

N.J.A.C. 7:27B-3.9. Procedures for the sampling and remote analysis of known volatile organic compounds using a gas chromatograph (GC) with a flame ionization detector (FID) or other suitable detector

N.J.A.C. 7:27B-3.10. Procedures for the determination of volatile organic compounds in surface coating formulations

N.J.A.C. 7:27B-3.11. Procedures for the determination of volatile organic compounds emitted from transfer operations using a flame ionization detector (FID) or non-dispersive infrared analyzer (NDIR)

N.J.A.C. 7:27B-3.12. Procedures for the determination of volatile organic compounds in cutback and emulsified asphalts

N.J.A.C. 7:27B-3.13. Procedures for the determination of leak tightness of gasoline delivery vessels

N.J.A.C. 7:27B-3.14. Procedures for the direct detection of fugitive volatile organic compound leaks

N.J.A.C. 7:27B-3.15. Procedures for the direct detection of fugitive volatile organic compound leaks from gasoline tank trucks and vapor collection systems using a combustible gas detector

N.J.A.C. 7:27B-3.18. Test methods and sources incorporated by reference

#### REFERENCE

#### APPENDIX 1

#### APPENDIX 3

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## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

#### 43 CFR Part 11

RIN 1090-AA97

#### Natural Resource Damages for Hazardous Substances

**AGENCY:** Office of the Secretary, Interior.  
**ACTION:** Final rule; correction.

**SUMMARY:** The Department of the Interior is correcting a final rule that appeared in the **Federal Register** on October 2, 2008 (73 FR 57259). The document issued a final rule that will regulate restoring, replacing, or acquiring the equivalent of public natural resources that are injured or destroyed as a result of releases of hazardous substances

**DATES:** *Effective Date:* November 3, 2008.

**FOR FURTHER INFORMATION CONTACT:** Frank DeLuise, 1849 C Street, NW., Washington, DC 20240. Telephone: 202-208-4143.

**SUPPLEMENTARY INFORMATION:** In FR Doc. E8-23225 appearing on page 57259 in the **Federal Register** of Thursday, October 2, 2008, the following correction is made:

1. On page 57266, in the second column, amendment 6, the instruction “In § 11.82, revise paragraphs (a), (b)(1)(iii), and (c) to read as follows:” is corrected to read, “In § 11.82, revise paragraphs (a), (b)(1)(iii), and (c)(1) to read as follows:”

Dated: October 30, 2008.

**James E. Cason,**

*Associate Deputy Secretary.*

[FR Doc. E8-26248 Filed 10-31-08; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

[FWS-R9-MB-2008-0090; 91200-1231-9BPP-L2]

RIN 1018-AW19

#### Migratory Bird Hunting; Hunting Methods for Resident Canada Geese

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or “we”) is amending the regulations on resident Canada goose management. This final rule clarifies the requirements for use of expanded hunting methods during special September hunting seasons. One requirement in the regulations has been misinterpreted, and we are taking this action to make sure that our regulations are clear for the States and the public.

**DATES:** This rule is effective on December 3, 2008.

**ADDRESSES:** You may view comments received on the proposed rule at <http://www.regulations.gov> or you may inspect them during normal business hours at the Service’s Division of Migratory Bird Management office in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, Virginia. You may obtain copies of the Final Environmental Impact Statement (FEIS) on resident Canada goose management from the above address or from the Division of Migratory Bird Management Web site at <http://www.fws.gov/migratorybirds/issues/cangeese/finaleis.htm>.

**FOR FURTHER INFORMATION CONTACT:** Robert Blohm, Chief, Division of Migratory Bird Management, or Ron Kokel (703) 358-1714 (see **ADDRESSES**).

## SUPPLEMENTARY INFORMATION:

### Authority and Responsibility

Migratory birds are protected under four bilateral migratory bird treaties the United States entered into with Great Britain (for Canada in 1916 as amended in 1999), the United Mexican States (1936 as amended in 1972 and 1999), Japan (1972 as amended in 1974), and the Soviet Union (1978). Regulations allowing the take of migratory birds are authorized by the Migratory Bird Treaty Act (16 U.S.C. 703-711), and the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712). The Migratory Bird Treaty Act (Act), which implements the above-mentioned treaties, provides that, subject to and to carry out the purposes of the treaties, the Secretary of the Interior is authorized and directed to determine when, to what extent, and by what means allowing hunting, killing, and other forms of taking of migratory birds, their nests, and eggs is compatible with the conventions. The Act requires the Secretary to implement a determination by adopting regulations permitting and governing those activities.

