



# Federal Register

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**Friday,  
September 7, 2007**

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**Part III**

## **Department of the Interior**

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**Fish and Wildlife Service**

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**50 CFR Part 32  
2007–2008 Hunting and Sport Fishing  
Regulations for the Upper Mississippi  
River National Wildlife and Fish Refuge;  
Final Rule**

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

RIN 1018-AV36

**2007–2008 Hunting and Sport Fishing Regulations for the Upper Mississippi River National Wildlife and Fish Refuge****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or we) amends the regulations for the Upper Mississippi River National Wildlife and Fish Refuge (refuge) that pertain to existing programs for migratory game bird hunting, upland game hunting, big game hunting, and sport fishing. These changes take effect with the 2007–2008 season and implement the recently completed Comprehensive Conservation Plan (CCP) for the refuge. This amendment replaces current refuge regulations found at 50 CFR part 32.32 (Illinois), places the regulations at 50 CFR part 32.42 (Minnesota) to match the State listing with the location of the refuge headquarters, and cross references those regulations in 50 CFR parts 32.34 (Iowa) and 32.69 (Wisconsin).

**DATES:** This rule is effective September 7, 2007.**FOR FURTHER INFORMATION CONTACT:** Don Hultman, (507) 452–4232; Fax (507) 452–0851.

**SUPPLEMENTARY INFORMATION:** The Upper Mississippi River National Wildlife and Fish Refuge (refuge) encompasses 240,000 acres in a more-or-less continuous stretch of 261 miles of Mississippi River floodplain in Minnesota, Wisconsin, Iowa, and Illinois. The refuge was established by Congress in 1924 to provide a refuge and breeding ground for migratory birds, fish, other wildlife, and plants. The refuge is perhaps the most important corridor of habitat in the central United States due to its species diversity and abundance and is the most visited refuge in the United States with 3.7 million annual visitors.

Approximately 187,000 acres of the refuge is open to all hunting, and approximately 140,000 acres of surface water is open to year-round fishing.

The development of an Environmental Impact Statement (EIS) and CCP for the refuge began with a notice of intent to prepare the EIS, which we published in the **Federal Register** on May 30, 2002 (67 FR 37852).

We followed with a notice of availability of our Draft EIS (April 28, 2005; 70 FR 22085), and we accepted public comments on the Draft EIS for 120 days. On October 7, 2005, we published a notice of intent to prepare a Supplement to the Draft EIS (70 FR 58738). We made the Supplement to the Draft EIS available on December 5, 2005 (70 FR 72462), and accepted public comments on that document for 60 days, extended to 90 days.

We offered public involvement through 46 public meetings and workshops attended by 4,500 persons in 14 different communities in four States during the 4-year planning process. In addition, we held or attended 80 other meetings with the States, other agencies, interest groups, and elected officials to discuss the Draft EIS, and mailed three different planning update newsletters to up to 4,900 persons or organizations on our planning mailing list. We also issued numerous news releases at various planning milestones, and held two press conferences.

On July 11, 2006, we published a notice of availability of our Final EIS (71 FR 39125), and we accepted public comments on the Final EIS for 30 days. On August 24, 2006, the Regional Director of the Midwest Region of the Fish and Wildlife Service signed the Record of Decision that documented the selection of Alternative E, the Preferred Alternative presented in the Final EIS. We published a notice of availability of that Record of Decision on November 2, 2006 (71 FR 64553).

In accordance with the Record of Decision, we prepared a CCP based on Alternative E. The CCP was approved on October 24, 2006. The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee, as amended by the National Wildlife Refuge Improvement Act of 1997), requires the Secretary of the Interior (Secretary) to manage each refuge in a manner consistent with a completed CCP. The Final EIS and CCP are available at <http://www.fws.gov/midwest/planning/uppermiss>.

This hunting and fishing rule implements the goals, objectives, and strategies spelled-out in the CCP pertaining to hunting and fishing and related uses.

The rule also reflects a fine-tuning of language in the current refuge-specific regulations for clarity and ease of enforcement, and other modest changes to modernize regulations and make them consistent with the principles of sound fish and wildlife management. For example, this rule includes the new requirement for hunters to use nontoxic shot shells for turkey hunting, the only

exemption the refuge had allowed under the nontoxic shot shell regulation at 50 CFR 32.2(k).

When all changes in the CCP are implemented in 2009, there will be 24 closed areas or sanctuaries totaling 43,683 acres, compared with the current 15 areas totaling 44,544 acres. Another 1,406 acres will be open the first 30 days of the season, closing November 1. An effective system of strategically located waterfowl closed areas on the 261-mile-long refuge is critical to the Mississippi Flyway, and allows hunting to remain compatible.

There is also a change to open water hunting regulations on 4,000 acres of Pool 11 in Grant County, Wisconsin, and a phase out of permanent hunting blinds on the only areas of the refuge they are still allowed. The Grant County area remains open to hunting, but restricts open water hunting from boats to protect large rafts of scarp and canvasback.

The National Wildlife Refuge System Administration Act of 1966 authorizes the Secretary to allow uses of refuge areas including hunting and/or sport fishing, upon a determination that such uses are compatible with the purposes of the refuge and National Wildlife Refuge System (Refuge System) mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), and consistent with the principles of sound fish and wildlife management and administration. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

The Secretary is required to prepare a CCP for each refuge and shall manage each refuge consistent with the CCP. Each CCP must identify and describe the refuge purposes; fish, wildlife, and plant populations; cultural resources; areas for administrative or visitor facilities; significant problems affecting resources and actions necessary; and opportunities for compatible wildlife-dependent recreation. Each CCP must also be developed through consultation with the other States, agencies, and the public, and be coordinated with applicable State conservation plans.

Each CCP is guided by the overarching requirement that refuges are to be managed to fulfill their purposes for which established and the mission of the Refuge System. In addition, the National Wildlife Refuge System Improvement Act requires that the Refuge System be administered to provide for the conservation of fish,

wildlife, and plants and their habitats; and to ensure their biological integrity, diversity, and environmental health.

We developed the CCP for the refuge in accordance with all requirements and in accordance with the consultation and public involvement provisions of the National Wildlife Refuge System Improvement Act. This includes new compatibility determinations for hunting and fishing, which are referenced and listed in Appendix E of the Final EIS. We then developed this rule to implement portions of the CCP.

#### Plain Language Mandate

In this rule, we comply with a Presidential mandate to use plain language in regulations. As examples, we use “you” to refer to the reader and “we” to refer to the Service, the word “allow” instead of “permit” when we do not require the use of a permit for an activity, and we use active voice whenever possible (i.e., “We allow hunting of upland game on designated areas” vs. “Upland game hunting in designated areas is allowed”).

#### Statutory Authority

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee, as amended by the National Wildlife Refuge System Improvement Act of 1997 [Improvement Act]) (Administration Act) and the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4) (Recreation Act) govern the administration and public use of refuges. In addition, the Migratory Bird Treaty Act (16 U.S.C 703–711) grants authority for management of migratory birds and the closing of any areas to migratory bird hunting.

The Migratory Bird Treaty Act (MBTA) designates the protection of migratory birds as a Federal responsibility. The MBTA enables the setting of seasons, and other regulations including the closing of areas, Federal and non-Federal, to the hunting of migratory birds. You can find regulations stemming from the MBTA pertaining to migratory bird hunting in 50 CFR part 20.

