

agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because State Plan approvals under section 111 of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal approval of the State Plan does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated here does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small

Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 2, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: May 21, 1999.

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

40 CFR part 62, subpart QQ, of chapter I, title 40 is amended as follows:

#### PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

**Authority:** 42 U.S.C. 7401-7642.

2. Subpart QQ is added to read as follows:

#### Subpart QQ—South Dakota

Sec.

62.10350 Identification of plan.

62.10351 Identification of sources.

62.10352 Effective date.

#### Subpart QQ—South Dakota

##### Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

###### § 62.10350 Identification of plan.

"Section 111(d) State Plan for Municipal Solid Waste Landfills" and the State's implementing regulations in Sections 74:36:07:34 through 74:36:07:42 of the Administrative Rules of South Dakota (ARSD), submitted by the State on May 2, 1997 with amendments to the plan submitted on May 6, 1999.

###### § 62.10351 Identification of sources.

The plan applies to all existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991 that accepted waste at any time since November 8, 1987 or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

###### § 62.10352 Effective date.

The effective date of the plan for municipal solid waste landfills is August 2, 1999.

[FR Doc. 99-13797 Filed 6-2-99; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

#### RIN 1018-AD74

#### Migratory Bird Hunting: Regulations Regarding Baiting and Baited Areas

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

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, amend the baiting regulations that apply to any person taking migratory game birds in the United States and/or preparing areas where migratory game birds are hunted. We include new definitions for "baiting," "baited areas," "normal agricultural planting, harvesting, and post-harvest manipulation", "normal agricultural operation," "normal soil stabilization practice," "natural vegetation" and "manipulation," and use these terms to identify allowable hunting methods.

**EFFECTIVE DATE:** This rule is effective July 6, 1999.

**ADDRESSES:** You may inspect public written comments by appointment between the hours of 8:00 a.m. and 4:30

p.m., Monday through Friday, in Room 500, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia 22203-3247; telephone (703) 358-1949.

**FOR FURTHER INFORMATION CONTACT:** Questions may be directed to either: Refugees and Wildlife: Paul Schmidt, 703-358-1769.

Office of Law Enforcement: Kevin Adams, 703-358-1949.

**SUPPLEMENTARY INFORMATION:**

**Statutory Authority for Rulemaking**

We have statutory authority and responsibility for enforcing the Migratory Bird Treaty Act (MBTA) in 16 U.S.C. 703-712 and 16 U.S.C. 742a-j. The MBTA regulates activities involving migratory birds, such as take, possession, transport, sale, and barter. Additionally, the MBTA authorizes us to make determinations about the conditions under which migratory game birds may be hunted. In general, these determinations include prohibitions on certain activities, such as baiting, and provisions that allow hunting in certain areas, such as agricultural areas and areas of natural vegetation. Regulations covering migratory game bird hunting are contained in 50 CFR Part 20.

**Purpose of Rulemaking**

This rule clarifies the current migratory bird hunting regulations. It provides a framework for sound habitat management, normal agricultural activities, and other practices as they relate to lawful migratory game bird hunting.

**Related Federal Register Documents**

The review process that produced this rule began in 1991. The review process consisted of numerous, related **Federal Register** documents, as follows: (1) November 14, 1991 (56 FR 57872), notice of intent to review multiple wildlife regulations (50 CFR Parts 12, 13, 14, 20, 21, 22); (2) December 1, 1993 (58 FR 53488), notice of intent to review the migratory bird regulations (50 CFR Parts 20 and 21); (3) March 22, 1996 (61 FR 11805), notice of intent to review the migratory game bird baiting regulations for moist soil management aspects (50 CFR Part 20); (4) March 25, 1998 (63 FR 11415), proposed rule to clarify and simplify the migratory game bird baiting regulations for migratory game bird hunting (50 CFR Part 20); (5) May 22, 1998 (63 FR 28343), notice to extend the comment period on No. 4 (above) to October 1, 1998 (50 CFR Part 20); and (6) October 6, 1998 (63 FR 53635), notice to extend the comment period on No. 4 (above) to October 22, 1998 (50 CFR Part 20).