Canada geese are Federally protected by the Act by reason of the fact that they are listed as migratory birds in all four treaties. Because Canada geese are covered by all four treaties, regulations must meet the requirements of the most restrictive of the four. For Canada geese, this is the treaty with Canada. All regulations concerning resident Canada geese are compatible with its terms, with particular reference to Articles VII, V, and II.

Each treaty not only permits sport hunting, but permits the take of migratory birds for other reasons, including scientific, educational, propagative, or other specific purposes consistent with the conservation principles of the various Conventions. More specifically, Article VII, Article II (paragraph 3), and Article V of “The Protocol Between the Government of the United States of America and the Government of Canada Amending the 1916 Convention between the United Kingdom and the United States of America for the Protection of Migratory Birds in Canada and the United States” provides specific limitations on allowing the take of migratory birds for reasons other than sport hunting. Article VII authorizes permitting the take, kill, etc., of migratory birds that, under extraordinary conditions, become seriously injurious to agricultural or other interests. Article V relates to the taking of nests and eggs, and Article II, paragraph 3, states that, in order to ensure the long-term conservation of

migratory birds, migratory bird populations shall be managed in accord with listed conservation principles.

The other treaties are less restrictive. The treaties with both Japan (Article III, paragraph 1, subparagraph (b)) and the Soviet Union (Article II, paragraph 1, subparagraph (d)) provide specific exceptions to migratory bird take prohibitions for the purpose of protecting persons and property. The treaty with Mexico requires, with regard to migratory game birds, only that there be a "closed season" on hunting and that hunting be limited to 4 months in each year.

Regulations governing the issuance of permits to take, capture, kill, possess, and transport migratory birds are promulgated in title 50, Code of Federal Regulations (CFR), parts 13 and 21, and issued by the Service. The Service annually promulgates regulations governing the take, possession, and transportation of migratory birds under sport hunting seasons in 50 CFR part 20.

#### Background

On August 10, 2006, we published in the **Federal Register** (71 FR 45964), a final rule establishing regulations in 50 CFR parts 20 and 21 authorizing State wildlife agencies, private landowners, and airports to conduct (or allow) indirect and/or direct population control management activities, including the take of birds, on resident Canada goose populations. On August 20, 2007, we published in the **Federal Register** (72 FR 46403), a final rule that clarified and slightly modified several program requirements in 50 CFR parts 20 and 21 regarding eligibility, definitions, methodologies, and dates. On August 6, 2008, we published in the **Federal Register** (73 FR 45689) a proposed rule further seeking to clarify the use of expanded hunting methods during special September hunting seasons. The final rule described here addresses the comments we received on the August 6 proposed rule and amends 50 CFR part 20.

#### *Expanded Hunting Methods During September Special Seasons*

One of the components in the resident Canada goose management program is to provide expanded hunting methods and opportunities to increase the sport harvest of resident Canada geese above that which results from existing September special Canada goose seasons. The regulatory changes in § 20.21(b) and (g) codified in the August 10, 2006, and August 20, 2007, final rules provide State wildlife management agencies and Tribal entities the option of authorizing the use of unplugged

shotguns (paragraph (b)) and electronic calls (paragraph (g)) during the first portion of existing, operational September Canada goose seasons (i.e., September 1–15, § 20.21(b)(2)(i) and § 20.21(g)(2)(i)). The final rules also stated that utilization of these additional hunting methods during any new special seasons or other existing, operational special seasons (i.e., September 16–30, § 20.21(b)(2)(ii) and § 20.21(g)(2)(ii)) can be approved by the Service and require demonstration of a minimal impact to migrant Canada goose populations. Further, we will authorize these seasons (i.e., those after September 15) on a case-by-case basis through the normal migratory bird hunting regulatory process.

All of these expanded hunting methods and opportunities must be conducted outside of any other open waterfowl season (i.e., when all other waterfowl and crane hunting seasons are closed). Thus, any State listed in § 20.21(b)(2) and (g)(2) may select the use of these expanded hunting methods during September 1–15 without annual Service approval, and during September 16–30 with annual Service approval.