This document codifies in the Code of Federal Regulations amended hunting and sport fishing regulations that are applicable to the Upper Mississippi River National Wildlife and Fish Refuge. We are doing this to implement the refuge CCP, better inform the general public of the regulations at the refuge, increase understanding and compliance with these regulations, and make enforcement of these regulations more efficient. In addition to finding these regulations in 50 CFR part 32, visitors

will find them reiterated in literature distributed by each refuge and posted on signs at major access points. Visitors will also find the boundaries of closed areas or other restricted-use areas referenced in this document marked by specific signs.

This rule includes cross-references to a number of existing regulations in 50 CFR parts 27 and 32 to assist hunting and sport fishing visitors with understanding safety and other legal requirements on refuges. This redundancy is deliberate, with the intention of improving safety and compliance in our hunting and sport fishing programs.

#### Response to Public Comment

In the June 28, 2007, **Federal Register** (72 FR 35380), we published a proposed rule identifying amendments to the refuge-specific regulations for the refuge and invited public comments. We reviewed and considered all comments received by July 30, 2007, the end of the 30-day comment period. We received 23 comments on the proposed rule. Since comments were often similar or commenters covered multiple topics, we have treated the comments/responses by major issue area.

In addition, one commenter posed eight questions to the Service. Although not specifically comments on the proposed rule, the questions represent concerns on issues that the Service took seriously in the development of the CCP and takes seriously in this rulemaking. We have answered similar questions in public meetings and other forums, and we welcome the opportunity to address them here. We quote these questions verbatim and answer in turn following the comment and response section below.

*Comment 1:* A commenter was opposed to hunting on the refuge and feels it is not compatible with other activities on the refuge.

*Response 1:* We understand some citizens' concern with hunting on national wildlife refuges. However, hunting on refuges remains an important form of outdoor recreation for millions of citizens and a use which we are to facilitate when compatible with the purpose of the refuge and the mission of the Refuge System per the National Wildlife Refuge System Administration Act (Refuge Administration Act). We have taken care to ensure the right balance between the needs of wildlife and people on the refuge in keeping with the Refuge Administration Act and Service policy and regulation. We have also determined in a compatibility determination that hunting, with

stipulations such as a system of hunting closed areas, is a compatible use on the refuge. We made no change to the rule as a result of this comment.

*Comment 2:* Several commenters expressed general support for the CCP and the proposed regulation changes.

*Response 2:* We have noted these comments but did not change the rule as a result.

*Comment 3:* One commenter asked that the Service not open or expand the refuge to hunting citing concerns over compliance with the National Environmental Policy Act (NEPA) and the Endangered Species Act, Section 7, and concerns that non-consumptive uses are not given enough emphasis.

*Response 3:* This rule does not open or expand hunting opportunities but amends an approved and long-standing hunting and fishing program on the refuge. We have complied with NEPA requirements through the completion of an EIS and Record of Decision which took into account the changes reflected in this rule (see **SUPPLEMENTARY INFORMATION**). We also completed the necessary endangered species review (see **Endangered Species Act Section 7 Consultation** in this rule) and the required compatibility determinations for hunting and fishing. Since this rule deals only with hunting and fishing regulations, it is not our intent to address nonconsumptive uses. However, nonconsumptive uses such as wildlife observation, photography, interpretation, and environmental education were addressed in considerable detail in the CCP. We believe we conducted our planning to ensure the proper balance between all priority public uses in accordance with the Refuge Improvement Act's recent amendments to the Refuge Administration Act. We made no change to the rule as a result of these comments.

*Comment 4:* Several commenters expressed general opposition to the CCP for the refuge and thus opposition to the proposed rule.

*Response 4:* We understand that many citizens remain opposed to changes reflected in the CCP. We made a concerted effort to keep citizens informed and to consider their comments and suggestions in crafting the CCP. We developed the CCP through extensive public involvement including 46 public meetings or workshops attended by 4,500 citizens, and offered longer than normal comment periods on the Draft EIS and subsequent Supplement. However, we have an obligation to manage the refuge in accordance with the Refuge Administration Act and policies and

regulations governing the Refuge System. These mandates require that we manage refuges to accomplish their established purposes and that recreation and use opportunities afforded the public are compatible with those purposes. The CCP was approved October 24, 2006, and we are now obligated to implement the plan in accordance with the Refuge Administration Act. The new rules implement portions of the CCP dealing with hunting and fishing, and ensure that these activities remain a safe and compatible use on the refuge. We made no change to the rule as a result of these comments.

*Comment 5:* Several commenters expressed concern that the rule is not in compliance with laws and regulations governing Federal and State cooperation since the resulting regulations would differ from State regulations.

*Response 5:* The Refuge Administration Act says, "Regulations permitting hunting or fishing of fish and resident wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations, and management plans." This directive does not apply to migratory bird hunting on refuges. However, our regulations for all hunting and fishing on the refuge are consistent with State laws and regulations in many ways (e.g., seasons, species, take limits, methods, weapons, required licenses or permits). As a landowner, we impose conditions on those who come onto the refuge to engage in hunting and fishing such as when, where, and how those activities take place. We believe that refuge regulations that differ from State regulations are at times, and under certain circumstances, the only practicable or feasible way to ensure a refuge meets its mandated purpose and other tenets of the Refuge Administration Act. We believe the conditions we are imposing under these rules for the refuge are those that allow us to meet these responsibilities. In addition, Service hunting and fishing policies say that refuge-specific regulations may be necessary when they seek to conserve the resource, when they assist in managing the resource, and when they ensure public safety. The changes to closed areas and other regulations in this rule are all designed to address one or more of these standards. We made no change to the rule based on these comments.

*Comment 6:* Several commenters contend that the refuge does not have the authority to restrict uses on navigable waters within the refuge. They contend the CCP and these proposed rules usurp Wisconsin

authority on sovereign waters, violate Wisconsin's Public Trust Doctrine, and are a breach of Wisconsin's original conditioned consent to establishment of the refuge.

*Response 6:* We received similar comments during preparation of the CCP. Neither the Wisconsin Department of Natural Resources' nor the Wisconsin Attorney General's comments included in the EIS said the Service has intruded or impinged on State authority. In particular, the Attorney General's comments on this issue did not say that the Service crossed a line that would constitute intrusion into State authority. The Attorney General's comments indicate that Wisconsin's Public Trust Doctrine embodies exactly the type of program we have been trying to develop, namely, balancing competing uses, acknowledging that no one public right is absolute. We also believe our proposal is in keeping with the Attorney General's urging that "any such restrictions are reasonable and are not imposed to the exclusion of other key factors that affect the conservation of resources in the Refuge." We addressed the State's 1925 consent language in the EIS and CCP and developed our plan and regulations to meet those conditions. We continue to recognize and respect the various State and U.S. Army Corps of Engineers authorities while carrying out our responsibilities to manage a national wildlife refuge in accordance with the Refuge Administration Act. We made no change to the rule based on these comments.

*Comment 7:* Several commenters opposed changes to Waterfowl Hunting Closed Areas, or any restrictions to hunting, and some noted that the changes were not based on sound science. Several noted that during the State's spring 2007 annual hearings, Wisconsin hunters and anglers voted overwhelmingly against a proposal by the Wisconsin Department of Natural Resources to adopt identical Waterfowl Hunting Closed Areas for the State's regulations.

*Response 7:* We understand that changes to the system of Waterfowl Hunting Closed Areas of the refuge reflected in this rule are generally met with resistance since some of the changes affect long-standing patterns of use by waterfowl hunters and others. However, we thoroughly documented the issue, the science, and the need for change in the Draft and Final EIS. We added Appendix Q in the Final EIS, which gives details on each closed area and rationale for changes based on public questions and concerns. The system of Waterfowl Hunting Closed

Areas has remained virtually unchanged since 1958, and we believe we need the adjustments reflected in the CCP and in this rule based on current habitat conditions, waterfowl population and use data, human disturbance studies, and energetics modeling. These changes also allow waterfowl hunting and other uses to remain compatible. We made no change to the rule based on these comments.

