

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

RIN 1018-AD27

Addition of Deep Fork National Wildlife Refuge to the List of Open Areas for Sport Fishing in Oklahoma

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to add Deep Fork National Wildlife Refuge to the list of areas open for sport fishing in Oklahoma along with pertinent refuge-specific regulations for such activities. The Service has determined that such use will be compatible with the purposes for which the refuge was established. The Service has further determined that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound wildlife management, and is otherwise in the public interest by providing additional recreational opportunities of a renewable natural resource.

DATES: Comments may be submitted on or before September 11, 1995.

ADDRESSES: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Esq., at the address above; Telephone: 703-358-1744.

SUPPLEMENTARY INFORMATION: National wildlife refuges are generally closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the purpose(s) for which the refuge was established. The action must also be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. This rulemaking proposes to open Deep Fork National Wildlife Refuge to sport fishing.

Request for Comments

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. A 60-day comment period is specified in order to facilitate public input. Accordingly, interested persons may

submit written comments concerning this proposed rule to the person listed above under the heading **ADDRESSES**. All substantive comments will be reviewed and considered.

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966, as amended (NWRSA) (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (RRA) (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSA authorizes the Secretary to permit the use of any areas within the National Wildlife Refuge System (Refuge System) for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the purposes for which each refuge was established. The Director administers the Refuge System on behalf of the Secretary. The RRA gives the Secretary additional authority to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the refuges were established.

Opening Package

In preparation for this opening, the refuge unit has included in its "openings package" for Regional review and approval from the Washington Office the following documents: a management plan for recreational fishing; an environmental assessment; a Finding of No Significant Impact (FONSI); a Section 7 statement, pursuant to the Endangered Species Act, that this opening is not likely to adversely affect a listed species or its critical habitat; and refuge-specific regulations to administer the fishing program. From a review of the totality of these documents, it has been determined that the opening of the Deep Fork National Wildlife Refuge to sport fishing is compatible with the principles of sound wildlife management and will otherwise be in the public interest.

In accordance with the NWRSA and the RRA, it has been also determined that this opening for sport fishing is compatible and consistent with the primary purposes for which the refuge was established. A brief description of the fishing program is as follows:

Deep Fork National Wildlife Refuge

The legislature of Oklahoma passed H.B. 1904 on May 17, 1990, authorizing the Fish and Wildlife Service (Service)

to acquire and develop a national waterfowl refuge in Okmulgee County, Oklahoma. Accordingly, Deep Fork National Wildlife Refuge was established on June 30, 1993, under the authority of the Emergency Wetlands Resources Act of 1986 (P.L. 99-645, 100 Stat. 3582). The refuge acreage totals 6,801 currently; however, an established acquisition boundary would eventually include 16,104 acres. The refuge is located along the Deep Fork River in Oklahoma. Recognized as a nationally important ecosystem, the Deep Fork River is listed in the Lower Mississippi Valley Joint Venture of the North American Waterfowl Management Plan (NAWMP) as an area of wetland habitat critical to the waterfowl of the Central Flyway.

Acquisition of refuge land is supported by the Eastern Oklahoma Wetlands Plan which is Oklahoma's implementation plan for the NAWMP. The Deep Fork River is also one of 17 priority-one sites listed in the 1985 Texas and Oklahoma Land Protection Plan. It has also been identified as the number one wetland site in Oklahoma in the Regional Wetlands Concept Plan.

The purposes of the refuge are to contribute to the conservation of the wetlands of the Nation in order to maintain the public benefits they provide and to help fulfill international obligations contained in various migratory bird treaties and conventions. (16 U.S.C. 3901(b))(Emergency Wetlands Resources Act of 1986).

The Deep Fork National Wildlife Refuge is located in the Deep Fork River Basin, upstream from Eufaula Reservoir. The majority of the area contains palustrine forested wetlands. Bottomland hardwood forests occur along the Deep Fork River and the many creeks which enter it. Scrub-shrub wetlands occur in the overflow areas. The uplands have deciduous forest composed primarily of post oak and blackjack. Numerous sloughs exist along the river channel. Some of the sloughs exceed four feet in depth.

