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50 CFR Part 92

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for
Migratory Birds in Alaska During the 2012 Season; Proposed Rule

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 92**

[Docket No. FWS-R7-MB-2011-0090;
91200-1231-9BPP-L2]

RIN 1018-AX55

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2012 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) proposes migratory bird subsistence harvest regulations in Alaska for the 2012 season. These regulations will enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking proposes region-specific regulations that go into effect on April 2, 2012, and expire on August 31, 2012.

DATES: We will accept comments received or postmarked on or before January 3, 2012. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by December 19, 2011.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-R7-MB-2011-0090.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R7-MB-2011-0090; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We will not accept email or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comment Procedures section below for more information).

FOR FURTHER INFORMATION CONTACT: Fred Armstrong, (907) 786-3887, or Donna

Dewhurst, (907) 786-3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

SUPPLEMENTARY INFORMATION:**Public Comment Procedures**

To ensure that any final action resulting from this proposed rule will be as accurate and as effective as possible, we request that you send relevant information for our consideration. The comments that will be most useful and likely to influence our decisions are those that you support by quantitative information or studies and those that include citations to, and analyses of, the applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

You must submit your comments and materials concerning this proposed rule by one of the methods listed above in the **ADDRESSES** section. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information, such as your address, telephone number, or email address—will be posted on the Web site. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

If you mail or hand-carry a hardcopy comment directly to us that includes personal information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy comments on <http://www.regulations.gov>.

In addition, comments and materials we receive, as well as supporting documentation used in preparing this proposed rule, will be available for public inspection in two ways:

(1) You can view them on <http://www.regulations.gov>. Search for FWS-R7-MB-2011-0090, which is the docket number for this rulemaking.

(2) You can make an appointment, during normal business hours, to view the comments and materials in person at the Division of Migratory Bird

Management, U.S. Fish and Wildlife Service; 4501 N. Fairfax Drive Room 4107, Arlington, VA 22203-1610.

Public Availability of Comments

As stated above in more detail, before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Why is this rulemaking necessary?

This rulemaking is necessary because, by law, the migratory bird harvest season is closed unless opened by the Secretary of the Interior, and the regulations governing subsistence harvest of migratory birds in Alaska are subject to public review and annual approval. This rule proposes regulations for the taking of migratory birds for subsistence uses in Alaska during the spring and summer of 2012. This rule proposes a list of migratory bird season openings and closures in Alaska by region.

How do I find the history of these regulations?

Background information, including past events leading to this rulemaking, accomplishments since the Migratory Bird Treaties with Canada and Mexico were amended, and a history, was originally addressed in the **Federal Register** on August 16, 2002 (67 FR 53511) and most recently on March 29, 2011 (76 FR 17353).

Recent **Federal Register** documents, which are all final rules setting forth the annual harvest regulations, are available at <http://alaska.fws.gov/ambcc/regulations.htm> or by contacting one of the people listed under **FOR FURTHER INFORMATION CONTACT**.

What is the process for issuing regulations for the subsistence harvest of migratory birds in Alaska?

The U.S. Fish and Wildlife Service (Service or we) proposes to establish migratory bird subsistence harvest regulations in Alaska for the 2012 season. These regulations will enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These proposed regulations were developed under a co-management process

involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives.

We opened the process to establish regulations for the 2012 spring and summer subsistence harvest of migratory birds in Alaska in a proposed rule published in the **Federal Register** on April 8, 2011 (76 FR 19876). While that proposed rule dealt primarily with the regulatory process for hunting migratory birds for all purposes throughout the United States, we also discussed the background and history of Alaska subsistence regulations, explained the annual process for their establishment, and requested proposals for the 2012 season. The rulemaking processes for both types of migratory bird harvest are related, and the April 8, 2011, proposed rule explained the connection between the two.

The Alaska Migratory Bird Co-management Council (Co-management Council) held a meeting in June 2011 to develop recommendations for changes that would take effect during the 2012 harvest season. These recommendations were presented first to the Flyway Councils and then to the Service Regulations Committee at the committee's meeting on July 27 and 28, 2011.

Who is eligible to hunt under these regulations?

Eligibility to harvest under the regulations established in 2003 was limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, and in areas north and west of the Alaska Range (50 CFR 92.5). These geographical restrictions opened the initial migratory bird subsistence harvest to about 13 percent of Alaska residents. High populated areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, and Southeast Alaska were excluded from eligible subsistence harvest areas.