*Comment 8:* Several commenters expressed support for the changes to the system of Waterfowl Hunting Closed Areas.

*Response 8:* We have noted these comments but did not change the rule as a result.

*Comment 9:* One commenter voiced concerns with what was perceived as a mandated approach to limiting disturbance to waterfowl in Waterfowl Hunting Closed Areas versus a voluntary and collaborative approach. The commenter was also concerned that the proposed rule does not provide access around or through the closed areas to make compliance by anglers and boaters feasible.

*Response 9:* We changed to a voluntary versus mandatory approach to reducing disturbance to waterfowl resting and feeding in closed areas based on public comment during preparation of the Final EIS and CCP. As the term implies, compliance is voluntary and the effectiveness of the approach will rely on the good will of anglers and boaters, not enforcement action. We included the provision in this rule to match language in the CCP and to heighten awareness of the need for reducing disturbance to waterfowl. On six large closed areas, we have provided a travel corridor to allow anglers and boaters to travel around the core of the closed area. On remaining closed areas, a travel corridor was either not feasible due to the small size of the area or not needed due to the location of the closed area in relation to the main channel of the river or other natural travel ways. We made no change to the rule based on these comments.

*Comment 10:* Several commenters raised concerns about the loss of recreational opportunities and economic activity from these rules.

*Response 10:* The changes to Waterfowl Hunting Closed Areas, Sanctuaries, and No Hunting Zones reflected in the rule were thoroughly analyzed during preparation of the EIS and CCP. As noted in the **SUPPLEMENTARY INFORMATION and Regulatory Planning and Review** sections of this rule, there will be relatively minor change to the overall area open to hunting and fishing.

Opportunities for recreation will remain abundant and we expect visitation and resulting economic activity to continue to increase with these rules. We believe that the CCP, and these resulting regulations, will help ensure that the refuge remains a destination of choice for wildlife and people. We believe this approach may prove more sustainable and have positive, long-term natural resource, social, and economic impacts both on the refuge and in surrounding communities as documented in the EIS. We made no change to the rule based on these comments.

*Comment 11:* Several commenters suggested bag limit reductions for waterfowl or a moratorium on taking specific species as strategies to address declining waterfowl numbers.

*Response 11:* Since waterfowl are a national and international resource, we defer to the Service's Division of Migratory Bird Management, the Flyway Councils, and the States for the setting of bag limits or species-specific closures. However, we believe the refuge plays a critical role in meeting the life-cycle needs of waterfowl by providing rest and food. Refuge-specific regulations, in conjunction with State regulations, help manage the means and methods of harvest to safeguard the waterfowl resource and ensure a quality waterfowl hunting experience. We made no change to the rule as a result of these comments.

*Comment 12:* Several commenters expressed concern that the CCP and this resulting rule have destroyed the refuge's working relationship with the public and eroded public support for the refuge.

*Response 12:* We remain committed to working with the public, and this is reflected in the CCP since virtually every objective has partnerships and coordination as a strategy. We are prepared to continue working relationships with long-term partners and new partners, regardless of disagreements on certain aspects of the CCP. However, we realize that doing the right thing for the refuge, its resources, and the public as a whole may mean the loss of support by a few. Any loss of support is usually off-set by new partners who emerge. An example is the 300-member "Friends of Pool 9" support group which was created by citizens due to the CCP public involvement process. We made no change to the rule as a result of these comments.

*Comment 13:* Two commenters endorsed the new dog regulation and the requirement for using non-toxic shot shells for all hunting on the refuge.

*Response 13:* We have noted these comments but did not change the rule as a result.

*Comment 14:* One commenter made suggestions on the posting of the Spring Lake (Pool 5) and Lake Onalaska (Pool 7) Waterfowl Hunting Closed Areas to enhance sign visibility, ease public confusion, improve enforcement, or retain some portion of a traditional hunting area.

*Response 14:* We will take these suggestions into consideration when signing the boundaries of these areas. We acknowledge that maps of Waterfowl Hunting Closed Areas, regardless of scale, do not contain enough specific detail to show exact boundaries. This is why we state in the rule "areas posted and shown on maps" to emphasize that signing is an important aspect of area delineation. It also recognizes that we must temper mapped boundaries with the realities of vegetation, visibility, and other physical conditions on the ground when posting areas. It is also our intent, as described in Appendix Q of the EIS, to continue to offer some level of waterfowl hunting adjacent to these Waterfowl Hunting Closed Areas. We made no change to the rule as a result of these comments.

*Comment 15:* Several commenters expressed opposition to the rule because Wisconsin conservation officers will not be able to enforce the amended Waterfowl Hunting Closed Areas without a matching State regulation.

*Response 15:* We prefer to see identical regulations in Wisconsin so that the State's conservation officers can continue to assist in enforcing refuge regulations related to hunting and other fish and wildlife-related recreation. We will continue to work with the State, but we are prepared to implement needed regulatory changes regardless of the outcome of the State rulemaking process. To do otherwise would be abdicating our responsibilities to manage the refuge in accordance with its establishing legislation, the Refuge Administration Act, and Refuge System policies and regulations. We believe our refuge officers, along with appropriate signing and outreach to the hunting public, will ensure a high level of compliance. We made no change to the rule as a result of these comments.

*Comment 16:* Two commenters were opposed to the restriction on open-water hunting in a 4,000-acre portion of Pool 11 of the refuge in Grant County, Wisconsin, citing that it is eliminating a traditional style of hunting.

*Response 16:* We believe this restriction, as documented in the EIS and CCP, is needed to protect the large concentrations of lesser scaup and

canvasback ducks that stage in this area each fall. The area remains open to hunting, and this regulation only affects the means of hunting. We learned during public involvement for the CCP that only a handful of hunters now hunt from boats or skiffs in open water in this area, and since Wisconsin regulations allow open-water hunting on the rest of the Mississippi River in Grant County, there will still be several thousand acres around the restricted area where hunters can hunt from boats in open water. We made no change to the rule as a result of these comments.

*Comment 17:* One commenter was opposed to Waterfowl Hunting Closed Area changes in Pools 4 and 5 of the refuge.

*Response 17:* Changes to the Waterfowl Hunting Closed Areas in Pool 4 are not a part of this rule since, in accordance with the CCP, those changes would not be made until 2009 and then only if current waterfowl use monitoring confirms the need for change. In Pool 5, we are making minor corrections to the existing Weaver Bottoms closed area resulting in an addition of 369 acres. However, this addition should have little to no impact on hunting since the addition encompasses the main channel of the river where hunting is not practical. We have added one new closed area in Pool 5 in the rule (Spring Lake, 243 acres) to provide rest and food for puddle ducks in a recently completed island and backwater habitat project. We believe this closed area will help provide a better distribution of waterfowl and complement the larger Weaver Bottoms closed area which is large enough to accommodate diving ducks. We made no change to the rule as a result of these comments.

*Comment 18:* Several commenters were opposed to the establishment of the Wisconsin River Delta Special Hunt Area that would be open to hunting until November 1, and then closed until the end of the State waterfowl season.

*Response 18:* We understand that opposition to this new restricted area remains. However, based on public input during preparation of the CCP, we modified the original proposal of a standard Waterfowl Hunting Closed Area that would be closed the entire waterfowl hunting season to a less restrictive designation to take into account local needs and desires. We continue to believe, as supported by our survey data and energetics modeling, that this area will provide a critical link in the series of rest and feeding areas throughout the length of the 261-mile long refuge. The partial-season closure will still allow hunting during the most

popular first half or more of the waterfowl season, while providing sanctuary for late migrating waterfowl. We made no change to the rule as a result of these comments.