**Summary of Comments on the Notice of Intent and Proposed Rule**

In the March 22, 1996, notice of intent, we specified four issues of concern regarding moist-soil management: potential impacts on available habitat, waterfowl populations, law enforcement and existing case law. In the March 25, 1998, proposed rule, we then invited comments on proposed changes to the migratory game bird baiting regulations. We received 509 comments in response. We have carefully reviewed and considered all comments received, including those from hunters, land managers, natural resource professionals, and law enforcement officers during preparation of this rule.

Comments received in response to the proposed rule primarily addressed the following issues: (1) Application of the strict liability standard to migratory game bird baiting regulations, (2) alternate penalties, (3) agricultural terms and definitions, (4) hunting over top-sown seeds, (5) manipulating natural vegetation, (6) millet as natural vegetation, (7) accidental scattering of seeds or grains incidental to hunting activities, (8) concealing blinds with natural vegetation, and (9) concerns about potential impacts on migratory bird habitat and populations.

**(1) Application of the Strict Liability Standard**

The proposed rule was published before passage of a new Public Law that affects the application of strict liability to migratory game bird baiting offenses. On October 30, 1998, Public Law 105-312 replaced the strict liability standard with a new standard. This law now prohibits the taking of migratory game birds *by the aid of baiting, or on or over any baited area, if the person knows or reasonably should know that the area is a baited area.* In addition, it is now a separate offense to *place or direct the placement of bait on or adjacent to an area for the purpose of causing, inducing, or allowing any person to take or attempt to take any migratory game bird by the aid of baiting or on or over the baited area.* The final rule reflects these changes to the underlying statute.

**(2) Alternate Penalties**

Because violations of the MBTA are criminal offenses, the proposed rule invited the public to identify alternatives to the existing penalty provisions for baiting. We received 19 comments about this issue, but due to recent legislation do not include any changes from the comments in this rule. In addition to removing strict liability

for baiting offenses, Public Law 105-312 changes the penalty provisions by increasing the penalty for any person who takes migratory game birds with the aid of bait or over a baited area, and adds a penalty for any person found responsible for the placement of bait. This rule incorporates the statutory revisions concerning baiting.

**(3) Agricultural Terms and Definitions**

The proposed rule addressed two current exemptions allowing migratory game bird hunting over agricultural lands. The current exemptions are separated into those practices allowed for hunting waterfowl, and those allowed for the hunting of other migratory game birds, such as doves. We proposed to consolidate the allowed practices into one term, *normal agricultural and soil stabilization practice*, that would apply to the hunting of all migratory game birds in agricultural areas. We received 43 comments about this issue. Although we intended to simplify the rules using one term, the comments reflected concern that this change could potentially restrict hunting methods currently allowed in agricultural areas. Other comments reflected concern that the new term could potentially liberalize the regulations for migratory game bird hunting in agricultural areas, especially for waterfowl.

After careful consideration of the comments, we decided to maintain the current distinction between those agricultural practices allowed for the hunting of waterfowl, cranes, and coots, and those agricultural practices allowed for the hunting of other migratory game birds, such as doves and pigeons, by the addition of three new agricultural terms and definitions: (1) *Normal agricultural planting, harvesting, and post-harvest manipulation*, (2) *normal agricultural operation*, and (3) *normal soil stabilization practice*. The hunting of any migratory game bird, including waterfowl, coots, and cranes, is allowed over lands where either a *normal agricultural planting, harvesting, and post-harvest manipulation* or *normal soil stabilization practice* has occurred, as defined in this rule. The term *normal soil stabilization practice* includes plantings made solely for agricultural soil erosion control or post-mining land reclamation. Finally, the hunting of migratory game birds, except waterfowl, coots, and cranes, is allowed over a *normal agricultural operation*, also defined in this rule. In order to meet the definitions in this rule, all of these practices must be conducted in accordance with official recommendations of State Extension

Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture.

#### (4) *Hunting Over Top-Sown Seeds*

The current regulations require a hunter to determine before hunting whether a hunting area has been subjected to a normal agricultural planting or harvesting, a bona fide agricultural operation, a wildlife management practice, or whether the area had been baited with seeds or grains to illegally lure migratory game birds. The proposed rule included a change to prohibit the hunting of all migratory game birds over any lands planted by means of top sowing or aerial seeding where seeds remained on the ground as a result. The prohibition was intended to apply regardless of the purpose of the seeding, and top sowing was explicitly excluded from the proposed term, *normal agricultural and soil stabilization practice*.

