

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified 17 mollusks, or parts thereof, that are taken or possessed in violation of these regulations or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in this paragraph (a).

(3) What take is allowed in the NEP Area?

(i) Take of these species that is accidental and incidental to an otherwise lawful activity such as fishing, boating, commercial navigation, trapping, wading, or mussel harvesting, is allowed.

(ii) Any individual collecting or harvesting mussels must check their collection prior to leaving the immediate area and return any NEP mussels to the site where they were obtained.

(4) How will the effectiveness of these reintroductions be monitored?

We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

Dated: May 31, 2001.

Marshall P. Jones, Jr.

Acting Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20 and 21

RIN 1018-A100

Migratory Bird Hunting; Regulations Designed to Reduce the Mid-Continent Light Goose Population

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule is intended to notify the public of a clarification of the expiration date of regulations imposed by Congress to reduce the population of mid-continent light geese (MCLG). In this rule we clarify the expiration date of special regulations pertaining to hunting methods (electronic calls and unplugged shotguns) for taking mid-continent light geese. We also clarify the expiration date of the conservation order for the reduction of the mid-continent light goose population.

DATES: This rule takes effect immediately upon publication on June 14, 2001.

ADDRESSES: Copies of the Environmental Assessment are available by writing to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Dept. of the Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Division of Migratory Bird Management, Dept. of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. (703) 358-1714.

SUPPLEMENTARY INFORMATION: The Service (or “we”) promulgated regulations on February 16, 1999, (64 FR 7507; 64 FR 7517) that authorized additional methods of take of MCLG and established a conservation order for the reduction of the MCLG population. In issuing those regulations, we indicated that we would initiate preparation of an Environmental Impact Statement (EIS) on light goose management beginning in 2000. The light goose regulations were subsequently challenged in a United States District Court by several groups. Though the judge refused to preliminarily enjoin the program, he did indicate a likelihood that the plaintiffs might prevail on the EIS issue when the lawsuit proceeded. In light of our earlier commitment to prepare an EIS on light goose management and to preclude further litigation on the issue, we published a Notice of Intent to begin immediate preparation of the EIS on May 13, 1999 (64 FR 26268). Subsequent to this action, on June 17, 1999, we withdrew the regulations promulgated on February 16, 1999 (64 FR 32778). On November 10, 1999, Congress passed the Arctic Tundra Habitat Emergency Conservation Act (Act), which effectively reinstated the MCLG regulations that we withdrew on June 17, 1999. On December 20, 1999 (64 FR 71236) we published a final rule that reinstated the MCLG regulations in the CFR and stipulated that such regulations would remain in effect until May 15, 2001 at the latest. However, this stipulation is contrary to the expiration date that Congress mandated in the Act.

Background

Lesser snow (*Anser caerulescens caerulescens*) and Ross’ (*Anser rossii*) geese that primarily migrate through the Mississippi and Central Flyways are collectively referred to as mid-continent light geese (MCLG). MCLG breed in the central and eastern arctic and subarctic regions of northern Canada. The total MCLG population is experiencing a high population growth rate and has become

seriously injurious to its Arctic and sub-Arctic breeding grounds through the feeding actions of geese. Our management goal is to reduce the MCLG population by 50% by the year 2005 in order to prevent further habitat degradation and impacts to other species.

On February 16, 1999, we published rules that: (1) authorized additional methods of take of MCLG (electronic calls and unplugged shotguns; 64 FR 7507); and (2) created a conservation order for the reduction of the MCLG population (64 FR 7517). These actions were designed to reduce the population of MCLG over a period of several years in order to bring the population to a level that their breeding habitat can support. We prepared an Environmental Assessment (EA) in support of this program, which resulted in a Finding of No Significant Impact.