*Comment 19:* Several commenters noted that the CCP does not address the most serious environmental issues facing the refuge, namely sedimentation, water quality, and invasive species.

*Response 19:* We did not intend for this rule to address all the issues facing the refuge since the rule deals only with hunting and fishing regulations. However, we believe the CCP does address resource issues in a realistic and measurable way by a more aggressive implementation of Pool Management Plans (a 50-year vision for habitat for each pool done collaboratively by the Service, Corps of Engineers, and the States), by marked expansion of the Partners for Fish and Wildlife Program in watersheds leading into the refuge, by calling for a 10 percent reduction in invasive plants by 2010, and by working with others on invasive animal issues. We devote about 78 percent (\$170 million) of the projected funding needs for the life of the plan to habitat improvement and finishing land acquisition within the approved boundary of the refuge, both of which directly improve the quality and quantity of fish and wildlife habitat. The CCP outlines more than 360 habitat-related actions that are refuge priorities. We made no change to the rule as a result of these comments.

*Question 1:* "Under the Wisconsin Administrative Rule process rules are published and voted on at the Spring Hearings. Identical rules to these proposed by your agency were voted down overwhelmingly this past April. How will you proceed in light of the overwhelming public opposition as recorded in the vote? How do you think the State of Wisconsin should proceed considering the votes?"

*Answer 1:* We refer to comments 5, 6, 7, and 15 above and our responses. We also do not think it appropriate to advise the State on how it should proceed, but stand ready to assist and work with the State regardless of their course of action.

*Question 2:* "Under the State's Public Trust Doctrine and the 1925 refuge agreement the state maintains its authority over its waters. What is the basis for your agency's authority over the navigable waters of Wisconsin? Please be specific."

*Answer 2:* Our authority is derived from several sources including the Property Clause (Article IV) of the Constitution, the Migratory Bird Treaty Act, the Migratory Bird Conservation

Act, the Refuge Recreation Act of 1962, the National Wildlife Refuge System Administration Act of 1966, the Fish and Wildlife Coordination Act, and the Upper Mississippi Wild Life and Fish Refuge Act.

*Question 3:* "Federal rules regarding hunting and fishing must comply with the State's "to the extent practicable". Can you explain how it is not "practicable" for your rules to comply with Wisconsin's?"

*Answer 3:* We refer to comment 5 and our response.

*Question 4:* "When you consider the different rules at the state and federal level and the confusion that may ensue, does that figure into the "to the extent practicable" definition? Is it "practicable" for the USFWS to have additional rules that your limited staff cannot enforce?"

*Answer 4:* We certainly prefer to have State conservation officers' assistance in enforcing refuge regulations. Of the four States encompassing the refuge, only Wisconsin requires that State regulations match refuge regulations in order for them to be enforced by their officers. We believe we have the capability to enforce any new refuge regulations in the Wisconsin portion of the refuge by pooling resources as needed from other districts of the refuge or from other refuges in the region. However, our experience has shown that most hunters and anglers comply with regulations once they are aware of them and understand them. We will be providing leaflets and maps to the public, as well as having areas adequately signed, to help ensure awareness. We also note that State officers currently do not enforce, and have no desire to enforce, many of the refuge-specific regulations dealing with uses other than hunting and fishing.

*Question 5:* "Do you feel your agency has a clear understanding of the Wisconsin Public Trust Doctrine and its associated case law?"

*Answer 5:* The Wisconsin Attorney General provided valuable analysis in this regard in comments on the Draft EIS.

*Question 6:* "Do you understand the authority of the Wisconsin Legislature when it comes to the waters of the state?"

*Answer 6:* We believe we do.

*Question 7:* "How do you plan to modify these rules to respect the authority of the State of Wisconsin?"

*Answer 7:* We believe these rules are a proper exercise of our authority in full recognition of the authority of the State of Wisconsin. We have responded to every concern raised by the State during the 4-year development of the CCP, and,

as a result, believe these rules do not create any State authority issues.

*Question 8:* "Where does the USFWS derive its authority to control navigation on the Upper Mississippi River?"

*Answer 8:* We do not claim authority to control general navigation on the Upper Mississippi River as this is under the purview of the Corps of Engineers, U.S. Coast Guard, and various State agencies. We believe we do have the authority to control public entry and use on the refuge under the authorities cited in response to question 1. In summary, we believe the United States owns the bed of the inundated areas of the refuge where we have proposed any restrictions, and thus the Property Clause of the Constitution and laws that established the refuge and govern the administration of the Refuge System apply. These laws grant authority to control all entry and public use. In addition, the Migratory Bird Treaty Act grants authority for management of migratory birds and the closing of any areas to migratory bird hunting. However, we believe we have been diligent in meeting Wisconsin's consent conditions and balancing the public need to enjoy the refuge while safeguarding fish and wildlife resources and habitat. The CCP and this rule continue to ensure relatively free and open access. We believe this has been accomplished through controlling the means of navigation within the refuge on specific areas when necessary rather than controlling navigation itself.

#### Modifications from the Proposed Rule

We are making a change in the final regulations to correct an inadvertent omission in the proposed rule. The CCP, developed through extensive public involvement and review, states that "no hunting should occur on the refuge from March 16 to August 31 of each year, except for spring wild turkey hunting and, on the Illinois portion of the refuge, squirrel hunting." During public review and comment periods for the EIS, there were no objections made to this provision by either the public or the States. We included this provision in the general hunting objective of the CCP to minimize potential conflicts between user groups during the peak fishing, boating, and camping period when more than two million refuge visits occur. Since most State seasons start in September or later, this change has little effect on hunting, affecting for only a short time the hunting of crow and State-listed unprotected or open-season animals. We have changed the introductions to the *Migratory Bird Hunting, Upland Game Hunting*, and

*Big Game Hunting* regulation sections to correct this omission.

We are making minor edits in this final rule to correct administrative errors or update information in the proposed rule. These corrections and one update by section are as follows: (1) In the **SUPPLEMENTARY INFORMATION** section we are correcting the summary of closed areas and sanctuaries from 23 areas and 43,652 acres to 24 areas and 43,683 acres; (2) in the **Statutory Authority** section we are correcting the date in the reference to the National Wildlife Refuge System Improvement Act of 1977 to 1997; (3) in the *Migratory Game Bird Hunting* regulation section we are correcting Bertom Island Sanctuary, Iowa to Bertom Island Sanctuary, Wisconsin; (4) in the *Sport Fishing* regulation section we are correcting Mertes Slough, Pool 5 to Mertes Slough, Pool 6; and (5) in the **Endangered Species Act Section 7 Consultation** section we noted the scheduled delisting of the bald eagle.

**Fish Advisory**

For health reasons, anglers should review and follow State-issued consumption advisories before enjoying recreational sport fishing opportunities on Service-managed waters. You can find information about current fish consumption advisories on the Internet at: <http://www.epa.gov/waterscience/fish/>.

**Regulatory Planning and Review**

In accordance with the criteria in Executive Order (E.O.) 12866, the Service asserts that this rule is not a significant regulatory action. The Office of Management and Budget (OMB)

makes the final determination under E.O. 12866.

a. This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. A cost-benefit and full economic analysis is not required. However, a brief assessment follows to clarify the costs and benefits associated with this rule.