We received 221 comments about this issue. The majority of comments opposing this change reflected concern that the change could restrict a valid agricultural practice affecting large areas of land, and discourage both habitat management and migratory game bird hunting in those areas. Other comments reflected concern that this change would adversely affect a time-honored, traditional form of hunting, especially for doves, over prepared agricultural fields. Comments that supported the change indicated that farmers would continue to plant using this method regardless of the hunting prohibition because they could still hunt migratory game birds, specifically doves, using other allowable hunting methods. Other comments supported the change as the only way to resolve the difficulty in determining whether a top-sown field had been planted for agricultural purposes.

After careful consideration, we will not prohibit the hunting of migratory game birds over lands planted by means of top sowing or aerial seeding. Instead, we will allow the hunting of any migratory game bird, including doves, over lands planted by means of top sowing or aerial seeding if seeds are present solely as the result of a *normal agricultural planting*, or a *normal soil stabilization practice*.

We have included post-mining land reclamations that are consistent with plantings for agricultural soil erosion control in the definition of a *normal soil stabilization practice*. These lands were included to provide hunting opportunities on land reclamations in non-agricultural areas.

Whether agricultural plantings, harvestings, post-harvest manipulations, operations, or soil stabilization practices are "normal" must be gauged against an objective standard. Therefore, this rule incorporates our policy to rely upon State Extension Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture (USDA) as the best source of factual and objective information on recommended planting, cultivation, harvest, and utilization of agricultural crops. These State Extension Specialists make recommendations about agricultural practices that may vary from state-to-state or region-to-region within a state. The recommendations may be site-specific, and may or may not be published. However, the Service will continue to make final determinations about whether the official recommendations were followed.

#### (5) *Manipulating Natural Vegetation*

We recognize the value derived from the manipulation of soil, water, and vegetation to enhance migratory bird and other wildlife habitat. Such manipulation, or moist-soil management, often involves the artificial maintenance and restoration of natural vegetation. In response to concerns about various moist-soil management techniques that could result in potential baiting situations, the proposed rule attempted to provide hunters, landowners, land managers, and law enforcement officers with guidance about what constitutes baiting in areas of natural vegetation. We invited the public to comment on the proposed rule to ensure that it could be readily understood and enforced, and was flexible enough to allow habitat managers to perform needed wildlife management practices. The proposed rule would have allowed the hunting of migratory waterfowl and cranes over any natural vegetation that had been manipulated at least 10 days before the opening of any waterfowl season and not during any open waterfowl season. The 10-day limitation was not intended to apply to the hunting of other migratory game birds, such as doves.

We received 215 comments about this issue. Comments supporting unrestricted manipulation of natural vegetation reflected concern that this change, if adopted with the 10-day, open-season requirement, could potentially further restrict current moist-soil management activities rather than provide the needed flexibility for habitat managers. Comments opposing manipulation of natural vegetation reflected concern that this change could potentially liberalize the current

regulations, and create situations where a determination about the timing and presence of seeds would be difficult and onerous for all affected parties. The current regulations were never intended to prevent the manipulation of naturally-vegetated areas, or discourage moist-soil management practices that benefit migratory birds. After due consideration of all concerns, we decided to allow the hunting of any migratory game bird over manipulated natural vegetation without any restrictions.

#### (6) *Millet as Natural Vegetation*

Millet can be utilized both as an agricultural crop and as a species of natural vegetation for moist-soil management. Because millet can be readily naturalized and serve as an important food source for migrating and wintering waterfowl, the proposed rule invited comments on whether to include millet as a form of natural vegetation and allow its manipulation prior to subsequent hunting. We received 136 comments about this issue. Comments supporting the inclusion of millet expressed concerns that the restrictions on its manipulation were too restrictive, burdensome, and not as effective for moist-soil management as possible. Comments opposing the inclusion of millet reflected concerns that the manipulation of millet before subsequent hunting could potentially conflict with the current regulations that prohibit hunting over manipulated agricultural crops.

After consideration of these comments, we concluded that inclusion of millet as natural vegetation and its manipulation could conflict with current regulations. Therefore, this rule explicitly excludes planted millet from the new term, *natural vegetation*. However, planted millet that grows on its own in subsequent years (naturalized) is considered natural vegetation that can be manipulated at any time without restriction.