On February 25, 1999, several groups filed a complaint in the District Court for the District of Columbia seeking an injunction against these regulations. On March 2, 1999, the plaintiffs filed a motion for a preliminary injunction against the two rules cited above. The lawsuit alleged that we had implemented the rules without adequate scientific evidence that MCLG were causing habitat destruction, that we did not have the authority under the Migratory Bird Treaty to allow take of MCLG after March 10 (the latest date allowable under the Treaty), and that an EIS should have been prepared prior to implementation of the rules. In his memorandum opinion the judge indicated that “the scientific evidence regarding the overpopulation of snow geese strongly favors FWS” and that we had exercised a reasonable use of our authority under the Migratory Bird Treaty Act to initiate population control measures. Although the judge refused to issue an injunction, he did indicate a likelihood that plaintiffs might succeed on their argument that an EIS should have been prepared. In order to avoid further litigation, and because we had earlier indicated we would begin preparing in the year 2000 an EIS on the larger, long-term program, we decided to withdraw the regulations and begin immediate preparation of the EIS. We concluded the public scoping phase of the EIS process on November 22, 1999. We anticipate publication of a draft EIS in the summer of 2001.

On November 10, 1999, Congress passed the Arctic Tundra Habitat Emergency Conservation Act (Pub. L. 106-108) to “reduce the population of mid-continent light geese,” and “to assure the long-term conservation of mid-continent light geese and the

biological diversity of the ecosystem upon which many North American migratory birds depend". The Act further states that,

the rules published by the Service on February 16, 1999, relating to use of additional hunting methods to increase the harvest of mid-continent light geese (64 Fed. Reg. 7507-7517) and the establishment of a conservation order for the reduction of mid-continent light goose populations (64 Fed. Reg. 7517-7528), shall have the force and effect of law.

The Act instructed the Secretary of the Interior, acting through the Director of the Service, to take such action as is necessary to appropriately notify the public of the force and effect of the rules referenced above. Furthermore, these provisions of the Act are to apply until, the latest [emphasis is ours] of

(A) The effective date of rules issued by the Service after such date of the enactment to control overabundant mid-continent light geese populations;

(B) The date of publication of a final environmental impact statement for such rules under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332 (2)(C)); and

(C) May 15, 2001.

We initiated preparation of an EIS on light goose management on May 13, 1999 (64 FR 26268). Nine public scoping meetings were held throughout the country during September and October, 1999 (64 FR 47332). We are currently completing an internal review of a draft EIS, and expect to release the draft for public comment by June 2001. However, we do not expect to publish a final EIS until at least the fall of 2001. Therefore, new rules that would implement our proposed alternative for controlling light goose populations will not be developed until after the fall of 2001. Because the milestones in paragraphs (A) and (B) will not be reached prior to May 15, 2001, paragraph (C) above is no longer germane. During preparation of our December 20, 1999 final rule (64 FR 71236), we mis-interpreted the language in the Act pertaining to expiration dates of light goose regulations and incorrectly identified May 15, 2001 as the latest of the milestones. In fact, May 15, 2001 is the earliest of the milestones, and therefore cannot serve as the expiration date of special light goose regulations. We note that the House Resources Committee report on the bill and some of the floor debate on the legislation identified May 15, 2001, as a "sunset". However, the law does not establish a "sunset" date and provides that "force and effect" will expire when the last of the three triggers occurs. Therefore, according to the Act, the light

goose regulations shall remain in effect until the latest of paragraphs (A) and (B) above. As we stated above, that is expected to be some time after the fall of 2001. Because in the December 20, 1999, final rule (64 FR 71236), we had erroneously added an expiration date of May 15, 2001, to the effective dates of certain paragraphs in 50 CFR 20.21, 20.22, and 21.60, those paragraphs have now expired. Through this rule, we are adding those paragraphs back to the CFR.

Effective Date

Under 5 U.S.C. 553(b)(3)(B) and 5 U.S.C. 553 (d)(3), we find good cause to take this action without prior notice and public procedure and to make this action effective upon publication because, for the following reasons, notice and public procedure are unnecessary and contrary to the public interest. We are clarifying, in the nature of a correction, the effective date of rules that were reinstated as a result of a directive contained in law. As we noted in our December 20, 1999, **Federal Register** notice (64 FR 71236), the rules with regard to light geese were in place previously and were adopted after notice and opportunity for public comment. Finally, the law imposing these rules requires that they remain effective as is provided herein.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (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. As this rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

Other Required Determinations

We published all of the required determinations in the February 16, 1999, final rules (64 FR 7507; 64 FR 7517).