The purpose of this rule is to implement amended hunting and sport fishing regulations on the Upper Mississippi River National Wildlife and Fish Refuge beginning with the 2007–2008 seasons. These regulations are derived from and are consistent with the CCP approved October 24, 2006, and whose environmental and socioeconomic impacts are documented in the Final EIS (available at <http://www.fws.gov/midwest/planning/uppermiss>).

*Costs Incurred*

Costs incurred by these regulations include signing of areas, leaflet preparation, and printing to provide information to the public, and law enforcement and monitoring. However, these are regular and reoccurring functions on the refuge with or without these regulations and can be handled within normal budget and staffing levels. Therefore, we expect any costs to be minor in the short term and negligible in the long term.

*Benefits Accrued*

These regulations will have several effects on current hunting opportunities on the refuge. Although some areas open to hunting are changed, the quality of hunting could increase, especially for waterfowl, since the refuge would likely

hold more birds in more areas for longer periods of time in the fall. In addition, improvement of habitat quality from ongoing habitat projects will likely result in an increase in some game populations and positively affect the hunting experience for many. Also, the CCP calls for an increase in land acquisition over time, opening several thousand acres to all forms of public hunting. For example, in 2005, an additional 2,000 acres was open to public hunting at the Lost Mound Unit, Savanna District, due to acquisition of the former Savanna Army Depot.

We estimate that hunting visits will increase 10 percent over the 15-year life of the CCP due to overall long-term trends in hunter visits, expected improvements to the hunting experience, and a better distribution of waterfowl and, thus, hunting opportunity. We predict these regulations to have a corresponding increase in positive economic impact as reflected in Table 1 below.

Table 1 shows the expected change by the end of the 15-year life of the CCP resulting from the implementation of the 2007–2008 hunting regulations compared with FY 2003 for the 19-county area on and adjacent to the refuge. We expect annual hunting visitation to increase by 10 percent resulting in 26,362 more hunter visits. Retail expenditures associated with this increased visitation total \$520,399 with total economic output (based on an output multiplier of 1.23 for the 19-county region impacted by the refuge) of \$642,526. An additional nine jobs with associated income of \$145,343 occur along with an additional \$68,909 in Federal and State tax revenue.

TABLE 1.—ANNUAL ECONOMIC IMPACTS OF 2007–2008 HUNTING AND FISHING REGULATIONS COMPARED WITH FY 2003 IMPACTS: HUNTING VISITORS  
[2003 Dollars]

Impacts	FY 2003	2007–2008 Regulations (change from FY 2003 for 15-year span of CCP)
Hunting Visitors .....	263,623	+26,362
Expenditures .....	\$5,203,988	+\$520,399
Economic Output .....	\$6,425,261	+\$642,526
Jobs .....	87	9
Job Income .....	\$1,453,433	+\$145,343
Federal and State Taxes .....	\$689,090	+\$68,909

These regulations will have several effects on current fishing opportunities on the refuge. A minimum of approximately 140,000 acres of water will remain open to year-round fishing,

a decrease of about 500 acres from existing conditions. This decrease will be due to changes in waterfowl sanctuaries where we allow no entry during the respective State waterfowl

hunting season. However, effects on fall fishing in approximately 31,000 acres of waterfowl hunting closed area included in voluntary avoidance guidelines will be variable since compliance is

voluntary. In addition, the voluntary avoidance provision is only in effect from October 15 to the end of the respective State waterfowl hunting season when fishing pressure is much reduced.

Overall fishing opportunities will remain abundant, and fishing will be welcome in closed areas during the peak spring, summer, early fall, and winter period. As called for in the CCP, the improvement of habitat quality from ongoing and planned habitat projects will likely result in an increase in some sport fish populations and positively affect the fishing experience for many.

Increased efforts to improve water quality through work with private landowners in tributary watersheds, and more emphasis on control of aquatic invasive species, could also result in increases in sport fish populations and thus fishing success. Despite voluntary guidelines or motor restrictions that may limit fall fishing in waterfowl closed areas, we expect fishing visits to increase 5 percent based on long-term trends in angling visits, improvements in fish habitat, and additional fishing-related facilities. We predict the 2007–2008 regulations to have a

corresponding increase in positive economic impact as reflected in Table 2. Table 2 shows the expected change by the end of the 15-year CCP lifespan resulting from the implementation of the 2007–2008 fishing regulations compared with FY 2003 in the 19-county area. We expect the annual number of fishing visitors to increase by 60,696, with associated retail expenditures of \$1,478,817 and total economic output of \$1,811,153. We associate these expenditures and output with 24 jobs and \$405,965 in job-related income. Federal and State tax revenue would increase by \$194,241.

TABLE 2.—ANNUAL ECONOMIC IMPACTS OF 2007–2008 HUNTING AND FISHING REGULATIONS COMPARED WITH FY 2003 IMPACTS: FISHING VISITORS  
[2003 Dollars]

Impacts	FY 2003	2007–2008 Regulations (change from FY 2003 for 15-year span of CCP)
Fishing Visitors .....	1,213,916	+60,696
Expenditures .....	\$29,576,333	+\$1,478,817
Economic Output .....	\$36,223,053	+\$1,811,153
Jobs .....	483	24
Job Income .....	\$8,119,297	+\$405,965
Federal and State Taxes .....	\$3,884,811	+\$194,241

b. This rule will not create inconsistencies with other agencies' actions. This action pertains solely to the management of the Refuge System. The fishing and hunting activities located on national wildlife refuges account for approximately 1 percent of the available supply in the United States. Any small, incremental change in the supply of fishing and hunting opportunities will not measurably impact any other agency's existing programs.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule does not affect entitlement programs. There are no grants or other Federal assistance programs associated with public use on national wildlife refuges.

d. This rule will not raise novel legal or policy issues that were not addressed in the Final EIS. This rule continues the practice of allowing recreational public use of the refuge. Many refuges in the Refuge System currently have opportunities for the public to hunt and fish on refuge lands.

**Regulatory Flexibility Act**

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601, et

seq.), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for "significant impact" and a threshold for a "substantial number of small entities." See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. Therefore, we certify that this action would not have a significant economic impact on a substantial number of small entities.

This rule does not increase the number of recreation types allowed on the refuge but amends hunting and fishing regulations on the refuge. As a result, opportunities for hunting and

fishing recreation on the refuge will remain abundant and increase over time.

Many small businesses within the retail trade industry (such as hotels, gas stations, taxidermy shops, bait and tackle shops, etc.) may benefit from some increased refuge visitation. A large percentage of these retail trade establishments in the majority of affected counties qualify as small businesses (Table 3).

We expect that the incremental recreational opportunities will be scattered, and so we do not expect that the rule will have a significant economic effect (benefit) on a substantial number of small entities in any given community or county. Using the estimate derived in the **Regulatory Planning and Review** section, we expect recreationists to spend an additional \$2 million annually in total in the refuges' local economies. As shown in Table 3, this represents 0.02 percent of the total amount of retail expenditures in the 19-county area. For comparison purposes, the county with the smallest retail expenditure total, Buffalo County in Wisconsin, is shown. If the entire retail trade expenditures associated with the 2007–2008 hunting and fishing regulations occurred in Buffalo County,



this would amount to 3.4 percent increase in annual retail expenditures.