Based on petitions requesting inclusion in the harvest, in 2004, we added 13 additional communities based on criteria set forth in 50 CFR 92.5(c). These communities were Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina, Tatitlek, Chenega, Port Graham, Nanwalek, Tyonek, and Hoonah, with a combined population of 2,766. In 2005, we added three additional communities for glaucous-winged gull egg gathering only, based on petitions requesting inclusion. These southeastern communities were Craig, Hydaburg, and

Yakatat, with a combined population of 2,459, based on the latest census information at that time.

In 2007, we enacted the Alaska Department of Fish and Game's request to expand the Fairbanks North Star Borough excluded area to include the Central Interior area. This action excluded the following communities from participation in this harvest: Big Delta/Fort Greely, Healy, McKinley Park/Village, and Ferry, with a combined population of 2,812.

What is different in the region-specific regulations for 2012?

Regulations proposed in this rule are identical to those for the 2011 harvest season. However, at the June 2, 2011 Co-Management Council meeting, the Yukon/Kuskokwim Delta and Kodiak Archipelago regional representatives requested to remove their respective regions from 2012 regulations by not approving the consent agenda. Annually, the migratory bird subsistence season in Alaska is closed until regulations are passed that open the upcoming season. If regulations do not change from year to year, the 11 Alaska regions opt to vote a consent agenda whereby regulations from the previous year (2011) are accepted for the following year (2012).

The justification provided at the Co-Management Council Meeting by the Yukon/Kuskokwim Delta representative was that the region could not support regulations that included the duck stamp requirement. The representative indicated that there was a conflict in the application of other federal requirements to the Alaska Migratory Bird Co-Management Council (AMBCC) regulations and that the Federal Government does not take into consideration other Native laws that could apply to the regulatory program. The representative also indicated that there is widespread opposition to the Federal duck stamp requirement and that he does not support any regulation requiring the Federal duck stamp to hunt waterfowl.

The justification provided by the Kodiak Archipelago Representative was that the Kodiak Island representative expressed concerns that he was not familiar with the AMBCC process and was not familiar with the history of the regional regulations. In discussions with local elders he indicated that they are not supportive of the closure areas or dates and could not support them. He indicated that there is egg gathering in the Kodiak Island region and that was another reason why he could not support a closure that would stop that activity.

After the Co-Management Council meeting, the Alaska Regional Director and his staff contacted both regional representatives to inform them that the Service Regulations Committee would have to implement regulations to provide harvest opportunities for subsistence users who take migratory birds in those areas and elsewhere. The Service Regulations Committee met on July 28, 2011, and does not support the lack of subsistence regulations in the Yukon-Kuskokwim and Kodiak Archipelago Regions. Therefore, the Service is proposing to continue the 2011 regulations for those two regions through the 2012 season without change. Justification to propose these regulations was to provide a continuity of the regulations affecting subsistence harvesters in those areas.

How will the service ensure that the subsistence harvest will not raise overall migratory bird harvest or threaten the conservation of endangered and threatened species?

We have monitored subsistence harvest for the past 25 years through the use of annual household surveys in the most heavily used subsistence harvest areas, such as the Yukon-Kuskokwim Delta. In recent years, more intensive surveys combined with outreach efforts focused on species identification have been added to improve the accuracy of information gathered from regions still reporting some subsistence harvest of listed or candidate species.

Spectacled and Steller's Eiders

Spectacled eiders (*Somateria fischeri*) and the Alaska-breeding population of Steller's eiders (*Polysticta stelleri*) are listed as threatened species; their migration and breeding distribution overlap with areas where the spring and summer subsistence migratory bird hunt is open in Alaska. Both species are closed to hunting, although harvest surveys and Service documentation indicate both species have been taken in several regions of Alaska.

The Service has dual goals and responsibilities for authorizing a subsistence harvest while protecting migratory birds and threatened species. Although these goals continue to be challenging, they are not irreconcilable, providing sufficient recognition is given to the need to protect threatened species, measures to remedy documented threats are implemented, and the subsistence community and other conservation partners commit to working together. With these dual goals in mind, the Service, working with partners, developed measures in 2009 to further reduce the potential for shooting

mortality or injury of closed species. These conservation measures included: (1) Increased waterfowl hunter outreach and community awareness through partnering with the North Slope Migratory Bird Task Force; (2) continued enforcement of the migratory bird regulations that are protective of listed eiders; and (3) in-season Service verification of the harvest to detect Steller's eider mortality.

