CCP)	Change as percent of total retail trade	Total No. of retail establishments	Establishments with fewer than 10 employees
19 County Area	\$9.8 billion	\$1,999,216	0.02 %	24,878	17,957
Buffalo County, WI	\$58.3 million	\$1,999,216	3.4 %	350	290

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no significant employment or small business effects. This rule:

a. Would not have an annual effect on the economy of \$100 million or more. By the end of the 15–year CCP lifespan, the additional fishing and hunting opportunities on the refuge would generate an additional \$2 million in angler and hunter expenditures with an economic impact estimated at \$2.5 million per year (2003 dollars). Consequently, the maximum benefit of this rule for businesses both small and large would not be sufficient to make this a major rule. The impact would be scattered across 19 counties and would most likely not be significant in any local area.

b. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. We do not expect this proposed rule to affect the supply or demand for fishing and hunting opportunities in the United States, and, therefore, it should not affect prices for fishing and hunting equipment and

supplies, or the retailers that sell equipment.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This proposed rule represents only a small proportion of recreational spending of a small number of affected hunters. Therefore, this rule would have virtually no economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of over \$72 billion nationwide.

Unfunded Mandates Reform Act

Since this proposed rule would apply to public use of federally owned and managed refuges, it would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with E.O. 12630, this proposed rule would not have

significant takings implications. This regulation would affect only visitors to the refuge and describe what they can do while they are on the refuge.

Federalism (E.O. 13132)

As discussed in the Unfunded Mandates Reform Act section above, this proposed rule would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment under E.O. 13132. In preparing the CCP for the refuge, we worked closely with the four States bordering the refuge, and this proposed rule reflects the CCP.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that the proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. This proposal would clarify established regulations and result in better understanding of the regulations by refuge visitors.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements

of Energy Effects when undertaking certain actions. Because this proposed rule is a modification of an existing hunting and fishing program on the refuge, and we do not expect it to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on national wildlife refuges with Tribal governments having adjoining or overlapping jurisdiction before we propose changes to the regulations. During scoping and preparation of the Final EIS, we contacted 35 Indian tribes to inform them of the process and seek their comments. Only the Iowa Tribe of Oklahoma provided comment on the Draft EIS, saying they have an historic presence in counties adjacent to the refuge, and they wish to be kept informed of any artifact discoveries as we implement refuge plans. We replied in the Final EIS that we appreciated their interest in the refuge and would keep them informed of any cultural resource issues and discoveries.

Paperwork Reduction Act

This regulation does not contain any information collection requirements other than those already approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (OMB Control Numbers 1018–0102 and 1018–0140). See 50 CFR 25.23 for information concerning that approval. An 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.

Endangered Species Act Section 7 Consultation

During preparation of the Final EIS, we completed a section 7 consultation and determined that the preferred alternative, which included hunting and fishing changes reflected in this proposed rule, is not likely to adversely affect individuals of listed or candidate species or designated critical habitat of such species. The Service's Ecological Services Office concurred with this determination. The listed species on the refuge is the Higgins eye mussel; candidate species are the Eastern

massasauga and spectaclecase and sheepsnout mussels. A copy of the section 7 evaluation and accompanying biological assessment is available from the refuge at the locations listed in the "Available Information for Specific Districts of the Refuge" section of this document.

National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*)

Concerning the actions that are the subject of this proposed rulemaking, we have complied with NEPA through the preparation of a Final EIS and Record of Decision which include the major hunting changes reflected in this proposed rule. An Environmental Assessment (EA) was prepared for the 75-acre No Hunting and Trapping Zone on Brice Prairie near Pool 7. The NEPA documents are available on or through our website at <http://www.fws.gov/midwest/UpperMississippiRiver/>. Then click on Current Topics on the left, which will bring you to the Mathy Tract EA.

Available Information for Specific Districts of the Refuge

The refuge is divided into four districts for management, administrative, and public service effectiveness and efficiency. These districts correspond to two or more Mississippi River pools created by the series of locks and dams on the river. District offices are located in Winona, Minnesota (Pools 4–6), La Crosse, Wisconsin (Pools 7–8), McGregor, Iowa (Pools 9–11), and Savanna, Illinois (Pools 12–14). If you are interested in specific information pertaining to a specific area encompassed in this proposed rule, you may contact the appropriate district office listed below:

Winona District, U.S. Fish and Wildlife Service, 51 East Fourth Street, Room 203, Winona, MN 55987; Telephone (507) 454–7351.

La Crosse District, U.S. Fish and Wildlife Service, 555 Lester Avenue, Onalaska, WI 54650; Telephone (608) 783–8405.

McGregor District, U.S. Fish and Wildlife Service, P.O. Box 460, McGregor, IA 52157; Telephone (563) 873–3423.

Savanna District, U.S. Fish and Wildlife Service, 7071 Riverview Road, Thomson, IL 61285; Telephone (815) 273–2732.

Primary Author

Don Hultman, Refuge Manager, Upper Mississippi River National Wildlife and Fish Refuge, is the primary author of this rulemaking document.

List of Subjects in:

50 CFR Part 25

Administrative practice and procedure, Concessions, Reporting and recordkeeping requirements, Safety, Wildlife refuges.

50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

For the reasons set forth in the preamble, we propose to amend title 50, Chapter I, subchapter C of the Code of Federal Regulations as follows:

PART 25—[AMENDED]

1. The authority citation for part 25 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i, 3901 *et seq.*; and Pub. L. 102–402, 106 Stat. 11961.

2. Revise §25.23 to read as follows:

§ 25.23 What are the general regulations and information collection requirements?