#### (7) *Accidental Scattering*

The proposed rule included a provision to allow hunting where grains or seeds from agricultural crops or natural vegetation had been scattered as a result of hunters entering or exiting areas, placing decoys, or retrieving downed birds. This provision was included to provide clarity to hunters about concerns that seeds or grains accidentally scattered during lawful hunting activities could create potential baiting situations.

We received 37 comments about this issue. Comments that supported this provision reflected concerns about

application of the strict liability standard to hunting over such seeds or grains. Comments that opposed this provision reflected concerns that it could potentially encourage hunters to bait an area and then claim that accidental scattering had occurred, and result in considerable difficulty for enforcement officers and the courts.

To alleviate the concerns of hunters, we will allow hunting over grains that are inadvertently scattered from standing or flooded standing crops solely as the result of a hunter entering or exiting a hunting area, placing decoys, or retrieving downed birds. Because this final rule also allows hunting over manipulated natural vegetation, no provision is needed for the inadvertent scattering of seeds from standing natural vegetation.

#### *(8) Concealing Blinds With Natural Vegetation*

To effectively hunt in areas of natural vegetation, hunters use natural vegetation to conceal themselves. The use of natural vegetation on blinds or places of concealment may result in the scattering of seeds and may create a potential baiting situation. The proposed rule included a provision to allow the hunting of any migratory game birds from a blind or other place of concealment camouflaged with natural vegetation. We received 18 comments about this issue. Although this rule does not restrict the manipulation of natural vegetation, we provide clarity to hunters by including a provision that allows the take of migratory game birds from a blind or other place of concealment camouflaged with natural vegetation. In addition, we include a provision that allows the hunting of migratory game birds from a blind or other place of concealment camouflaged with vegetation from agricultural crops as long as the use of such camouflage does not result in the exposing, depositing, distributing, or scattering of grain or other feed.

#### *(9) Concerns About Potential Impacts on Migratory Bird Habitat and Populations*

As we indicated in the March 25, 1998, proposed rule, we believe that one of the most important factors affecting waterfowl and other migratory bird populations is the amount and availability of quality habitat. For waterfowl, we believe the loss and degradation of habitat is the most serious threat facing North America's populations. North America has lost many of its original wetlands. Overall, the lower 48 States have lost about 53% of their original wetlands. In many of the remaining wetlands, large-scale

land-use changes have often altered the natural water regime to the point that they are no longer ecologically functional.

One of the primary ways we have attempted to address this loss of wetland habitat is through implementation of the North American Waterfowl Management Plan (Plan). Established in 1986, the Plan identifies key waterfowl habitat areas and through habitat joint ventures implements habitat conservation projects. Habitat joint ventures are regional public/private partnerships composed of individuals, corporations, conservation organizations, and local, state, and federal agencies that work together to protect and restore habitat.

For example, the Central Valley Habitat Joint Venture is comprised of California's San Joaquin and Sacramento valleys. This vitally important migratory bird area provides wintering habitat for 60 percent of the waterfowl in the Pacific Flyway and includes the primary wintering area for cackling Canada geese, the threatened Aleutian Canada goose, and a number of other endangered species. Almost 4 million acres (95 percent) of wetlands in the Central Valley have been lost to drainage and conversion to agricultural land. Only about 300,000 acres remain to support and maintain waterfowl. Central Valley Habitat Joint Venture efforts focus on protecting and enhancing remaining wetlands, restoring or creating additional wetlands, enhancing private agricultural lands, and securing dependable water supplies for wetland areas.

To mitigate for the extensive loss and alteration of wetlands, it is critical that wildlife managers intensively manage many of the remaining wetland areas to maximize their value to wildlife, especially migratory birds, through moist-soil management. Moist-soil management, or the management of man-made, seasonally flooded impoundments, is a technique that uses manipulation of soil, water, and vegetation to enhance habitat for migratory birds. Modern moist-soil management includes water level manipulation, planting, mowing, burning, and other practices to: (1) Encourage production of moist soil plants for use by wildlife, especially migratory birds; (2) promote the production of invertebrate and vertebrate food sources; (3) control undesirable plants; and (4) increase biological diversity. Moist-soil plants provide essential nutritional requirements, consistently produce more pounds and diversity of food per acre than agricultural crops, provide

seeds that are more nutritionally complete and resistant to decay when flooded (providing longer and more constant use by waterfowl), and are more economical and efficient to manage than agricultural crops.