This proposed rule continues to focus on the North Slope from Barrow through Point Hope because Steller's eiders from the listed Alaska breeding population are known to breed and migrate there. These proposed regulations were designed to address several ongoing eider management needs by clarifying for subsistence users that (1) Service law enforcement personnel have authority to verify species of birds possessed by hunters, and (2) it is illegal to possess any bird closed to harvest. This proposal also describes how the Service's existing authority of emergency closure would be implemented, if necessary, to protect Steller's eiders. We are willing to discuss many of the proposed regulations with our partners on the North Slope to ensure the proposed regulations protect closed species as well as provide subsistence hunters an opportunity to harvest migratory birds in a way that maintains the culture and traditional harvest of the community. The proposed regulations pertaining to bag checks and possession of illegal birds are deemed necessary to verify compliance with not harvesting protected eider species.

The Service is aware and appreciates the considerable efforts by North Slope partners to raise awareness and educate hunters on Steller's eider conservation via the bird fair, meetings, radio shows, signs, school visits, and one-on-one contacts. We also recognize that no listed eiders have been documented shot in the last 3 years, even with the first significant breeding season for Steller's eiders occurring in the Barrow area this past summer. The Service acknowledges progress made with the other eider conservation measures including partnering with the North Slope Migratory Bird Task Force for increased waterfowl hunter awareness, continued enforcement of the regulations, and in-season verification of the harvest. Our primary strategy to reduce the threat of shooting mortality of threatened eiders is to continue working with North Slope partners to conduct education, outreach, and harvest monitoring. In addition, the emergency closure authority provides another level of assurance if an

unexpected amount of Steller's eider shooting mortality occurs (50 CFR 92.21 and proposed 50 CFR 92.32).

In-season harvest monitoring information will be used to evaluate the efficacy of regulations, conservation measures, and outreach efforts. During 2009 through 2011, no Steller's eider harvest was reported on the North Slope, and no Steller's eiders were found shot during in-season verification of the subsistence harvest. Based on these successes, the 2011 conservation measures will also be continued, although there will be some modification of the amount of effort and emphasis each will receive. Specifically, local communities have continued to develop greater responsibility for taking actions to ensure Steller's and spectacled eider conservation and recovery, and based on last year's observations, local hunters have demonstrated greater compliance with hunting regulations.

The longstanding general emergency closure provision at 50 CFR 92.21 specifies that the harvest may be closed or temporarily suspended upon finding that a continuation of the regulation allowing the harvest would pose an imminent threat to the conservation of any migratory bird population. With regard to Steller's eiders, the proposed regulation at 50 CFR 92.32, carried over from the past 2 years, would clarify that we will take action under 50 CFR 92.21 as is necessary to prevent further take of Steller's eiders, and that action could include temporary or long-term closures of the harvest in all or a portion of the geographic area open to harvest. If mortality of threatened eiders occurs, we will evaluate each mortality event by criteria such as cause, quantity, sex, age, location, and date. We will consult with the Co-management Council when we are considering an emergency closure. If we determine that an emergency closure is necessary, we will design it to minimize its impact on the subsistence harvest.

Yellow-Billed Loon and Kittlitz's Murrelet

Yellow-billed loon (*Gavia adamsii*) and Kittlitz's murrelet (*Brachyramphus brevirostris*) are candidate species for listing under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Their migration and breeding distribution overlaps with where the spring and summer migratory bird hunt is open in Alaska. Both species are closed to hunting, and there is no evidence Kittlitz's murrelets are harvested. On the other hand, harvest surveys have indicated that harvest of yellow-billed loons on the North Slope

and St. Lawrence Island does occur. Most of the yellow-billed loons reported harvested on the North Slope were found to be entangled loons salvaged from subsistence fishing nets as described below. The Service will continue outreach efforts in both areas in 2012, engaging partners to improve harvest estimates and decrease take of yellow-billed loons.