#### *This Rule*

We became aware of concerns that, as written, the regulations in § 20.21(b)(2) and (g)(2) do not require annual promulgation in the **Federal Register** of a State's decision to use these expanded hunting methods during the period September 1–15. Language in § 20.21(b)(2)(ii) and (g)(2)(ii) requires that any decision by the States to use these expanded hunting methods during the period of September 16–20 be incorporated in the annual migratory bird hunting regulations. The result is that the States are required to notify us of their decision. Because this same language does not appear in § 20.21(b)(2)(i) and (g)(2)(i), the existing regulations could be interpreted as requiring notification by a State only for the period September 16–20 and not for the period September 1–15. We codify all the other season dates, daily bag limits, area restrictions, shooting hours, etc., annually in late August, so this interpretation of the regulations was clearly not our intention.

Therefore, we are amending § 20.21(b)(2)(i) and (g)(2)(i) by adding the phrase "when approved in the annual regulatory schedule in subpart K of this part" to expressly require States to inform us of their annual selections on the use of these expanded hunting methods during the period of September 1–15. This is the same language that currently exists in § 20.21(b)(2)(ii) and (g)(2)(ii) that requires such notification

by the States for the period September 16–30. As a result of these amendments, all State selections, or nonselections, of these expanded hunting methods during September would require publication in the annual regulatory schedule in subpart K of part 20.

#### Public Comments

In the August 6, 2008, proposed rule we solicited comments from the public. The public comment period ended on September 5, 2008. We received one comment. The individual commenter believed that the entire migratory bird hunting regulations process was run by those interested in profit and that the killing of all migratory birds should be eliminated.

*Service Response:* Our long-term objectives continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. We annually take into account the zones of temperature and the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory birds before we establish hunting seasons. We believe that all such seasons are compatible with the current status of migratory bird populations and long-term population goals. Additionally, we are obligated to, and do, give serious consideration to all information received as public comment. While there are problems inherent with any type of representative management of public-trust resources, we believe that the Flyway-Council system of migratory bird management has been a longstanding example of State-Federal cooperative management since its establishment in 1952. However, as always, we continue to seek new ways to streamline and improve the process.

#### NEPA Considerations

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we published the availability of a Draft Environmental Impact Statement (DEIS) on March 7, 2002 (67 FR 10431), followed by a 91-day comment period. We subsequently reopened the comment period for 60 additional days (68 FR 50546, August 21, 2003). On November 18, 2005, both the Service and the Environmental Protection Agency published notices of availability for the FEIS in the **Federal Register** (70 FR 69966 and 70 FR 69985). On August 10,

2006, we published our Record of Decision (ROD) in the **Federal Register** (71 FR 45964). The FEIS is available to the public (see **ADDRESSES**). The changes to the resident Canada goose regulations fall within the scope of the FEIS.

#### **Endangered Species Act Consideration**

Section 7(a)(2) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531–1543; 87 Stat. 884) provides that “Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out \* \* \* is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat \* \* \*.” We completed a biological evaluation and informal consultation (both available upon request; see **ADDRESSES**) under section 7 of the ESA for the action described in the August 10 final rule. In the letter of concurrence between the Division of Migratory Bird Management and the Division of Endangered Species, we concluded that the inclusion of specific conservation measures in the final rule satisfied concerns about certain species and that the action was not likely to adversely affect any threatened, endangered, or candidate species. This change falls within the scope of that informal consultation.

#### **Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for actions that will have a significant economic impact on a substantial number of small entities, which includes small businesses, organizations, or governmental jurisdictions. We discussed these impacts in the August 10 final rule. For the reasons detailed in that rule, we have determined that a Regulatory Flexibility Act analysis is not required.

#### **Executive Order 12866**

The Office of Management and Budget (OMB) has determined that this rule is not significant and has reviewed this rule under Executive Order 12866. OMB bases its determination 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.

#### **Small Business Regulatory Enforcement Fairness Act**

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not have an annual effect on the economy of \$100 million or more; nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will 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.

#### **Paperwork Reduction Act and Information Collection**

This rule does not contain any new information collection or recordkeeping requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). OMB has approved and assigned control number 1018–0133, which expires on 08/31/2009, to the regulations concerning the control and management of resident Canada geese. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

#### **Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (UMRA) requires agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. The purpose of the UMRA is to strengthen the partnership between the Federal Government and State, local, and tribal governments and to end the imposition, in the absence of full consideration by Congress, of Federal mandates on these governments without adequate Federal funding, in a manner that may displace other essential governmental priorities. We have determined, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this action will not “significantly or uniquely” affect small governments, and will not produce a Federal mandate of \$100 million or more in any given year on local or State government or private entities. Therefore, this action is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

#### **Civil Justice Reform—Executive Order 12988**

We have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity, has been written to minimize litigation, provides a clear legal standard for affected conduct, and specifies in clear language the effect on existing Federal law or regulation. We do not anticipate that this rule will require any additional involvement of the justice system beyond enforcement of provisions of the Migratory Bird Treaty Act of 1918 that have already been implemented through previous rulemakings.

