DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AC79

Migratory Bird Hunting: Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1995–96 Late Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special late season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands and ceded lands. This is in response to tribal requests for Service recognition of their authority to regulate hunting under established guidelines. This rule is necessary to allow establishment of seasons and bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

EFFECTIVE DATE: This rule takes effect September 30, 1995.

ADDRESSES: Comments received on the tribal proposals and special hunting regulations are available for public inspection during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA. Communications regarding the documents should be sent to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C St., NW, Washington, DC 20240. FOR FURTHER INFORMATION CONTACT: Ron W. Kokel or Dr. Keith A. Morehouse, Office of Migratory Bird Management, U.S. Fish and Wildlife Service (703/358-1714).

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

In the August 17, 1995 Federal Register (60 FR 42960), the U.S. Fish and Wildlife Service (Service) proposed special migratory bird hunting regulations for the 1995–96 hunting season for certain Indian tribes, under the guidelines described in the June 4,

1985, Federal Register (50 FR 23467). The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for: (1) onreservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the March 10-September 1 closed season mandated by the 1916 Convention on the Protection of Migratory Birds Between the U.S. and Great Britain (for Canada). Tribes that desired special hunting regulations in the 1995-96 hunting season were requested in the March 24, 1995, Federal Register (60 FR 15642) to submit a proposal that included details on: (1) requested season dates and other regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest; (4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and (5) tribal capabilities to establish and enforce migratory bird hunting regulations. No action is required if a tribe wishes to observe the hunting regulations that are established by the State(s) in which an Indian reservation is located. The guidelines have been used successfully since the 1985-86 hunting season, and they were made final beginning with the 1988–89 hunting season (August 18, 1988; 53 FR 31612).

Although the August 17, 1995, proposed rule included generalized regulations for both early-and lateseason hunting, this rulemaking addresses only the late-season proposals. Early-season hunting was addressed in the rulemaking published in the Federal Register on September 1, 1995 (60 FR 46012). As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and whitewinged dove. Late seasons are ordinarily those that begin in late-September or early-October, or later, each year and have a primary emphasis on waterfowl.

This year, the Service's annual breeding duck survey recorded an estimated 35.9 million ducks, a 10 percent increase from 32.5 million last year. Breeding mallard populations rose 18 percent to 8.3 million, the highest level since 1972 and above the North American Waterfowl Management Plan's goal of 8.1 million. Based on survey and production data, the Service is projecting a fall-flight index of about 80 million ducks from the traditional surveyed areas, up 13 percent from last year's estimate of 71 million. As a result, the Service has responded by proposing Flyway frameworks including longer seasons and larger daily bag limits for the 1995-96 waterfowl hunting season (August 28, 1995, Federal Register, 60 FR 44463). The fact that liberalization has occurred in bag limits and season length is considered in these final regulations, many of which were proposed before final decisions were made on late-season frameworks for the States.

Tribal Proposals

For the 1995–96 migratory bird hunting season, the Service proposed regulations for 17 tribes and/or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes have both early- and late-season elements. However, as noted earlier, only those with late-season proposals are included in this final rulemaking; 14 tribes made proposals with late seasons. Nine tribes were represented in the early-season regulations.

There have been no tribal comments or revised proposals for the late seasons received since publication of the earlyseason final rule. However, tribal proposals were made before late-season final frameworks for States were established. Thus, with the liberalization that has occurred, changes have been made in some of the tribal seasons that are not reflected in the earlier proposed rule document.

Public Comments On Tribal Proposals

The Service received a letter from the Arizona Game and Fish Department (AGFD), dated August 25, 1995, generally supporting the season proposals by Arizona tribes. The AGFD did, however, comment on aspects of the proposals from the Colorado River Tribes and the White Mountain Apache