Consistent with the request of the North Slope Borough Fish and Game Management Committee and the recommendation of the Co-management Council, this rule proposes to continue through 2012 the provisions originally established in 2005 to allow subsistence use of yellow-billed loons inadvertently entangled in subsistence fishing (gill) nets on the North Slope. Yellow-billed loons are culturally important to the Inupiat Eskimo of the North Slope for use in traditional dance regalia. A maximum of 20 yellow-billed loons may be kept if found entangled in fishing nets in 2012 under this proposed provision. This proposed provision does not authorize intentional harvest of yellow-billed loons, but would allow use of those loons inadvertently entangled during normal subsistence fishing activities.

In 2010, the Service Regulations Committee continued support of this proposal was contingent on the North Slope Borough collaborating with the Service and the Co-Management Council to design and implement in 2011 a scientifically defensible survey to estimate the number of yellow-billed loons entangled in subsistence fishing nets. During June 2011, the North Slope submitted a proposal entitled "Assessment of Yellow-Billed Loons Inadvertently Entangled in Subsistence Fishing Nets in the North Slope Borough" that has been endorsed by the Alaska Department of Fish and Game and the Service. The Service Regulations Committee met on July 28, 2011, and appreciated the efforts by the North Slope Borough to develop a scientifically defensible yellow-billed loon entanglement survey and therefore supported the proposed continuation of the provision to allow subsistence use of up to 20 yellow-billed loons inadvertently caught in subsistence fishing nets.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act (16 U.S.C. 1536) requires the Secretary of the Interior to "review other programs administered by him and utilize such programs in furtherance of the purposes of the Act" and to "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 * * *.” Prior to issuance of annual spring and summer subsistence regulations, we will consult under section 7 of the Endangered Species Act of 1973, as amended (Act), to ensure that the 2012 subsistence harvest is not likely to jeopardize the continued existence of any species designated as endangered or threatened, or modify or destroy its critical habitats, and that the regulations are consistent with conservation programs for those species. Consultation under section 7 of the Act for the annual subsistence take regulations may cause us to change these regulations. Our biological opinion resulting from the section 7 consultation is a public document available from either person listed under **FOR FURTHER INFORMATION CONTACT**.

Statutory Authority

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918, 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to “issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.”

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The proposed rule would legalize a pre-existing subsistence activity, and the resources harvested would be consumed by the harvesters or persons within their local community.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

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. This rule:

(a) Will not have an annual effect on the economy of \$100 million or more. It proposes to legalize and regulate a traditional subsistence activity. It will not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns. The commodities being regulated under this proposed rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this proposed rule derives from the sale of equipment and ammunition to carry out

subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska would qualify as small businesses. We have no reason to believe that this proposed rule will lead to a disproportionate distribution of benefits.

(b) Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This proposed rule does not deal with traded commodities and, therefore, does not have an impact on prices for consumers.

(c) Does 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 proposed rule deals with the harvesting of wildlife for personal consumption. It does not regulate the marketplace in any way to generate effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certified under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this proposed rule will not impose a cost of \$100 million or more in any given year on local, State, or tribal governments or private entities. The proposed rule does 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 is not required. Participation on regional management bodies and the Co-management Council will require travel expenses for some Alaska Native organizations and local governments. In addition, they will assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than \$300,000 per year. In a Notice of Decision (65 FR 16405; March 28, 2000), we identified 12 partner organizations (Alaska Native nonprofits and local governments) to administer the regional programs. The Alaska Department of Fish and Game will also incur expenses for travel to Co-management Council and regional management body meetings. In addition, the State of Alaska will be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed \$100,000 per year, but should not exceed \$150,000 per year. When

funding permits, we make annual grant agreements available to the partner organizations and the Alaska Department of Fish and Game to help offset their expenses.

Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this proposed rule does not have significant takings implications. This proposed rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. We discuss effects of this proposed rule on the State of Alaska in the Unfunded Mandates Reform Act section above. We worked with the State of Alaska to develop these proposed regulations. Therefore, a federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

The Department, in promulgating this proposed rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relations With Native American Tribal Governments

In keeping with the spirit of the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), and Executive Order 13175 (65 FR 67249; November 6, 2000), concerning consultation and coordination with Indian Tribal Governments, we implemented the amended treaty with Canada with a focus on local involvement. The treaty calls for the creation of management bodies to ensure an effective and meaningful role for Alaska's indigenous inhabitants in the conservation of migratory birds. According to the Letter of Submittal, management bodies are to include Alaska Native, Federal, and State of Alaska representatives as equals. They will develop recommendations for among other things: seasons and bag limits, methods and means of take, law enforcement policies, population and harvest monitoring, education program, research and use of traditional knowledge, and habitat protection. The

management bodies will involve village councils to the maximum extent possible in all aspects of management. To ensure maximum input at the village level, we required each of the 11 participating regions to create regional management bodies consisting of at least one representative from the participating villages. The regional management bodies meet twice annually to review and/or submit proposals to the Statewide body.