TABLE 3.—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FROM 2007–2008 HUNTING AND FISHING REGULATIONS

	Retail trade in 2002	Change due to 2007–2008 hunting and fishing regulations (15-year span of CCP)	Change as percent of total retail trade	Total number of retail establishments	Establishments with fewer than 10 employees
19 County Area .....	\$9.8 billion .....	\$1,999,216	0.02%	24,878	17,957
Buffalo County WI .....	\$58.3 million .....	1,999,216	3.4	350	290

### Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no significant employment or small business effects. This rule:

a. Will not have an annual effect on the economy of \$100 million or more. By the end of the 15-year CCP lifespan, the additional fishing and hunting opportunities on the refuge will generate an additional \$2 million in angler and hunter expenditures with an economic impact estimated at \$2.5 million per year (2003 dollars). Consequently, the maximum benefit of this rule for businesses both small and large will not be sufficient to make this a major rule. The impact will be scattered across 19 counties and will most likely not be significant in any local area.

b. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. We do not expect this rule to affect the supply or demand for fishing and hunting opportunities in the United States and, therefore, it should not affect prices for fishing and hunting equipment and supplies, or the retailers that sell equipment. Additional refuge hunting and fishing opportunities will account for less than 0.0001 percent of the available opportunities in the United States.

c. 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. This rule represents only a small proportion of recreational spending of a small number of affected anglers and hunters, approximately a maximum of \$2.5 million annually in impact (economic output). Therefore, this rule will have no measurable economic effect on the wildlife-dependent

industry, which has annual sales of equipment and travel expenditures of over \$72 billion nationwide.

### Unfunded Mandates Reform Act

Since this rule applies to public use of a federally owned and managed refuge, it will not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

### Takings (E.O. 12630)

In accordance with E.O. 12630, this rule will not have significant takings implications. These regulations will affect only visitors to the refuge and describe what they can do while they are on the refuge.

### Federalism (E.O. 13132)

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment under E.O. 13132. In preparing the CCP for the refuge, we worked closely with the four States bordering the refuge, and this rule reflects the CCP.

### Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. This rule clarifies established regulations and results in better understanding of the regulations by refuge visitors.

### Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued 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. Because this rule is a modification of an existing hunting and fishing program on the refuge, it is not a significant regulatory action under E.O. 12866, and we do not expect it to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

### Consultation and Coordination with Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on national wildlife refuges with Tribal governments having adjoining or overlapping jurisdiction before we propose changes to the regulations. During scoping and preparation of the Final EIS, we contacted 35 Indian tribes to inform them of the process and seek their comments.

### Paperwork Reduction Act

This regulation does not contain any information collection requirements other than those already approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (OMB Control Number is 1018–0102). See 50 CFR 25.23 for information concerning that approval. An agency 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.

**Endangered Species Act Section 7 Consultation**

During preparation of the Final EIS, we completed a section 7 consultation and determined that the preferred alternative, which included hunting and fishing changes reflected in this rule, is not likely to adversely effect individuals of listed or candidate species or designated critical habitat of such species. The Service's Ecological Services Office concurred with this determination. Listed species on the refuge at the time of the determination were the Higgins eye mussel and bald eagle (the bald eagle was removed from the Federal List of Endangered and Threatened Wildlife on August 9, 2007); candidate species are the Eastern massasauga and spectaclegace and sheepsnose mussels. A copy of the section 7 evaluation and accompanying biological assessment is available from any of the refuge offices listed in the **Available Information for Specific Districts of the Refuge** section of this document.

**National Environmental Policy Act**

Concerning the actions that are the subject of this rulemaking, we have complied with NEPA through the preparation of a Final EIS and Record of Decision which include the major hunting and fishing changes reflected in this rule. The NEPA documents are available on our Web site at <http://www.fws.gov/midwest/planning/uppermiss>.

**Effective Date and Notice**

This rule is effective upon filing in the **Federal Register**. We have determined that any further delay in implementing these refuge-specific hunting and sport fishing regulations would not be in the public interest, in that a delay would hinder the effective planning and administration of the hunting and sport fishing programs this season or shorten their duration and thereby lessen the management effectiveness of this regulation. This rule does not impact the public generally in terms of requiring lead time for compliance. These regulations implement management decisions made and published in the final Comprehensive Conservation Plan adopted October 24, 2006, giving refuge users and affected public significant advance notice (see **SUPPLEMENTARY INFORMATION**). Therefore, we find good cause under 5 U.S.C. 553(d)(3) to make this rule effective upon date of filing.

**Available Information for Specific Districts of the Refuge**

The refuge is divided into four districts for management, administrative, and public service effectiveness and efficiency. These districts correspond to two or more Mississippi River pools created by the series of locks and dams on the river. District offices are located in Winona, Minnesota (Pools 4–6), La Crosse, Wisconsin (Pools 7–8), McGregor, Iowa (Pools 9–11), and Savanna, Illinois (Pools 12–14). If you are interested in specific information pertaining to a particular closed area, no hunting zone, managed hunt, or other feature discussed in this rule, you may contact the appropriate district office listed below:

Winona District, U.S. Fish and Wildlife Service, 51 East Fourth Street, Room 203, Winona, MN 55987; Telephone (507) 454–7351.

La Crosse District, U.S. Fish and Wildlife Service, 555 Lester Avenue, Onalaska, WI 54650; Telephone (608) 783–8405.

McGregor District, U.S. Fish and Wildlife Service, P.O. Box 460, McGregor, IA 52157; Telephone (563) 873–3423.

Savanna District, U.S. Fish and Wildlife Service, 7071 Riverview Road, Thomson, IL 61285; Telephone (815) 273–2732.

**Primary Author**

Don Hultman, Refuge Manager, Upper Mississippi River National Wildlife and Fish Refuge, is the primary author of this rulemaking document.

**List of Subjects in 50 CFR Part 32**

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

■ For the reasons set forth in the preamble, we amend title 50, Chapter I, subchapter C of the Code of Federal Regulations as follows:

**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–668ee, and 715i.

■ 2. Amend § 32.32 Illinois by revising Upper Mississippi River National Wildlife and Fish Refuge to read as follows:

**§ 32.32 Illinois.**

\* \* \* \* \*

**Upper Mississippi River National Wildlife and Fish Refuge**

Refer to § 32.42 Minnesota for regulations.

■ 3. Amend § 32.34 Iowa by revising Upper Mississippi River National Wildlife and Fish Refuge to read as follows:

**§ 32.34 Iowa.**

\* \* \* \* \*

**Upper Mississippi River National Wildlife and Fish Refuge**

Refer to § 32.42 Minnesota for regulations.

■ 4. Amend § 32.42 Minnesota by revising Upper Mississippi River National Wildlife and Fish Refuge to read as follows:

**§ 32.42 Minnesota.**

\* \* \* \* \*

**Upper Mississippi River National Wildlife and Fish Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds on areas designated by the refuge manager and shown on maps available at refuge offices in accordance with State regulations. We prohibit migratory bird hunting March 16 through August 31 each year. All migratory bird hunting is subject to the following conditions:

1. You must possess a hunting license valid in the State in which you are hunting and be in compliance with all applicable State and Federal regulations and requirements (see § 32.2). You cannot reserve hunting areas, except at Potter's Marsh Managed Hunt Area, Pool 13, near Thomson, Illinois, in accordance with procedures established by the refuge manager.

2. In areas posted and shown on maps as "No Entry—Sanctuary," we prohibit migratory bird hunting at all times and all public entry except as specified. These areas are named and located as follows:

- i. Pool Slough, Pool 9, Minnesota/Iowa, 1,112 acres.
- ii. Bertom Island, Pool 11, Wisconsin, 31 acres.
- iii. Guttenberg Ponds, Pool 11, Iowa, 252 acres.
- iv. Spring Lake, Pool 13, Illinois, 3,686 acres.

3. In areas posted and shown on maps as "Area Closed" and "Area Closed—No Motors," we prohibit migratory bird hunting at all times. We ask that you practice voluntary avoidance of these areas by any means or for any purpose from October 15 to the end of the respective State duck season. In areas also marked "no motors," we prohibit

the use of motors on watercraft from October 15 to the end of the respective State duck season.