To help stem wetland habitat loss, the migratory bird management community realized that it would take the concerted effort of many parties working together toward a common goal. Principal among this concerted effort is the involvement of private landowners, since the vast majority of wetland and other migratory bird habitat will always remain in private ownership. Thus, to actively invite and encourage participation from private landowners in migratory bird habitat conservation efforts, we believe new and innovative approaches to our traditional habitat protection and management programs are required.

We believe that our programs should not discourage private landowners and others in their efforts to conserve, restore, and manage wetland areas for the benefit of migratory birds and other wildlife. Thus, practices such as moist-soil management should not be discouraged, but openly encouraged. However, modern moist-soil management presented us with several issues and potential conflicts regarding moist-soil management practices and baiting. Several commenters throughout this process have pointed out that some of these moist-soil management practices could technically result in the creation of potential baiting situations when seeds from moist-soil management plants become available as a result of a manipulation. In the proposed rule, we acknowledged that the current baiting regulations were not intended to prevent the manipulation of natural vegetation such as that found in moist-soil management areas or to discourage moist-soil management practices benefitting migratory birds.

To address the moist-soil management issues, we made several specific regulatory changes to ensure that this valuable wildlife management practice continues to be encouraged while also clarifying to land managers and hunters what constitutes baiting. By allowing the manipulation of natural vegetation at any time, this rule enables wildlife habitat managers to conduct valuable moist-soil management in wetland areas and promote increased benefits to migratory birds and other wildlife. By encouraging moist-soil management techniques such as manipulation of natural vegetation, waterfowl populations will benefit from additional feeding, roosting, and resting habitat in important migration and wintering areas.

## Summary of Changes

### 1. New Definitions for Section 20.11, Meaning of Terms

We define *Normal agricultural planting, harvesting, or post-harvest manipulation* and use the term in Section 20.21(i) to allow the hunting of any migratory game birds in agricultural areas over seeds and grains that are present solely as the result of a *normal agricultural planting, harvesting, or post-harvest manipulation*.

We define *Normal agricultural operation* and use the term in Section 20.21(i) to allow a hunter to take migratory game birds, except waterfowl, cranes, and coots, in agricultural areas over seeds or grains that are present solely as the result of a *normal agricultural operation*.

We define *Normal soil stabilization practice* and use the term in Section 20.21(i) to allow the hunting of any migratory game bird in agricultural or post-mining land reclamation areas over seeds that are present solely as the result of a *normal soil stabilization practice*.

We define *Manipulation* and use the term in 20.21(i) to explain which hunting activities are permitted over *manipulated* lands. Migratory game birds, except waterfowl, coots, and cranes, may be hunted over a *manipulated* agricultural crop. Any migratory game bird, including waterfowl, coots, and cranes, may be hunted over *manipulated* natural vegetation.

We define *Natural vegetation* and use the term in 20.21(i) to allow the hunting of migratory game birds over *manipulated natural vegetation*.

We define *Baited area* and use the term in 20.21(i) to prohibit the hunting on or over any *baited area* where a person knows or reasonably should know that the area is or has been baited.

We define *Baiting* and use the term in section 20.21(i) to prohibit the hunting by the aid of *baiting* where a person knows or reasonably should know that the area is or has been baited.

### 2. New Methods of Take, Section 20.21(i)

We revised the current prohibition in the introductory text to this paragraph to incorporate the new standard created by Public Law 105-312.

The introductory text for paragraph 20.21(i) of this rule does not prohibit the following:

*The taking of any migratory game bird, including waterfowl, coots, and cranes, on or over the following lands or areas that are not otherwise baited areas—*

Paragraph 20.21(i)1(i) of this rule allows the hunting of any migratory game birds over lands planted by means of top sowing or aerial seeding if seeds are present solely as the result of a *normal agricultural planting* or a *normal soil stabilization practice*. This rule also allows the take of any migratory game birds over areas where natural vegetation has been manipulated by such activities as mowing or burning, and treats all natural vegetation in the same manner.

