

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

RIN 1018-AG08

Migratory Bird Hunting; Proposed 2000-01 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2000-01 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. We also request proposals from Indian tribes that wish to establish special migratory bird hunting regulations on Federal Indian reservations and ceded lands. Migratory game bird hunting seasons provide hunting opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory bird population status and habitat conditions.

DATES: You must submit comments for proposed early-season frameworks by July 28, 2000, and for proposed late-season frameworks by September 8, 2000. Tribes should submit proposals and related comments by June 2, 2000.

ADDRESSES: Send your comments on the proposals to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634-ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel at: Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634-ARLSQ, 1849 C Street, NW., Washington, DC 20240 (703) 358-1714.

SUPPLEMENTARY INFORMATION: For administrative purposes, this document consolidates the notice of intent to establish open migratory bird hunting seasons and the request for tribal proposals with the preliminary proposals for the annual hunting

regulations-development process. We will publish the remaining proposed and final rulemaking documents separately. For inquiries on tribal guidelines and proposals, tribes should contact the following personnel.

Region 1—Brad Bortner, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181; (503) 231-6164.

Region 2—Jeff Haskins, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103; (505) 248-7885.

Region 3—Steve Wilds, U.S. Fish and Wildlife Service, Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111-4056; (612) 713-5432.

Region 4—Frank Bowers, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; (404) 679-4000.

Region 5—George Haas, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035-9589; (413) 253-8576.

Region 6—John Cornely, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Building, Denver, Colorado 80225; (303) 236-8145.

Region 7—Robert Leedy, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; (907) 786-3423.

Notice of Intent To Establish Open Seasons

This notice announces our intent to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 2000-01 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

"Migratory game birds" are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Hunting of all other birds designated as migratory (under § 10.13 of Subpart B of 50 CFR part 10) is not permitted.

For the 2000-01 migratory game bird hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). We describe these proposals under Proposed 2000-01 Migratory Game Bird Hunting Regulations (Preliminary) in this document. We published definitions of waterfowl flyways and mourning dove

management units, as well as a description of the data used in and the factors affecting the regulatory process, in the March 14, 1990, **Federal Register** (55 FR 9618).

Regulatory Schedule for 2000-01

This document is the first in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations. In supplemental proposed rulemakings, we will make proposals relating to the harvest of migratory game birds initiated after this publication is available for public review. Also, we will publish additional supplemental proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available.

Because of the late dates when certain portions of these data become available, we anticipate abbreviated comment periods on some proposals. Special circumstances limit the amount of time we can allow for public comment on these regulations. Specifically, two considerations compress the time for the rulemaking process: the need, on one hand, to establish final rules early enough in the summer to allow resource agencies to select and publish season dates and bag limits prior to the beginning of hunting seasons and, on the other hand, the lack of current status data on most migratory game birds until later in the summer.

Because the regulatory process is strongly influenced by the times when information is available for consideration, we divide the regulatory process into two segments: early seasons and late seasons. Early seasons are those seasons that generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. Late seasons are those seasons opening in the remainder of the United States about October 1 and later, and include most of the general waterfowl seasons.

Major steps in the 2000-01 regulatory cycle relating to open public meetings and **Federal Register** notifications are illustrated in the accompanying diagram. All publication dates of **Federal Register** documents are target dates.

All sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
2. Sea Ducks
3. Mergansers
4. Canada Geese
5. White-fronted Geese
6. Brant

7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Later sections of this and subsequent documents will refer only to numbered items requiring your attention. Therefore, it is important to note that we will omit those items requiring no attention and remaining numbered items will be discontinuous and appear incomplete.

Requests for Tribal Proposals

Background

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to tribal requests for our recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s); (2) On-reservation hunting by tribal members only, outside of 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, tribal regulations established under the guidelines must be consistent with the annual 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 (Convention). The guidelines are capable of application to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also apply to the establishment of migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory game bird hunting by nonmembers on Indian-owned reservation lands, subject to our 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 migratory bird 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 may wish to establish special hunting regulations for tribal members on ceded lands. As explained in previous rulemaking documents, it is incumbent upon the tribe and/or the State to request consultation as a result of the proposal being published in the **Federal Register**. We will not presume to make a determination, without being advised by either a tribe or a State, that any issue is or is not worthy of formal consultation.