These "Area(s) Closed" are named and located as follows:

i. Nelson-Trevino, Pool 4, Wisconsin, 3,773 acres (no voluntary avoidance provision).

ii. Peterson Lake, Pool 4, Minnesota/Wisconsin, 3,111 acres (no voluntary avoidance provision).

iii. Weaver Bottoms/Lost Island, Pool 5, Minnesota/Wisconsin, 3,508 acres.

iv. Polander Lake, Pool 5A,

Minnesota/Wisconsin, 1,907 acres.

v. Lake Onalaska, Pool 7, Wisconsin, 7,369 acres (voluntary avoidance on 3,356 acres until mid-November).

vi. Wisconsin Islands, Pool 8,

Minnesota/Wisconsin, 6,510 acres.

vii. Harpers Slough, Pool 9, Iowa/Wisconsin, 5,209 acres.

viii. Wisconsin River Delta, Pool 10, Wisconsin, 1,406 acres (closed November 1 to end of duck season).

ix. 12-Mile Island, Pool 11, Iowa, 1,145 acres.

x. Bertom-McCartney, Pool 11, Wisconsin, 2,384 acres (no voluntary avoidance provision).

xi. Pleasant Creek, Pool 13, Iowa, 2,067 acres.

xii. Elk River, Pool 13, Iowa, 1,237 acres.

The "Area(s) Closed—No Motors" are named and located as follows:

xiii. Spring Lake, Pool 5, Wisconsin, 243 acres.

xiv. Sturgeon Slough, Pool 10, Wisconsin, 340 acres.

xv. 12-Mile Island, Pool 10, Iowa, 540 acres.

xvi. John Deere Marsh, Pool 11, Iowa, 439 acres.

xvii. Kehough Slough, Pool 12, Illinois, 343 acres.

xviii. Beaver Island, Pool 14, Iowa, 717 acres.

4. In areas posted and shown on maps as "No Hunting Zone" or "No Hunting or Trapping Zone," we prohibit migratory bird hunting at all times. You must unload and encase firearms in these areas. These areas are named and located as follows:

i. Upper Halfway Creek Marsh, Pool 7, Wisconsin, 141 acres.

ii. Hunter's Point, Pool 8, Wisconsin, 82 acres.

iii. Goose Island, Pool 8, Wisconsin, 986 acres (also no motors and voluntary avoidance as in condition A3).

iv. Sturgeon Slough, Pool 10, Wisconsin, 66 acres.

v. Goetz Island Trail, Pool 11, Iowa, 32 acres.

vi. Crooked Slough Backwater, Pool 13, Illinois, 2,467 acres.

vii. Crooked Slough Proper, Pool 13, Illinois, 192 acres.

viii. Frog Pond, Pool 13, Illinois, 64 acres.

ix. Ingersoll Learning Center, Pool 13, Illinois, 41 acres.

5. We prohibit hunting of migratory birds within 50 yards (45 m) of the Great River Trail at Thomson Prairie, within 150 yards (135 m) of the Great River Trail at Mesquaki Lake, and within 400 yards (360 m) of the Potter's Marsh Managed Hunt area, all in or near Pool 13, Illinois.

6. You may retrieve dead or wounded game from areas posted "Area Closed," "No Hunting Zone," and "No Hunting or Trapping Zone" provided you do not take a loaded gun into the area and do not attempt to chase birds from the area. You may not use a motor to aid in the retrieval of game in areas posted "Area Closed—No Motors." You may not retrieve birds or other game from areas posted "No Entry—Sanctuary."

7. You may not engage in open-water waterfowl hunting in Pool 11, approximate river miles 586–592, Grant County, Wisconsin as marked with signs and as shown on refuge maps. Open-water hunting regulations and definitions that apply for Wisconsin outside of Grant County will apply in this area.

8. You may possess only approved nontoxic shot shells while in the field (see § 32.2(k)).

9. We allow the use of dogs for hunting in accordance with State regulations. When dogs are not actively engaged in authorized hunting activities, the following conditions apply:

i. We prohibit dogs disturbing or endangering wildlife or people while on the refuge.

ii. All dogs while on the refuge must be under the control of their owners/handlers at all times or on a leash.

iii. We prohibit allowing dogs to roam.

iv. All dogs must be on a leash when on hiking trails, or other areas so posted.

v. We allow working a dog in refuge waters by tossing a retrieval dummy or other object for out-and-back exercise.

vi. Owners/handlers of dogs are responsible for disposal of dog droppings on refuge public use concentration areas such as trails, sandbars, and boat landings.

vii. We prohibit field trials and commercial/professional dog training.

10. We prohibit the construction of permanent hunting blinds (see § 27.92 of this chapter). You may use natural material for seasonal blinds, with restrictions. You may gather grasses and marsh vegetation from the refuge for blind-building materials; however, Phragmites (giant cane) may not be cut

or brought onto the refuge. You may not gather, bring onto the refuge, or use for blind building tree(s) or other plant parts, including dead wood on the ground, greater than 2 inches (5 cm) in diameter. We prohibit constructing hunting blinds from rocks placed for shoreline protection (rip rap). You may leave only seasonal blinds made entirely of natural vegetation and biodegradable twines on the refuge. We consider all such blinds public property and open to use by any person on a first-come-first-served basis. You may use manmade material for temporary blinds, with restrictions. You may not use lumber, pipe, posts, or timbers greater than 2 inches (5 cm) in diameter. At the end of each day's hunt, you must remove all manmade blind materials, including boat blinds. Any blinds containing manmade materials left on the refuge are subject to immediate removal and disposal. Manmade materials include, but are not limited to, wooden pallets, metal fence posts, wire, nails, staples, netting, or tarps (see §§ 27.93 and 27.94 of this chapter).

11. We will phase out the construction and use of permanent hunting blinds for waterfowl hunting within the Savanna District of the refuge. We will no longer allow permanent blinds on the refuge in Pool 12 beginning with the 2007–2008 waterfowl hunting season, Pool 14 after the 2007–2008 season, and Pool 13 after the 2008–2009 season. The following regulations apply for phase out of permanent hunting blinds:

i. All permanent blinds must have the current name, address, and telephone number of the blind owner, posted no smaller than 3" x 5" (7.5 cm x 12.5 cm) inside the blind.

ii. The blind's owner must remove from the refuge all blind materials, including old blind materials located within 100 yards (90 m) of the blind, within 30 days of the end of the waterfowl hunting season.

iii. After the phase-out year of permanent blinds in each pool, refuge hunting blind regulations in Condition A10 will apply, except that we require a 200-yard (180-m) spacing distance between hunting parties on the Illinois portions of the refuge in Pools 12, 13, and 14.

12. You may set up hunting equipment the day of the hunt but must remove it at the end of each day. You may place and leave hunting equipment and decoys on the refuge only from 1 hour before the start of legal shooting hours until ½ hour after the close of legal shooting hours. You may not use nails, wire, screws, or bolts to attach a stand to a tree, or hunt from a tree into

which a metal object has been driven or screwed for support (see § 32.2(i) and § 27.93 of this chapter).

13. We prohibit the cutting, removing, or damaging of any tree or other vegetation except as allowed for blinds in Condition A10 or by written permit. You may not clear vegetation for shooting lanes or limb trees for trees stands (see § 27.51 of this chapter).