List of Subjects in 50 CFR Parts 20 and 21

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

For the reasons given in the preamble, we hereby amend parts 20 and 21, of the 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: 16 U.S.C. 703-712; and 16 U.S.C. 742 a-j; Pub. L. 106-108.

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

§ 20.21 What hunting methods are illegal?

* * * * *

(b) With a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells. This restriction does not apply during a light-geese-only season (lesser snow and Ross' geese) when all other waterfowl and crane hunting seasons, excluding falconry, are closed while hunting light geese in Central and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

* * * * *

(g) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds. This restriction does not apply during a light-geese-only season (lesser snow and Ross' geese) when all other waterfowl and crane hunting seasons, excluding falconry, are closed while hunting light geese in Central and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

3. Revise § 20.22 to read as follows:

§ 20.22 Closed seasons.

No person shall take migratory game birds during the closed season except as provided in part 21.

PART 21—[AMENDED]

4. The authority citation for part 21 continues to read as follows:

Authority: Pub. L. 95-616, 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106-108.

5. Subpart E, consisting of § 21.60, is added to read as follows:

Subpart E—Control of Overabundant Migratory Bird Populations

§ 21.60 Conservation Order for Mid-continent light geese.

(a) Which waterfowl species are covered by this order?

This conservation order addresses management of lesser snow (*Anser c. caerulescens*) and Ross' (*Anser rossii*) geese that breed, migrate, and winter in the mid-continent portion of North America, primarily in the Central and Mississippi Flyways (mid-continent light geese).

(b) In what areas can the conservation order be implemented? (1) The following States, or portions of States, that are contained within the boundaries of the Central and Mississippi Flyways: Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

(2) Tribal lands within the geographic boundaries in paragraph (b)(1) of this section.

(3) The following areas within the boundaries in paragraph (b)(1) of this section are closed to the conservation order after 10 March of each year: Monte Vista National Wildlife Refuge (CO); Bosque del Apache National Wildlife Refuge (NM); the area within 5 miles of the Platte River from Lexington, Nebraska to Grand Island, Nebraska; the following area in and around Aransas National Wildlife Refuge; those portions of Refugio, Calhoun, and Aransas counties that lie inside a line extending from 5 nautical miles offshore to and including Pelican Island, thence to Port O'Conner, thence northwest along State Highway 185 and southwest along State Highway 35 to Aransas Pass, thence southeast along State Highway 361 to Port Aransas, thence east along the Corpus Christi Channel, thence southeast along the Aransas Channel, extending to 5 nautical miles offshore; except that it is lawful to take mid-continent light geese after 10 March of each year within the Guadalupe WMA. If at any time we receive evidence that a need to close the areas in this paragraph (b)(3) no longer exists, we will publish a proposal to remove the closures in the **Federal Register**.

(c) What is required in order for State/Tribal governments to participate in the conservation order? Any State or Tribal government responsible for the management of wildlife and migratory birds may, without permit, kill or cause to be killed under its general

supervision, mid-continent light geese under the following conditions:

(1) Activities conducted under this section may not affect endangered or threatened species as designated under the Endangered Species Act.

(2) Control activities must be conducted clearly as such and are intended to relieve pressures on migratory birds and habitat essential to migratory bird populations only and are not to be construed as opening, re-opening, or extending any open hunting season contrary to any regulations promulgated under section 3 of the Migratory Bird Treaty Act.

(3) Control activities may be conducted only when all waterfowl and crane hunting seasons, excluding falconry, are closed.

(4) Control measures employed through this section may be implemented only between the hours of one-half hour before sunrise to one-half hour after sunset.

(5) Nothing in this section may limit or initiate management actions on Federal land without concurrence of the Federal Agency with jurisdiction.