The numerous wetlands along the Deep Fork River are rich in diversity of wildlife. A total of 147 species of birds (8 game and 139 non-game) occur in the bottomland forest and the associated wetlands. The sloughs and open wetlands support great blue herons, little blue herons, and snowy egrets. Raptors, woodpeckers, and passerine birds utilize the area. The bald eagle is the only known endangered species to occur on the area. Fifty-one species of mammals have been recorded in the Deep Fork Basin. Furbearer populations are considered to be among the highest in the State. The Deep Fork River

provides feeding and spawning habitat for a variety of fish native to east central Oklahoma. Channel catfish, blue catfish, flathead catfish, crappie, white bass, and largemouth bass are the most important economically. Carp are common in the river. Carp and catfish are also found in the sloughs and wetlands along the river as a result of floods.

Sport fishing was addressed in the environmental assessment for land acquisition as a desirable activity and was listed in the Oklahoma legislation authorizing the Service to establish the refuge. Opening the area to sport fishing will aid in meeting the general refuge objective of wildlife oriented recreation. There is significant demand in the local community for sport fishing, and it is anticipated that there would be approximately 3,500 use-days of sport fishing annually at the refuge.

It is proposed that bank fishing be allowed on the refuge year-round. Fishing would be permitted on the sloughs separated from the river from March 1 through September 30 with pole and line only. The use of firearms would be prohibited. The public would be allowed to bank fish along the Deep Fork River within the refuge boundary. They would also be permitted to launch small boats. Improved boat ramps would not be available. Only small hand-powered boats or canoes would be launched from the bank. Signs would be placed at major access points showing the fishing regulations. In addition, maps and printed refuge-specific regulations would be available. The refuge views this initial sport fishing program as "interim," as further acquisition within the refuge boundary will require revisions to the plan in the future.

Target species will include channel catfish, flathead catfish, blue catfish, crappie, white bass, and largemouth bass. The Oklahoma Department of Wildlife Conservation has established daily possession limits and means of taking to protect individual species. Refuge-specific regulations, as proposed, are consistent with state regulations which will be observed on the refuge.

Opening the refuge to fishing has been found to be compatible in a separate compatibility determination. The fishing program will be reviewed, as appropriate, to ensure that sensitive habitats are protected from disturbance. A Section 7 evaluation pursuant to the Endangered Species Act was conducted. It was determined that the proposed action is not likely to adversely affect any Federally listed or proposed for listing threatened or endangered species

or their critical habitats. Pursuant to the National Environmental Policy Act (NEPA), an environmental assessment was made and a Finding of No Significant Impact (FONSI) was made regarding the fishing program.

The Service has determined that there would be sufficient funds to administer the proposed fishing program. Sufficient funds would be available within the refuge unit budget to operate such a fishing program as proposed.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1018-0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018-0014), Washington, DC 20503.

Economic Effect

This rulemaking was not subject to Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) has revealed that the rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. While the proposed fishing program could increase the fishing licenses purchased and boost sales of fishing gear and tackle, the impact would not be considered significant as other surrounding areas are, also, open to fishing and the addition of the refuge to fishing waters would be only proportionally relevant to small entities. Therefore, this proposed rule would have minimal effect on such entities.

Federalism

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), an environmental assessment has been prepared for this opening. Based upon the Environmental Assessment, the Service issued a Finding of No Significant Impact with respect to the opening. A Section 7 evaluation was prepared pursuant to the Endangered Species Act with a finding that no adverse impact would occur to any identified threatened or endangered species.

Primary Author. Duncan L. Brown, Esq., Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

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

Accordingly, part 32 of chapter I of Title 50 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 32—[AMENDED]

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

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

§ 32.7 List of refuge units open to hunting and/or fishing.

2. Section 32.7 *List of refuge units open to hunting and/or fishing* is amended by adding the alphabetical listing of "Deep Fork National Wildlife Refuge" under the state of Oklahoma.

3. Section 32.55 *Oklahoma* is amended by adding the alphabetical listing of Deep Fork National Wildlife Refuge to read as follows:

§ 32.55 Oklahoma.

* * * * *

Deep Fork National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* [Reserved.]

B. *Upland Game Hunting.* [Reserved.]

C. *Big Game Hunting.* [Reserved.]

D. Sport Fishing. Sport fishing for channel catfish, flathead catfish, blue catfish, crappie, white bass, and large mouth bass is permitted on designated areas of the refuge pursuant to the following conditions:

1. Bank fishing is permitted year-round on the Deep Fork River. Bank fishing with pole and line is permitted from March 1 through September 30 on the sloughs separated from the Deep Fork River.

2. Boats may be launched on the refuge from access points designated in the refuge leaflet. Only small boats or canoes will be permitted.

3. The use of firearms is prohibited.

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Dated: June 12, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

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