Paragraph 20.21(i)1(ii) includes a provision to allow the take of migratory game birds from a blind or other place of concealment camouflaged with natural vegetation.

Paragraph 20.21(i)1(iii) includes language to allow the take of migratory game birds from a blind or other place of concealment camouflaged with vegetation from agricultural crops if it does not result in the exposing, depositing, distributing, or scattering of grain or other feed that would constitute a potential baiting situation.

Paragraph 20.21(i)1(iv) of this rule allows the hunting of any migratory game bird over an area of standing or flooded standing agricultural crops where the hunter has inadvertently scattered grains. This provision does not address the scattering of seeds from natural vegetation because this rule allows the manipulation of natural vegetation at the site where grown.

Paragraph 20.21(i)2 of this rule changes the current regulation that allowed the hunting of migratory game birds, except waterfowl, over a *bona fide agricultural operation*, and replaces it with the term *normal agricultural operation*.

### Required Determinations

#### *Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 requiring Office of Management and Budget review.

#### *Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1502 et seq.)*

This rule will not result in a significant annual effect on the economy of \$100 million or more. The U.S. Department of Agriculture publishes a directory of State Extension Specialists who provide factual and objective information on recommended plantings, cultivation, harvest, and utilization of agricultural crops. This rule has no foreseen significant adverse effects on the economy. Therefore, we have determined and certified pursuant to 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 State, local or tribal governments or private entities.

#### *Federalism*

As discussed above, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 12612.

#### *Regulatory Planning and Review (Executive Order 12866)*

This document has been reviewed by the Office of Management and Budget in accordance with the criteria in Executive Order 12866.

#### *Endangered Species Act Considerations*

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1538 *et seq.*) provides that Federal agencies shall 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 found that no Section 7 consultation under the ESA was required for this rule.

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

As discussed below, this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of \$100 million or more and will not cause a major increase in costs or prices for consumer, individual industries, Federal, State, or local government agencies, or geographic regions. Also, this rule 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.

#### *Regulatory Flexibility Act Determination (5 U.S.C. 601)*

This rulemaking will have no significant effect on small entities. This rule is an update to the current regulations governing baiting and migratory game bird hunting. Hunters and other affected parties are not likely to suffer dislocation or other local effects. The changes clarify and modify the ways that migratory game birds may be hunted, and add new definitions for terms used in Part 20. This rule adds our policy to rely upon State Extension Specialists of the Cooperative Extension Service of the U.S. Department of

Agriculture as the best source of factual and objective information on recommended planting, cultivation, harvest, and utilization of agricultural crops. The changes may encourage some landowners to open their land for migratory game bird hunting. This additional land would improve the hunting experience for 2.4 million people who hunt migratory game birds on private land. The estimated value of this benefit is \$3.8 to \$14.6 million per year. Farmers who lease their land may capture \$2.4 million of this benefit. Many of the parties affected are small entities and we believe they will receive minor economic benefits if any.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the Order.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required because migratory birds are a federally managed resource under laws implementing international treaties and are not personal property.

Environmental Effects (National Environmental Policy Act—42 U.S.C. 4321 et seq.)

We have determined that National Environmental Policy Act documentation is not required because this rule qualified as a categorical exclusion under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1.10. Results of this finding are available to the public by contacting us at the number listed under ADDRESSES. This final rule provides added benefits to the migratory bird resource by promoting available habitat through moist-soil management and by changing and clarifying current methods for hunting migratory game birds in agriculture areas, areas of natural vegetation, and over post-mining land reclamation areas.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and Recordkeeping Requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, we amend Title 50, Chapter I, subchapter B of the Code of Federal Regulations as set forth below:

PART 20—MIGRATORY BIRD HUNTING

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

Authority: 16 U.S.C. 703–712, 16 U.S.C. 742a–j.

2. Revise the title of § 20.11 and add new paragraphs (g), (h), (i), (j), (k), (l) and (m) to read as follows:

§ 20.11 What terms do I need to understand?

\* \* \* \* \*

(g) Normal agricultural planting, harvesting, or post-harvest manipulation means a planting or harvesting undertaken for the purpose of producing and gathering a crop, or manipulation after such harvest and removal of grain, that is conducted in accordance with official recommendations of State Extension Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture.

(h) Normal agricultural operation means a normal agricultural planting, harvesting, post-harvest manipulation, or agricultural practice, that is conducted in accordance with official recommendations of State Extension Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture.