One of the guidelines provides for the continuation of harvest of migratory game birds by tribal members on reservations where such harvest is a customary practice. We do not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory bird resource. For several years, we have reached annual agreement with tribes for migratory bird hunting by tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

Tribes should not view the guidelines as inflexible. Nevertheless, we believe that they 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. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 2000–01 hunting season should submit a proposal that includes:

- (1) The requested hunting season dates and other details regarding regulations;
- (2) Harvest anticipated under the requested regulations;
- (3) Methods that will be employed to measure or monitor harvest (mail-questionnaire survey, bag checks, etc.);
- (4) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory bird resource; and
- (5) Tribal capabilities to establish and enforce migratory bird hunting regulations.

A tribe that desires the earliest possible opening of the waterfowl season should specify this request in their proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit, the proposal should request the same daily bag and possession limits and season length for ducks and geese that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

Tribal Proposal Procedures

We will publish details of tribal proposals for public review in later **Federal Register** documents. Because of the time required for our and public review, Indian tribes that desire special migratory bird hunting regulations for the 2000–01 hunting season should submit their proposals as soon as possible, but no later than June 2, 2000. Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed under the caption *Supplementary Information*. Tribes that request special migratory game bird hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments Solicited

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. We invite interested persons to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES**.

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. 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 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 **ADDRESSES**.

Endangered Species Act Consideration

Prior to issuance of the 2000-01 migratory game bird hunting regulations, we will consider 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 this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order (E.O.) 12866

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

E.O. 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

These 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, and the Service issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. 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 Analysis utilized the 1996 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 between \$429 million and \$1,084 million at small businesses in 1998. Copies of the Analysis are available upon request from the Office of Migratory Bird Management.

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. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808 (1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. 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 the Migratory Bird Harvest Information Program and assigned clearance number 1018-0015 (expires 09/30/2001). 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 Sandhill Crane Harvest Questionnaire and assigned clearance number 1018-0023 (expires 09/30/2000). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of the harvest, and the portion it constitutes of the total population.

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.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards found in 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.

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 and 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 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.

The rules that eventually will be promulgated for the 2000–01 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: March 24, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

Proposed 2000–01 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific framework proposals (including opening and closing dates, season lengths, and bag limits). Unless otherwise specified, we are proposing no change from the final 1999–2000

frameworks of August 27 and September 27, 1999 (64 FR 47072 and 52124). Specific preliminary proposals that vary from the 1999–2000 frameworks and issues requiring early discussion, action, or the attention of the States or tribes are contained below:

1. Ducks

A. Harvest Strategy Considerations

We propose to continue the use of Adaptive Harvest Management (AHM) to guide the establishment of duck hunting regulations. The AHM approach recognizes that we cannot predict the consequences of hunting regulations with certainty, and provides a means for making objective decisions despite this uncertainty. In addition, a tightly integrated cycle of monitoring, assessment, and decision-making is required under AHM to better understand the relationships among hunting regulations, harvests, and waterfowl abundance. More detailed information about AHM can be found on the Internet at: <http://www.fws.gov/r9mbmo/homepg.html>.

Since 1995, AHM regulatory strategies have been based on the status of midcontinent mallards, which are defined as those breeding from South Dakota to Alaska (Federal survey strata 1–18, 20–50, and 75–77), and in Minnesota, Wisconsin, and Michigan. An optimal regulatory alternative for midcontinent mallards is based on breeding population size and water conditions in the Canadian prairies, and on empirical weights assigned to four competing models of population dynamics. The same regulatory alternative is applied in all four Flyways, although season lengths and bag limits are Flyway-specific.

Efforts are underway to extend the AHM process to account for mallards breeding westward and eastward of the midcontinent survey area. For the purposes of harvest regulation, eastern mallards are defined as those breeding in southern Ontario and Quebec (Federal survey strata 51–54 and 56), and in New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, and Virginia. Western mallards currently are defined as those breeding in Washington, Oregon, and California. These mallard stocks make significant contributions to the total mallard harvest, particularly in the Atlantic and Pacific Flyways.