This proposed rule would legally recognize the subsistence harvest of migratory birds and their eggs for indigenous inhabitants including tribal members. In 1998, we began a public involvement process to determine how to structure management bodies in order to provide the most effective and efficient involvement of subsistence users. We began by publishing in the **Federal Register** stating that we intended to establish management bodies to implement the spring and summer subsistence harvest (63 FR 49707, September 17, 1998). We held meetings with the Alaska Department of Fish and Game and the Native Migratory Bird Working Group to provide information regarding the amended treaties and to listen to the needs of subsistence users. The Native Migratory Bird Working Group was a consortium of Alaska Natives formed by the Rural Alaska Community Action Program to represent Alaska Native subsistence hunters of migratory birds during the treaty negotiations. We held forums in Nome, Kotzebue, Fort Yukon, Allakaket, Naknek, Bethel, Dillingham, Barrow, and Copper Center. We led additional briefings and discussions at the annual meeting of the Association of Village Council Presidents in Hooper Bay and for the Central Council of Tlingit & Haida Indian Tribes in Juneau.

On March 28, 2000, we published in the **Federal Register** (65 FR 16405) a Notice of Decision entitled, "Establishment of Management Bodies in Alaska To Develop Recommendations Related to the Spring/Summer Subsistence Harvest of Migratory Birds." This notice described the way in which management bodies would be established and organized. Based on the wide range of views expressed on the options document, the decision incorporated key aspects of two of the modules. The decision established one Statewide management body consisting of 1 Federal member, 1 State member, and 7 to 12 Alaska Native members, with all components serving as equals.

In the development of this proposed rule, the Service has adopted a policy to involve Alaska tribes in the consultation process to the extent possible. Alaska is

home to more than 230 federally recognized tribes. The majority of tribes are located in rural Alaska which has no road access. Accessibility is limited to air transportation, which is cost prohibitive to conduct face-to-face consultation, especially with over 200 tribes. An important factor to consider is that consulting with tribes prior to the publication of migratory bird subsistence harvest regulations limits our options dramatically. Because of this time constraint, the Service has determined that consultation will be conducted via teleconference. Annually, prior to the publication of a proposed rule, the AMBCC will send out letters to each federally recognized tribe soliciting their input as to whether or not they would like to consult with the Service on upcoming subsistence harvest regulations. The letter will include a request for: (1) Name of the tribe, (2) list of tribal representatives involved in the consultation, (3) contact numbers of the tribal office, and (4) preferred date and time for consultation. The Service is confident that the proposed rule process, which includes a 60-day comment period and the opportunities for tribes to be involved in the rulemaking process through consultation, increases tribal involvement immensely.

Paperwork Reduction Act

This proposed rule has been examined under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and does not contain any new collections of information that require Office of Management and Budget approval. OMB has approved our collection of information associated with the voluntary annual household surveys used to determine levels of subsistence take. The OMB control number is 1018-0124, which expires April 30, 2013. 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.

*National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) Consideration*

The annual regulations and options were considered in the environmental assessment, "Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the 2012 Spring/Summer Harvest," October 25, 2011. Copies are available from either the person listed under **FOR FURTHER INFORMATION CONTACT** or at <http://www.regulations.gov>.

Energy Supply, Distribution, or Use
(Executive Order 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This is not a significant regulatory action under this Executive Order; it would allow only for traditional subsistence harvest and would improve conservation of migratory birds by allowing effective regulation of this harvest. Further, this proposed rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action under Executive Order 13211, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 92

Hunting, Treaties, Wildlife.

Proposed Regulation Promulgation

For the reasons set out in the preamble, we propose to amend title 50, chapter I, subchapter G, of the Code of Federal Regulations as follows:

**PART 92—MIGRATORY BIRD
SUBSISTENCE HARVEST IN ALASKA**

1. The authority citation for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

**Subpart D—Annual Regulations
Governing Subsistence Harvest**

2. Amend subpart D by adding § 92.31 to read as follows:

§ 92.31 Region-specific regulations.

