



# NEWS

*from the U.S. Fish and Wildlife Service*

March 25, 1998

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## SERVICE PROPOSES CHANGES IN BAITING REGULATIONS

The U.S. Fish and Wildlife Service announced today a proposed rule regarding migratory bird hunting and baiting regulations. Baiting is the practice of placing, exposing, depositing, distributing, or scattering any salt, grain, or other feed on or over areas where hunters are attempting to take birds. This proposed rule will help ensure the long-term conservation of migratory birds while providing clarity for the public and consistency and fairness in law enforcement operations.

"These proposed changes are the result of an exhaustive review of baiting regulations during which we have received a great deal of input from state fish and wildlife agencies and the public, including hunters and conservation groups," said Service Director Jamie Rappaport Clark. "They serve to clarify the rules so that waterfowl hunters will know what is allowed and what is not allowed when they go into the field."

"We expect no adverse effect on migratory bird populations as a result of these proposed regulatory changes," Clark said. "In fact, the additional areas of natural vegetation that are expected to be preserved because of the proposed changes will benefit waterfowl and other migratory birds. Advances in wetlands habitat management in recent years have improved land managers' abilities to enhance winter habitat for waterfowl and other species by providing high-quality natural foods."

Overall, the proposal would clarify the conditions under which waterfowl hunting over manipulated vegetation may lawfully occur. Hunters would be allowed to hunt waterfowl and cranes over natural vegetation that has been mowed or otherwise manipulated to benefit migratory birds as long as the manipulation takes place at least 10 days before the start of any waterfowl season and does not occur during any open waterfowl season.

This change addresses concerns that current baiting regulations have discouraged the conservation and management of moist-soil areas to benefit waterfowl and other migratory birds. The proposed regulations recognize the need to allow the manipulation of these areas to benefit migratory birds, while still allowing reasonable hunting opportunities. As in current regulations, there would be no restriction on manipulating natural vegetation and hunting migratory game species other than waterfowl and cranes.

Hunters would also be assured that the accidental scattering of seed during the normal course of hunting would not constitute illegal baiting.

The proposed changes in the regulations will, for the first time, distinguish between agricultural areas and areas of natural vegetation and establish separate and clear rules for each. The proposal defines natural vegetation as non-agricultural, native, or naturalized plant species, including millet, that grows at a site in response to planting or from existing seeds.

On agricultural lands, the proposed regulations would consolidate and clarify the current distinction between land management practices allowable for the hunting of waterfowl and those allowable for the hunting of other migratory game birds, such as doves. The proposed regulations use one land-management-related term for the hunting of all migratory birds: "normal agricultural and soil stabilization practices."

The Service would rely on the U.S. Department of Agriculture's state specialists for recommendations about normal agricultural planting, harvesting, post-harvesting, and soil stabilization practices. By designating the U.S. Department of Agriculture state specialists as an authority on agricultural issues, the Service, in cooperation with the state fish and wildlife agencies, would use a reliable and consistent source of guidance for making determinations about the legality of hunting over agricultural areas.

Hunting would be allowed over an agricultural field that has been subject to a normal agricultural or soil stabilization practice. However, the Service has determined that it often is difficult for some to conclude whether seed broadcast by top sowing is part of normal agricultural planting or is intended to lure birds to hunters illegally. Therefore, the Service is proposing to prohibit hunting any migratory birds over any areas planted by top sowing of seeds where, as a result, the seeds remain on the ground. Any such area would be considered a baited area until 10 days after the seed has been removed from the ground.

The Service proposes to maintain the current prohibition on hunting migratory birds over any baited area until 10 days after the seed or grain has been removed, also known as the 10-day rule.

After extensive review, the Service opted not to change the "strict liability" standard under which hunters may be cited for hunting over a baited area regardless of whether they knew about the baiting or intended to violate the law. The Service believes the strict liability standard is well established and that the deterrent value of the standard should be maintained.

The Service began a review of various wildlife regulations in 1991 and published its intent to review the migratory bird regulations in 1993. In 1996, the Service announced its intention to review waterfowl baiting regulations separately from the regulations governing other migratory game birds. In addition, the Service indicated its intent to address issues involving migratory bird conservation practices such as moist-soil management.

The Service has received extensive comments on the migratory bird regulations, including baiting, during three different public comment periods since 1991. In addition, in 1996, the Service asked the International Association of Fish and Wildlife Agencies, a professional organization representing all 50 state fish and wildlife agencies, to review waterfowl baiting issues related to management of moist-soil areas of natural vegetation and make recommendations. The Service received those recommendations in May 1997.

The proposed changes were published in the March 25 Federal Register. Comments should be sent to Director, U.S. Fish and Wildlife Service, Post Office Box 3247, Arlington, Virginia 22203-3247. Comments may be hand delivered to 4401 North Fairfax Drive, Suite 500, Arlington, Virginia 22203. Comments must be received by May 26, 1998.