14. We prohibit camping during waterfowl hunting seasons within areas posted "No Entry—Sanctuary," "Area Closed," "Area Closed—No Motors," and "No Hunting Zone" or on any sites not clearly visible from the main commercial navigation channel of the Mississippi River. We define camping as erecting a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, parking of a motor vehicle, or mooring or anchoring of a vessel for the apparent purpose of overnight occupancy, or occupying or leaving personal property, including boats or other craft, at a site anytime between the hours of 11 p.m. and 3 a.m. on any given day. Where we allow camping, you must occupy claimed campsites each night.

15. We prohibit the building or use of warming fires while hunting (see § 27.95 of this chapter). We only allow campfires in conjunction with camping, day-use activities on beaches, or on the ice while ice fishing using only dead wood on the ground, or materials brought onto the refuge such as charcoal or firewood. You must remove any unused firewood brought onto the refuge upon departure due to threat of invasive insects.

16. We prohibit all vehicle use on or across refuge lands at any time except on designated routes of travel or on the ice over navigable waters accessed from boat landings. We prohibit parking beyond vehicle control barriers or on grass or other vegetation. You may not park or operate vehicles in a manner that obstructs or impedes any road, trail, fire lane, boat ramp, access gate, or other facility or in a manner that creates a safety hazard or endangers any person, property, or environmental feature. We may impound any vehicle left parked in violation at the owner's expense (see § 27.31 of this chapter).

17. We require that you keep all refuge lands clean during your period of use or occupancy. At all times you must keep all refuse, trash, and litter contained in bags or other suitable containers and not left scattered on the ground or in the water. You must remove all personal property, refuse, trash, and litter immediately upon vacating a site. We consider animal

carcasses and spent shells to be litter (see § 27.94 of this chapter).

*B. Upland Game Hunting.* We allow hunting of upland game on areas of the refuge designated by the refuge manager and shown on maps available at refuge offices in accordance with State regulations. We prohibit upland game hunting from March 16 through August 31 each year except for spring wild turkey hunting, and squirrel hunting on the Illinois portion of the refuge. All upland game hunting is subject to the following conditions:

1. Condition A1 applies.

2. We prohibit the carrying, possessing, or discharging of firearms (including dog training pistols and dummy launchers), air guns, or any other weapons on the refuge, unless you are a licensed hunter or trapper engaged in authorized activities during established seasons, in accordance with Federal, State, and local regulations. We prohibit target practice on the refuge (see §§ 27.42 and 27.43 of this chapter).

3. In areas posted and shown on maps as "No Entry—Sanctuary," we prohibit entry and upland game hunting at all times. In areas posted and shown on maps as "No Entry—Sanctuary October 1 to end of state duck hunting season," we allow upland game hunting beginning the day after the respective State duck hunting season until upland game season closure or March 15, whichever comes first, except we allow spring turkey hunting during State seasons. We describe these areas more fully in Condition A2.

4. In areas posted and shown on maps as "Area Closed" and "Area Closed—No Motors," we allow upland game hunting beginning the day after the respective State duck hunting season until upland game season closure or March 15, whichever comes first, except we allow spring turkey hunting during State seasons. We ask that you practice voluntary avoidance of these areas by any means or for any purpose from October 15 to the end of the respective State duck season. In areas also marked "Area Closed—No Motors," we prohibit the use of motors on watercraft from October 15 to the end of the respective State duck season. We describe these areas more fully in Condition A3.

5. In areas posted and shown on maps as "No Hunting Zone" or "No Hunting or Trapping Zone," we prohibit upland game hunting at all times. You must unload and encase firearms in these areas. We describe these areas more fully in Condition A4.

6. We prohibit hunting of upland game within 50 yards (45 m) of the Great River Trail at Thomson Prairie, within 150 yards (135 m) of the Great

River Trail at Mesquaki Lake, and within 400 yards (360 m) of the Potter's Marsh Managed Hunt area, all in or near Pool 13, Illinois.

7. You may only use or possess approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k)).

8. We prohibit the shining of a light to locate any animal on the refuge except at the point of kill for species specified in respective State night or artificial light hunting regulations (see § 27.73 of this chapter). You may use lights to find your way. We prohibit the distribution of bait or feed, the hunting over bait or feed, and the use or possession of any drug on any arrow for bow hunting (see § 32.2(g) and (h)). You must comply with all other hunt method regulations of the respective State on the refuge.

9. Conditions A6, A9, A10, and A12 through A17 apply.

*C. Big Game Hunting.* We allow hunting of big game on areas of the refuge designated by the refuge manager and shown on maps available at refuge offices in accordance with State regulations. We prohibit big game hunting from March 16 through August 31 each year. All big game hunting is subject to the following conditions:

1. Conditions A1 and B2 apply.

2. In areas posted and shown on maps as "No Entry—Sanctuary," we prohibit entry and big game hunting at all times. In areas posted and shown on maps as "No Entry—Sanctuary October 1 to end of state duck hunting season," we allow big game hunting beginning the day after the respective State duck hunting season until big game season closure or March 15, whichever comes first. We describe these areas more fully in Condition A2.

3. In areas posted and shown on maps as "Area Closed" and "Area Closed—No Motors" we allow big game hunting beginning the day after the respective State duck hunting season until big game season closure or March 15, whichever comes first. We ask that you practice voluntary avoidance of these areas by any means or for any purpose from October 15 to the end of the respective State duck season. In areas also marked "Area Closed—No Motors," we prohibit the use of motors on watercraft from October 15 to the end of the respective State duck season. These areas are described more fully in Condition A3.

4. In areas posted and shown on maps as "No Hunting Zone" or "No Hunting or Trapping Zone," we prohibit big game hunting at all times. You must unload and encase firearms in these

areas. We describe these areas more fully in Condition A4.

5. We prohibit hunting of big game within 50 yards (45 m) of the Great River Trail at Thomson Prairie, within 150 yards (135 m) of the Great River Trail at Mesquaki Lake, and within 400 yards (360 m) of the Potter's Marsh Managed Hunt area, all in or near Pool 13, Illinois.

6. Conditions A6, A9, A10, A12 through A17, and B7 apply.

*D. Sport Fishing.* We allow fishing on areas of the refuge designated by the refuge manager and shown on refuge maps available at refuge offices in accordance with State regulations subject to the following conditions:

1. In the Bertrom Island "No Entry—Sanctuary" area, Pool 11, Wisconsin we prohibit entry and fishing at all times.

2. In the Spring Lake "Area Closed" area, Pool 13, Illinois, we prohibit fishing from October 1 until the day

after the close of the State duck hunting season.

3. In areas posted and shown on maps as "Area Closed" and "Area Closed—No Motors," we allow fishing; however, we ask that you practice voluntary avoidance of these areas by any means or for any purpose from October 15 to the end of the respective State duck season. In areas also marked "Area Closed—No Motors," we prohibit the use of motors on watercraft from October 15 to the end of the respective State duck season. We describe these areas more fully in Condition A3.

4. On Mertes Slough, Pool 6, Wisconsin, we allow only hand-powered boats or boats with electric motors.

5. For the purpose of determining length limits, slot limits, and daily creel limits, the impounded areas of Spring Lake, Duckfoot Marsh, and Pleasant Creek in Pool 13, Illinois, are part of the

Mississippi River site-specific State regulations.

6. Conditions A10, and A13 through A17 apply.

\* \* \* \* \*

■ 5. Amend § 32.69 Wisconsin by revising Upper Mississippi River National Wildlife and Fish Refuge to read as follows:

**§ 32.69 Wisconsin.**

\* \* \* \* \*

**Upper Mississippi River National Wildlife and Fish Refuge**

Refer to § 32.42 Minnesota for regulations.

\* \* \* \* \*

Dated: August 24, 2007.

**Todd Willens,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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