Extension of the current process to account for multiple mallard stocks and Flyway-specific regulatory choices involves: (1) Augmentation of the

decision criteria to include population and environmental variables relevant to eastern and western mallards; (2) revision of the objective function to account for harvest management objectives for mallards outside the midcontinent region; and (3) modification of the decision rules to allow independent regulatory choices in the Flyways. An optimal harvest strategy for each Flyway then can be derived, which in effect would represent an average of the optimal strategies for each breeding stock, weighted by the relative contribution of each stock to the respective Flyways.

Modifying the AHM protocol to account for multiple duck populations is one of the most challenging technical issues facing harvest managers. Never before have we tried to consider the status of multiple populations in such a formal way, nor have we attempted to give Flyways the ability to choose regulations that are predicated on their particular derivation of birds. We expect the efforts with eastern and western mallards to be precedent-setting and, thus, must be done carefully and in a way that provides a sound conceptual framework for considering additional duck populations in the future. Recently, the Service, in cooperation with the Atlantic Flyway Council, completed a technical assessment regarding modification of the current AHM protocol to account for eastern mallards. That report is available at: <http://www.fws.gov/r9mbmo/reports/reports.html>. We will consider the implications discussed in that assessment, as well as all public comment, in proposing a regulatory alternative for the Atlantic Flyway for the 2000–2001 hunting season.

G. Special Seasons/Species Management

i. Scaup

In 1999, we reduced the scaup daily bag limit to 3 in the Atlantic, Mississippi, and Central Flyways and 4 in the Pacific Flyway, based on the status of and trends in scaup populations and information from recent hunting seasons. A harvest management strategy for scaup was under development at that time but was not adopted because Flyway Council reviews of the draft strategy indicated further refinement was needed. We hoped to have a strategy completed prior to the 2000 hunting season; however, at this time it appears unlikely that sufficient progress can be made to do so. We are continuing to work with the Flyway Councils to complete the strategy, but if it cannot be completed in

time, scaup bag limits for this year's hunting season will again be based on scaup population status and harvest information.

ii. Canvasbacks

We continue to support the canvasback harvest strategy adopted in 1994. Overall, we believe the strategy has performed adequately, and have not found sufficient reason to alter it. However, results from the Service's Harvest Surveys indicate that canvasback harvests generally have been greater in both the U.S. and Canada than those predicted in the strategy. We note that harvest predictions used in the strategy were based largely on data collected several decades ago, and believe that more contemporary estimates would better reflect current harvest pressure. Therefore, we propose to replace the current predicted harvest values with the average harvests observed during recent (1994-97) hunting seasons. We will continue to monitor the strategy's performance as annual information from population and habitat surveys become available.

iii. September Teal/Wood Duck Seasons

The Wood Duck Population Monitoring Initiative showed that current wood duck monitoring efforts resulted in information that was capable of being used to manage wood ducks at no finer resolution than the Flyway level. In 1997, we stated that after September 2000, the special wood duck seasons in Florida, Kentucky and Tennessee would be discontinued; the year 2000 will be the last permitted for these seasons. The Service, in cooperation with the Atlantic and Mississippi Flyway Councils, is in the process of developing population models that will guide harvest management in the future. These models, and the accompanying evaluations of potential Flyway-wide expansions in harvest opportunity, will be developed prior to Spring 2001.