The U.S. Fish and Wildlife Service is the principal Federal agency responsible for conserving, protecting, and enhancing fish and wildlife and their habitats for the continuing benefit of the American people. The Service's 94 million acres include 512 national wildlife refuges, 65 national fish hatcheries, 38 wetland management districts with waterfowl production areas, 78 ecological services field stations, and 50 wildlife coordination areas.

The agency enforces Federal wildlife laws, manages migratory bird populations, restores nationally significant fisheries, conserves and restores wildlife habitat such as wetlands, administers the Endangered Species Act, and helps foreign governments with their conservation efforts. It also oversees the Federal Aid program that distributes Federal excise taxes on fishing and hunting equipment to state wildlife agencies. This program is a cornerstone of the Nation's wildlife management efforts, funding fish and wildlife restoration, boating access, hunter education, shooting ranges, and related projects across America.



# FACTS

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## WHY THE SERVICE MADE ITS PROPOSALS

In the Federal Register notice, the Service explained each of the proposals. The following are brief synopses of the rationale for the changes:

- o The proposed changes related to manipulation of natural vegetation stem from concerns that current baiting regulations discourage the setting aside and management of moist-soil management areas, including manmade seasonally flooded impoundments, to benefit waterfowl and other migratory birds.

More than half of the original wetlands in the United States have been lost and many of those wetlands that remain are degraded. In many areas of the country, moist-soil management areas provide invaluable habitat for waterfowl and other migratory birds. The proposed regulations recognize the need to allow the necessary manipulation of these areas to benefit migratory birds while still providing hunting opportunities.

The proposal also sets a clear cut-off date for legal manipulation of these areas if they are to be hunted, and may provide multiple opportunities to legally manipulate the same area during either the late summer, fall, or winter and subsequently hunt that area, depending upon states' seasons.

The Service had to determine how to address millet, a plant that can be both an agricultural crop and a moist-soil management tool. Because millet can be an important food source for migrating and wintering waterfowl, the Service decided that the potential benefits justify including millet in the proposed definition of natural vegetation, even when planted and manipulated in a moist-soil management area.

- o The proposed changes related to agricultural lands stem from concerns about public confusion over existing regulatory language and definitions. For instance, the current regulations include separate definitions of agricultural activities related to different migratory bird groups: the term "normal agricultural planting and harvesting" is used for waterfowl hunting and "bona fide agricultural operations" is used for other birds such as doves. By having one definition--"normal agricultural and soil stabilization practices"--the regulations will be more uniform and clear.

In addition, the proposed regulations codify current Service policy related to determining normal agricultural practices. By designating the U.S. Department of Agriculture state specialists as an authority on agricultural issues, the Service, in cooperation with the state fish and wildlife agencies, would use a reliable and consistent source of guidance for making determinations about the legality of hunting over agricultural areas.

Finally, the Service is concerned about resource impacts and enforceability of hunting over top-sown seeds. In some areas, it may be a normal agricultural planting practice; however, the Service determined that it often is difficult to conclude whether seed broadcast by top sowing is part of normal agricultural planting or is intended to lure birds to hunters illegally. Therefore, the Service is proposing to prohibit hunting over any areas planted by top sowing of seeds where, as a result, the seeds remain on the ground. Any such area would be considered a baited area until 10 days after the seed has been removed from the ground.

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## **WHAT DO THE PROPOSALS MEAN TO HUNTERS?**

Under the proposed rules, hunters could:

- o Hunt waterfowl and cranes over natural vegetation that has been mowed or otherwise manipulated as long as the manipulation took place at least 10 days before the start of any waterfowl season and is not carried out during any open waterfowl season.
- o Hunt migratory birds other than waterfowl and cranes over natural vegetation, including millet, that has been manipulated with no restrictions on when the manipulation occurred.
- o Hunt migratory birds over natural vegetation where millet occurs naturally, has been naturalized, or where it has been planted.
- o Hunt migratory birds on a field that has been subject to a normal agricultural and soil stabilization practice, except where seeds are top sown and remain exposed on the ground. The Service would codify its current policy of relying on the U.S. Department of Agriculture's state specialists as an authority on what is and isn't a normal agricultural and soil stabilization practice.

Hunters would not be allowed to:

- o Bait birds or areas by placing, exposing, depositing, distributing, or scattering any salt, grain, or other feed on or over areas where hunters are attempting to take birds. However, the accidental scattering of seed that occurs when a hunter enters or exits an area, conceals a blind with natural vegetation, places decoys, or retrieves a downed bird would not be considered baiting.
- o Hunt over any baited area where salt, grain, or other feed remains until 10 days after that seed, grain, or other feed has been removed.

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