The 2012 season dates for the eligible subsistence harvest areas are as follows:

(a) Aleutian/Pribilof Islands Region.**(1) Northern Unit (Pribilof Islands):**

(i) Season: April 2–June 30.

(ii) Closure: July 1–August 31.

(2) Central Unit (Aleut Region's eastern boundary on the Alaska Peninsula westward to and including Unalaska Island):

(i) Season: April 2–June 15 and July 16–August 31.

(ii) Closure: June 16–July 15.

(iii) Special Black Brant Season Closure: August 16–August 31, only in Izembek and Moffet lagoons.

(iv) Special Tundra Swan Closure: All hunting and egg gathering closed in units 9(D) and 10.

(3) Western Unit (Umnak Island west to and including Attu Island):

(i) Season: April 2–July 15 and August 16–August 31.

(ii) Closure: July 16–August 15.

(b) Yukon/Kuskokwim Delta Region.

(1) Season: April 2–August 31.

(2) Closure: 30-day closure dates to be announced by the Service's Alaska

Regional Director or his designee, after consultation with field biologists and the Association of Village Council President's Waterfowl Conservation Committee. This 30-day period will occur between June 1 and August 15 of each year. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations.

(3) Special Black Brant and Cackling Goose Season Hunting Closure: From the period when egg laying begins until young birds are fledged. Closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President's Waterfowl Conservation Committee. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations.

(c) Bristol Bay Region.

(1) Season: April 2–June 14 and July 16–August 31 (general season); April 2–July 15 for seabird egg gathering only.

(2) Closure: June 15–July 15 (general season); July 16–August 31 (seabird egg gathering).

(d) Bering Strait/Norton Sound Region.

(1) Stebbins/St. Michael Area (Point Romanof to Canal Point):

(i) Season: April 15–June 14 and July 16–August 31.

(ii) Closure: June 15–July 15.

(2) Remainder of the region:

(i) Season: April 2–June 14 and July 16–August 31 for waterfowl; April 2–July 19 and August 21–August 31 for all other birds.

(ii) Closure: June 15–July 15 for waterfowl; July 20–August 20 for all other birds.

(e) Kodiak Archipelago Region, except for the Kodiak Island roaded area, which is closed to the harvesting of migratory birds and their eggs. The closed area consists of all lands and waters (including exposed tidelands) east of a line extending from Crag Point in the north to the west end of Saltery Cove in the south and all lands and water south of a line extending from Termination Point along the north side of Cascade Lake extending to Anton Larson Bay. Waters adjacent to the closed area are closed to harvest within 500 feet from the water's edge. The offshore islands are open to harvest.

(1) Season: April 2–June 30 and July 31–August 31 for seabirds; April 2–June 20 and July 22–August 31 for all other birds.

(2) Closure: July 1–July 30 for seabirds; June 21–July 21 for all other birds.

(f) Northwest Arctic Region.

(1) Season: April 2–June 9 and August 15–August 31 (hunting in general); waterfowl egg gathering May 20–June 9 only; seabird egg gathering May 20–July 12 only; hunting molting/non-nesting waterfowl July 1–July 31 only.

(2) Closure: June 10–August 14, except for the taking of seabird eggs and molting/non-nesting waterfowl as provided in paragraph (f)(1) of this section.

(g) North Slope Region.

(1) Southern Unit (Southwestern North Slope regional boundary east to Peard Bay, everything west of the longitude line 158°30' W and south of the latitude line 70°45' N to the west bank of the Ikpiqpuk River, and everything south of the latitude line 69°45' N between the west bank of the Ikpiqpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 29 and July 30–August 31 for seabirds; April 2–June 19 and July 20–August 31 for all other birds.

(ii) Closure: June 30–July 29 for seabirds; June 20–July 19 for all other birds.

(iii) Special Black Brant Hunting Opening: From June 20–July 5. The open area would consist of the coastline, from mean high water line outward to include open water, from Nokotlek Point east to longitude line 158°30' W. This includes Peard Bay, Kugrua Bay, and Wainwright Inlet, but not the Kuk and Kugrua river drainages.

(2) Northern Unit (At Peard Bay, everything east of the longitude line 158°30' W and north of the latitude line 70°45' N to west bank of the Ikpiqpuk River, and everything north of the latitude line 69°45' N between the west bank of the Ikpiqpuk River to the east bank of Sagavinirktok River):

(i) Season: April 6–June 6 and July 7–August 31 for king and common eiders; April 2–June 15 and July 16–August 31 for all other birds.