The Office of Management and Budget has approved the information collection requirements contained in subchapter C, parts 25, 32, and 36 under 44 U.S.C. 3501 *et seq.* and assigned the following control numbers: 1018–0014 for Special Use Permit Applications on National Wildlife Refuges in Alaska; 1018–0102 for Special Use Permit Applications on National Wildlife Refuges Outside Alaska; and 1018–0140 for Hunting and Fishing Application Forms and Activity Reports for National Wildlife Refuges. We collect information to assist us in administering our programs in accordance with statutory authorities that require that recreational or other uses be compatible with the primary purposes for which the areas were established. Send comments on any aspect of these forms to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222 ARLSQ, Washington, DC 20240.

PART 32—[AMENDED]

3. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i.

4. Amend §32.42 Minnesota by revising paragraphs A.2., A.3., A.4., and A.6. of Upper Mississippi River National Wildlife and Fish Refuge to read as follows:

§ 32.42 Minnesota.

* * * * *

Upper Mississippi River National Wildlife and Fish Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

2. In areas posted and shown on maps as “No Entry – Sanctuary,” we prohibit migratory bird hunting at all times and all public entry except as specified. These areas are named and located as follows:

- i. Pool Slough, Pool 9, Minnesota/Iowa, 1,126 acres.
- ii. Bertom Island, Pool 11, Wisconsin, 31 acres.
- iii. Guttenberg Ponds, Pool 11, Iowa, 252 acres.
- iv. Spring Lake, Pool 13, Illinois, 3,697 acres.

3. In areas posted and shown on maps as “Area Closed” and “Area Closed – No Motors,” we prohibit migratory bird hunting at all times. We ask that you practice voluntary avoidance of these areas by any means or for any purpose from October 15 to the end of the respective State duck season. In areas also marked “no motors,” we prohibit the use of motors on watercraft from October 15 to the end of the respective State duck season.

These “Area(s) Closed” are named and located as follows:

- i. Big Lake, Pool 4, Wisconsin, 2,210 acres.
- ii. Weaver Bottoms/Lost Island, Pool 5, Minnesota/Wisconsin, 3,508 acres.
- iii. Polander Lake, Pool 5A, Minnesota/Wisconsin, 1,873 acres.
- iv. Lake Onalaska, Pool 7, Wisconsin, 7,366 acres (voluntary avoidance on 3,365 acres until mid-November).
- v. Wisconsin Islands, Pool 8, Minnesota/Wisconsin, 6,538 acres.
- vi. Harpers Slough, Pool 9, Iowa/Wisconsin, 5,209 acres.

vii. Wisconsin River Delta, Pool 10, Wisconsin, 1,414 acres (closed November 1 to end of duck season).

viii. 12-Mile Island, Pool 11, Iowa, 1,139 acres.

ix. Bertom-McCartney, Pool 11, Wisconsin, 2,384 acres (no voluntary avoidance provision).

x. Pleasant Creek, Pool 13, Iowa, 2,191 acres.

xi. Elk River, Pool 13, Iowa, 1,248 acres.

The “Area(s) Closed – No Motors” are named and located as follows:

xii. Peterson Lake, Pool 4, Wisconsin 572 acres.

xiii. Rieck’s Lake, Pool 4, Wisconsin, 499 acres.

xiv. Spring Lake, Pool 5, Wisconsin, 254 acres.

xv. Sturgeon Slough, Pool 10, Wisconsin, 340 acres.

xvi. 12-Mile Island, Pool 10, Iowa, 540 acres.

xvii. John Deere Marsh, Pool 11, Iowa, 439 acres.

xviii. Kehough Slough, Pool 12, Illinois, 333 acres.

xiv. Beaver Island, Pool 14, Iowa, 864 acres.

4. In areas posted and shown on maps as “No Hunting Zone” or “No Hunting or Trapping Zone,” we prohibit migratory bird hunting at all times. You must unload and encase firearms in these areas. These areas are named and located as follows:

i. Buffalo River, Pool 4, Wisconsin, 219 acres.

ii. Fountain City Bay, Pool 5A, Wisconsin, 24 acres.

iii. Upper Halfway Creek Marsh, Pool 7, Wisconsin, 143 acres.

iv. Mathy Tract (Brice Prairie), Pool 7, Wisconsin, 75 acres.

v. Hunter’s Point, Pool 8, Wisconsin, 82 acres.

vi. Goose Island, Pool 8, Wisconsin, 984 acres (also no motors and voluntary avoidance as in condition A3).

vii. Sturgeon Slough, Pool 10, Wisconsin, 66 acres.

viii. Goetz Island Trail, Pool 11, Iowa, 31 acres.

ix. Crooked Slough Backwater, Pool 13, Illinois, 2,453 acres.

x. Crooked Slough Proper, Pool 13, Illinois, 270 acres.

xi. Frog Pond, Pool 13, Illinois, 64 acres.

xii. Ingersoll Learning Center, Pool 13, Illinois, 41 acres.

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6. You must immediately make a reasonable attempt to retrieve downed waterfowl unless the bird lies in plain sight of you, is clearly dead, and there is no risk of the bird drifting off due to wind or current. You may retrieve dead or wounded game from areas posted “Area Closed,” “No Hunting Zone,” and “No Hunting or Trapping Zone” provided you do not take a loaded gun into the area and do not attempt to chase birds from the area. You may not use a motor to aid in the retrieval of game in areas posted “Area Closed – No Motors.” You may not retrieve birds or other game from areas posted “No Entry – Sanctuary.”

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Dated: April 11, 2009

Will Shafroth,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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