(i) Normal soil stabilization practice means a planting for agricultural soil erosion control or post-mining land reclamation conducted in accordance with official recommendations of State Extension Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture for agricultural soil erosion control.

(j) Baited area means any area on which salt, grain, or other feed has been placed, exposed, deposited, distributed, or scattered, if that salt, grain, or other feed could serve as a lure or attraction for migratory game birds to, on, or over areas where hunters are attempting to take them. Any such area will remain a baited area for ten days following the complete removal of all such salt, grain, or other feed.

(k) Baiting means the direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that could serve as a lure or attraction for migratory game birds to, on, or over any areas where hunters are attempting to take them.

(l) Manipulation means the alteration of natural vegetation or agricultural crops by activities that include but are not limited to mowing, shredding, discing, rolling, chopping, trampling, flattening, burning, or herbicide treatments. The term manipulation does

not include the distributing or scattering of grain, seed, or other feed after removal from or storage on the field where grown.

(m) Natural vegetation means any non-agricultural, native, or naturalized plant species that grows at a site in response to planting or from existing seeds or other propagules. The term natural vegetation does not include planted millet. However, planted millet that grows on its own in subsequent years after the year of planting is considered natural vegetation.

3. Amend § 20.21 by revising the section title and paragraph (i) to read as follows:

§ 20.21 What hunting methods are illegal?

\* \* \* \* \*

(i) By the aid of baiting, or on or over any baited area, where a person knows or reasonably should know that the area is or has been baited. However, nothing in this paragraph prohibits:

(1) the taking of any migratory game bird, including waterfowl, coots, and cranes, on or over the following lands or areas that are not otherwise baited areas—

(i) Standing crops or flooded standing crops (including aquatics); standing, flooded, or manipulated natural vegetation; flooded harvested croplands; or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) From a blind or other place of concealment camouflaged with natural vegetation;

(iii) From a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(iv) Standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys, or retrieving downed birds.

(2) The taking of any migratory game bird, except waterfowl, coots and cranes, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown, or solely as the result of a normal agricultural operation.

\* \* \* \* \*

Dated: March 22, 1999.

**Donald J. Barry,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 222 and 223

[Docket No.950427117-9149-09;I.D.052799C]

RIN 0648-AH97

#### Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawl Activities; Leatherback Conservation Zone

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

**ACTION:** Temporary rule.

**SUMMARY:** NMFS is extending for 1 week its existing closure of all inshore waters and offshore waters out to 10 nautical miles (nm) (18.5 km) seaward of the COLREGS demarcation line bounded by 33° N. lat. and 34° N. lat. within the leatherback conservation zone, to fishing by shrimp trawlers required to have a turtle excluder device (TED) installed in each net that is rigged for fishing, unless the TED has an escape opening large enough to exclude leatherback turtles, as specified in the regulations. This action is necessary to reduce mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls.

**DATES:** This action is effective from May 28, 1999 through 11:59 p.m. (local time) on June 11, 1999.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Oravetz, (727) 570-5312, or Barbara A. Schroeder (301) 713-1401. For assistance in modifying TED escape openings to exclude leatherback sea turtles, fishermen may contact gear specialists at the NMFS, Pascagoula, MS laboratory by phone (228) 762-4591 or by fax (228) 769-8699.

**SUPPLEMENTARY INFORMATION:** The taking of sea turtles is governed by regulations implementing the Endangered Species Act (ESA) at 50 CFR parts 222 and 223 (see 64 FR 14051, March 23, 1999, final rule consolidating and reorganizing ESA regulations). Generally, the taking of sea turtles is prohibited. However, the incidental take of turtles during shrimp fishing in the Atlantic Ocean off the coast of the southeastern United States

and in the Gulf of Mexico is excepted from the taking prohibition pursuant to sea turtle conservation regulations at 50 CFR 223.206, which include a requirement that shrimp trawlers have a NMFS-approved TED installed in each net rigged for fishing. The use of TEDs significantly reduces mortality of loggerhead, green, Kemp's ridley, and hawksbill sea turtles. Because leatherback turtles are larger than the escape openings of most NMFS-approved TEDs, use of these TEDs is not an effective means of protecting leatherback turtles.