(ii) Closure: June 7–July 6 for king and common eiders; June 16–July 15 for all other birds.

(3) Eastern Unit (East of eastern bank of the Sagavinirktok River):

(i) Season: April 2–June 19 and July 20–August 31.

(ii) Closure: June 20–July 19.

(4) All Units: Yellow-billed loons. Annually, up to 20 yellow-billed loons total for the region may be inadvertently entangled in subsistence fishing nets in the North Slope Region and kept for subsistence use.

(5) North Coastal Zone (Cape Thompson north to Point Hope and east along the Arctic Ocean coastline around Point Barrow to Ross Point, including Iko Bay, and 5 miles inland).

(i) No person may at any time, by any means, or in any manner, possess or have in custody any migratory bird or part thereof, taken in violation of subpart C and D of this part.

(ii) Upon request from a Service law enforcement officer, hunters taking, attempting to take, or transporting migratory birds taken during the subsistence harvest season must present them to the officer for species identification.

(h) *Interior Region.*

(1) Season: April 2–June 14 and July 16–August 31; egg gathering May 1–June 14 only.

(2) Closure: June 15–July 15.

(i) *Upper Copper River Region*

(Harvest Area: Units 11 and 13) (Eligible communities: Gulkana, Chitina, Tazlina, Copper Center, Gakona, Mentasta Lake, Chistochina and Cantwell).

(1) Season: April 15–May 26 and June 27–August 31.

(2) Closure: May 27–June 26.

(3) The Copper River Basin communities listed above also documented traditional use harvesting birds in Unit 12, making them eligible to hunt in this unit using the seasons specified in paragraph (h) of this section.

(j) *Gulf of Alaska Region.*

(1) Prince William Sound Area (Harvest area: Unit 6 [D]), (Eligible Chugach communities: Chenega Bay, Tatitlek):

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(2) Kachemak Bay Area (Harvest area: Unit 15[C] South of a line connecting

the tip of Homer Spit to the mouth of Fox River) (Eligible Chugach Communities: Port Graham, Nanwalek):

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(k) *Cook Inlet* (Harvest area: portions of Unit 16[B] as specified below)

(Eligible communities: Tyonek only):

(1) Season: April 2–May 31—That portion of Unit 16(B) south of the Skwentna River and west of the Yentna River, and August 1–31—That portion of Unit 16(B) south of the Beluga River, Beluga Lake, and the Triumvirate Glacier:

(2) Closure: June 1–July 31.

(l) *Southeast Alaska.*

(1) Community of Hoonah (Harvest area: National Forest lands in Icy Strait and Cross Sound, including Middle Pass Rock near the Inian Islands, Table Rock in Cross Sound, and other traditional locations on the coast of Yakobi Island. The land and waters of Glacier Bay National Park remain closed to all subsistence harvesting (50 CFR 100.3(a)):

(i) Season: Glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(2) Communities of Craig and Hydaburg (Harvest area: small islands and adjacent shoreline of western Prince of Wales Island from Point Baker to Cape Chacon, but also including Coronation and Warren islands):

(i) Season: Glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(3) Community of Yakutat (Harvest area: Icy Bay (Icy Cape to Point Riou),

and coastal lands and islands bordering the Gulf of Alaska from Point Manby southeast to Dry Bay):

(i) Season: Glaucous-winged gull egg gathering: May 15–June 30.

(ii) Closure: July 1–August 31.

3. Amend subpart D by adding § 92.32 to read as follows:

§ 92.32 Emergency regulations to protect Steller's eiders.

Upon finding that continuation of these subsistence regulations would pose an imminent threat to the conservation of threatened Steller's eiders (*Polysticta stelleri*), the U.S. Fish and Wildlife Service Alaska Regional Director, in consultation with the Co-management Council, will immediately under § 92.21 take action as is necessary to prevent further take. Regulation changes implemented could range from a temporary closure of duck hunting in a small geographic area to large-scale regional or Statewide long-term closures of all subsistence migratory bird hunting. These closures or temporary suspensions will remain in effect until the Regional Director, in consultation with the Co-management Council, determines that the potential for additional Steller's eiders to be taken no longer exists.

Dated: October 17, 2011.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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