#### **Takings Implication Assessment**

In accordance with Executive Order 12630, this action, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This action will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this action will help alleviate private and public property damage and concerns related to public health and safety and allow the exercise of otherwise unavailable privileges.

#### **Federalism Effects**

Due to the migratory nature of certain species of birds, the Federal Government has been given statutory responsibility over these species by the Migratory Bird Treaty Act. While legally this responsibility rests solely with the Federal Government, it is in the best interest of the migratory bird resource for us to work cooperatively with the Flyway Councils and States to develop and implement the various migratory bird management plans and strategies.

The August 10 final rule and this final rule were developed following extensive input from the Flyway Councils, States, and Wildlife Services. Individual Flyway management plans were developed and approved by the four Flyway Councils, and States actively participated in the scoping process for the DEIS. This rule does 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. The rule allows States the latitude to develop and implement their own resident Canada goose management action plan within the frameworks of the selected

alternative. Therefore, in accordance with Executive Order 13132, this rule does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### 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 determined that this rule has no effects on Federally recognized Indian tribes.

#### Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under Executive Order 12866 and 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.

#### List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ For the reasons stated in the preamble, we amend part 20 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

#### PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

**Authority:** Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j Pub. L. 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

■ 2. Revise paragraphs (b)(2) and (g)(2) of § 20.21 to read as follows:

#### § 20.21 What hunting methods are illegal?

\* \* \* \* \*

(b) \* \* \*

(2) A Canada goose only season when all other waterfowl and crane hunting seasons, excluding falconry, are closed in the Atlantic, Central, and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire,

New Mexico, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming, as set forth below:

(i) During the period of September 1 to September 15, when approved in the annual regulatory schedule in subpart K of this part; and

(ii) During the period of September 16 to September 30, when approved in the annual regulatory schedule in subpart K of this part.

\* \* \* \* \*

(g) \* \* \*

(2) A Canada goose only season when all other waterfowl and crane hunting seasons, excluding falconry, are closed in the Atlantic, Central, and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming, as set forth below:

(i) During the period of September 1 to September 15, when approved in the annual regulatory schedule in subpart K of this part; and

(ii) During the period of September 16 to September 30, when approved in the annual regulatory schedule in subpart K of this part.

\* \* \* \* \*

Dated: October 16, 2008.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–26153 Filed 10–31–08; 8:45 am]

BILLING CODE 4310–55–P

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 222 and 223

[Docket No. 0809241260–81401–02]

RIN 0648–XK78

#### Sea Turtle Conservation; Shrimp Trawling Requirements

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule.

**SUMMARY:** NMFS issues this temporary rule for a period of 30 days, to allow shrimp fishermen to use limited tow times as an alternative to Turtle Excluder Devices (TEDs) in state and Federal waters off Louisiana from the western end of Timbalier Island (approximately 90° 33' W. long.) eastward to the Plaquemines/Jefferson Parish line (approximately 89° 54' W. long.), and extending offshore 15 nautical miles. The previous 30–day exemption from TED requirements was effective September 26 through October 26, 2008. This action is necessary because environmental conditions resulting from Hurricanes Gustav and Ike persist on the fishing grounds, preventing some fishermen from using TEDs effectively.

**DATES:** Effective from October 29, 2008 through November 28, 2008.

**FOR FURTHER INFORMATION CONTACT:** Michael Barnette, 727–551–5794.

#### SUPPLEMENTARY INFORMATION:

#### Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Sea turtles are incidentally taken, and some are killed, as a result of numerous activities, including fishery-related trawling activities in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, the taking of sea turtles is prohibited, with exceptions identified in 50 CFR 223.206(d), or according to the terms and conditions of a biological opinion issued under section 7 of the ESA, or according to an incidental take permit issued under section 10 of the ESA. The incidental taking of turtles during shrimp or summer flounder trawling is exempted from the taking prohibition of section 9 of the ESA if the conservation measures specified in the sea turtle conservation regulations (50 CFR 223) are followed. The regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic area, Gulf area, and summer flounder sea turtle protection area, see 50 CFR