Through a final rule (60 FR 47713, September 14, 1995), NMFS established regulations to protect leatherback turtles when they occur in locally high densities during their annual, spring northward migration along the Atlantic seaboard. Within the leatherback conservation zone, NMFS is required to close an area for 2 weeks all inshore and offshore waters out to 10 nm (18.5 km) seaward of the COLREGS demarcation line (as defined at 33 CFR part 80), when leatherback sightings exceed 10 animals per 50 nm (92.6 km) during repeated aerial surveys pursuant to 50 CFR 223.206(d)(2)(iv)(A) through (C).

NMFS announced a two-week closure on May 7, 1999 (64 FR 25460, May 12, 1999), affecting the portion of the leatherback conservation zone between 32° N. lat. and 33° N. lat. The boundaries of the closure correspond to those of shrimp fishery statistical zone 32. The closure was based on high concentrations of leatherbacks off the South Carolina coast, observed during aerial surveys conducted on April 27 and May 3. During those surveys, the highest concentrations were noted in waters off the southern half of the state between Hilton Head Island, SC, and at Kiawah Island, SC. After a May 11 aerial survey reconfirmed the continued high abundance of leatherback turtles in that closed zone, NMFS extended the closure for an additional week, through May 28, 1999 (64 FR 27206, May 19, 1999). That survey also showed that the leatherbacks were continuing to move slowly northward, as expected. Concentrations of leatherbacks were noted between Murrells Inlet and Myrtle Beach.

On May 14, 1999, 10 leatherback turtles were sighted during an aerial survey over approximately 15 nm (28 km) trackline, beginning at approximately 33°23' N. lat., 079°07' W. long. (offshore Pawleys Island, SC) and ending at approximately 33°35' N. lat., 078°57' W. long. (offshore Surfside Beach, SC). A repeated survey along the same trackline documented 12 leatherbacks on May 18, 1999.

On May 21, 1999, NMFS issued a temporary rule closing inshore and offshore waters from shore out to 10 nm (18.5 km) between 33° N. lat. and 34° N. lat., unless shrimp trawlers use TEDs with escape openings modified to exclude leatherback turtles (64 FR 28761, May 27, 1999). This closed area is generally from Cape Romain, South Carolina, to Wilmington Beach, North Carolina. This closure was to expire at 11:59 a.m. June 4, 1999.

On May 26, 1999, an aerial survey conducted by the South Carolina Department of Natural Resources documented continued concentrations of leatherback sea turtles between Cape Island and Murrells Inlet. A total of 15 leatherback sea turtles were concentrated in a 44 nm (81.4 km) area. Therefore, the Assistant Administrator for Fisheries, NOAA (AA), is closing all inshore waters and offshore waters within 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded by 33° N. lat. and 34° N. lat., within the leatherback conservation zone to fishing by shrimp trawlers required to have a TED installed in each net that is rigged for fishing, unless the TED installed has an escape opening large enough to exclude leatherback turtles, meeting the specifications at 50 CFR 223.207(a)(7)(ii)(B) or 223.207(c)(1)(iv)(B). These regulations specify modifications that can be made to either single-grid hard TEDs or Parker soft TEDs to allow leatherbacks to escape. The boundaries of this closed zone correspond to those of shrimp fishery statistical zone 33.

This action does not affect the current closure in zone 32. High concentrations of leatherback sea turtles were not documented in the May 26 survey, and, therefore, the closure in zone 32 will expire at 11:59 p.m. on May 28, 1999.

NMFS will continue to monitor the presence of leatherback sea turtles along the Georgia and South Carolina coasts through weekly aerial surveys. Continued high abundance of leatherbacks greater than 10 turtles per 50 nm (92.6 km) of trackline will require further agency action, as per 50 CFR 223.206(d)(2)(iv)(B). If leatherback sightings fall to 5 or fewer turtles per 50 nm (92.6 km) of trackline, then the aerial surveys of the closed area will be replicated within 24 hours, or as soon as practicable thereafter. If sighting rates of 5 or fewer leatherbacks per 50 nm (92.6 km) are reconfirmed, the AA may withdraw or modify the closure that is the subject of this rule, as per 50 CFR 223.206(d)(4)(ii). NMFS will consult with the appropriate state natural resource officials in the closed area in making a determination to withdraw or