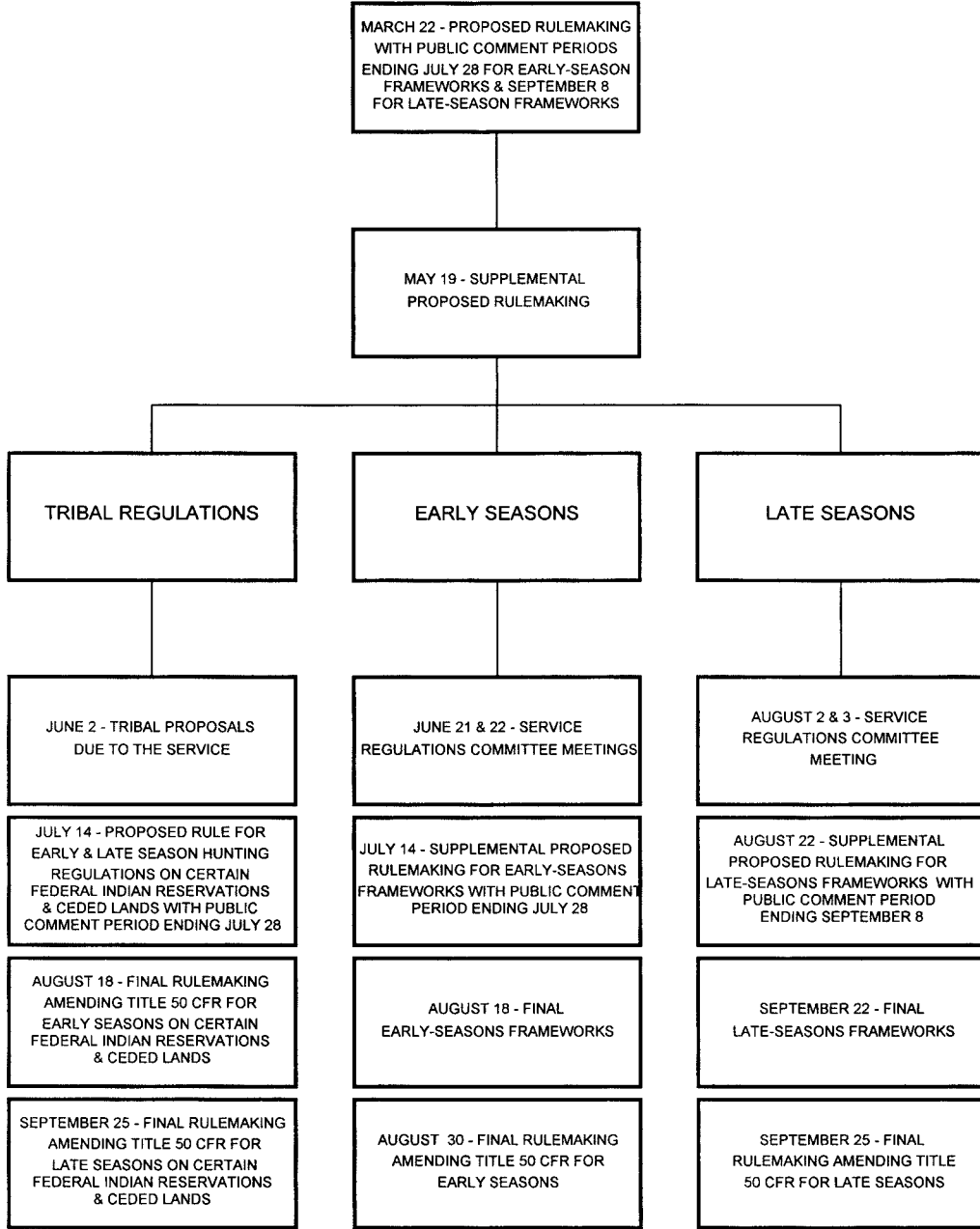
8. Swans

In March, we developed and made available for public review a Draft Supplemental Environmental Assessment (Assessment) on the

continuation of general swan hunting seasons in parts of the Pacific Flyway. The Assessment includes a review of the past 5-year experimental general swan hunting seasons in parts of the Pacific Flyway and alternatives for establishment of future operational swan hunting seasons in the same area. The Assessment was prompted by requests from individuals, States, and various conservation organizations for a thorough examination of alternatives for swan hunting in the Pacific Flyway in light of continuing concerns for the Rocky Mountain Population of trumpeter swans. The Assessment deals with establishment of an operational approach for swan hunting and related efforts to address status and distributional concerns regarding the Rocky Mountain Population of trumpeter swans. Four alternatives, including the proposed action, are considered. Copies of the Assessment are available upon request from the Office of Migratory Bird Management.

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2000 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS



DATES SHOWN RELATIVE TO PUBLICATION
OF FEDERAL REGISTER DOCUMENTS
ARE TARGET DATES