(6) States and Tribes must designate participants who must operate under the conditions of this section.

(7) States and Tribes must inform participants of the requirements/conditions of this section that apply.

(8) States and Tribes must keep records of activities carried out under the authority of this section, including the number of mid-continent light geese taken under this section, the methods by which they were taken, and the dates they were taken. The States and Tribes must submit an annual report summarizing activities conducted under this section on or before August 30 of each year, to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, ms 634—ARLSQ, 1849 C Street NW., Washington, DC 20240.

(d) What is required in order for individuals to participate in the conservation order? Individual participants in State or tribal programs covered by this section are required to comply with the following requirements:

(1) Nothing in this section authorizes the take of mid-continent light geese contrary to any State or Tribal laws or regulations; and none of the privileges granted under this section may be exercised unless persons acting under the authority of the conservation order possesses whatever permit or other authorization(s) required for such activities by the State or Tribal government concerned.

(2) Participants who take mid-continent light geese under this section may not sell or offer for sale those birds nor their plumage, but may possess, transport, and otherwise properly use them.

(3) Participants acting under the authority of this section must permit at all reasonable times, including during actual operations, any Federal or State game or deputy game agent, warden, protector, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted, and must promptly furnish whatever information an officer requires concerning the operation.

(4) Participants acting under the authority of this section may take mid-continent light geese by any method except those prohibited as follows:

(i) With a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance;

(ii) From or by means, aid, or use of a sinkbox or any other type of low floating device, having a depression affording the person a means of concealment beneath the surface of the water;

(iii) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind, except that paraplegics and persons missing one or both legs may take from any stationary motor vehicle or stationary motor-driven land conveyance;

(iv) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off and the sails furled, and its progress therefrom has ceased. A craft under power may be used only to retrieve dead or crippled birds; however, the craft may not be used under power to shoot any crippled birds;

(v) By the use or aid of live birds as decoys; although not limited to, it shall be a violation of this paragraph for any person to take mid-continent light geese on an area where tame or captive live geese are present unless such birds are and have been for a period of 10 consecutive days before the taking, confined within an enclosure that substantially reduces the audibility of their calls and totally conceals the birds from the sight of mid-continent light geese;

(vi) By means or aid of any motor-driven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving,

rallying, or stirring up of mid-continent light geese;

(vii) By the aid of baiting, or on or over any baited area. As used in this paragraph, "baiting" means the placing, exposing, depositing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed so as to constitute for such birds a lure, attraction or enticement to, on, or over any areas where hunters are attempting to take them; and "baited area" means any area where shelled, shucked, or unshucked corn, wheat or other grain, salt, or other feed capable of luring, attracting, or enticing such birds is directly or indirectly placed, exposed, deposited, distributed, or scattered; and such area shall remain a baited area for 10 days following complete removal of all such corn, wheat or other grain, salt, or other feed. However, nothing in this paragraph prohibits the taking of mid-continent light geese on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands,

grain crops properly shucked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting; or

(viii) Participants may not possess shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, or bismuth-tin, or other shots that are authorized in 50 CFR 20.21(j). Season limitations in that section do not apply to participants acting under this order.

(e) Under what conditions would the conservation order be revoked? The Service will annually assess the overall impact and effectiveness of the conservation order to ensure compatibility with long-term conservation of this resource. If at any time we receive that clearly demonstrates a serious threat of injury to the area or areas involved no longer exists, we will initiate action to revoke the conservation order.

(f) Will information concerning the conservation order be collected? The information collection requirements of the conservation order have been

approved by OMB and assigned clearance number 1018-0103. Agencies 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. The recordkeeping and reporting requirements imposed under regulations established in this subpart E will be utilized to administer this program, particularly in the assessment of impacts alternative regulatory strategies may have on mid-continent light geese and other migratory bird populations. The information collected will be required to authorize State and Tribal governments responsible for migratory bird management to take mid-continent light geese within the guidelines provided by the Service.

Dated: June 7, 2001.

Marshall P. Jones, Jr.,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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