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**Docket:** All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of the Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Martin Kotsch, (215) 814-3335, or by e-mail at [kotsch.martin@epa.gov](mailto:kotsch.martin@epa.gov).

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the Rules and Regulations section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: November 5, 2009.

**William C. Early,**

*Acting Regional Administrator, Region III.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 92

[FWS-R7-MB-2009-0082] [91200-1231-9BPP-L2]

RIN 1018-AW67

#### Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2010 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 2010 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, 2010, and expire on August 31, 2010.

**DATES:** We will accept comments received or postmarked on or before January 19, 2010. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by January 4, 2010.

**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-2009-0082.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R7-MB-2009-0082; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail 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 bases 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 e-mail 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 e-mail address—will be posted on the Web site. Please note that comments submitted to this Web site are not immediately viewable. 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>. In the Search Documents box, enter FWS-R7-MB-2009-0082, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, select the type of documents you want

to view under the Document Type heading.

(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, e-mail 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. Though 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 2010. This rule lists proposed 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 action, accomplishments since the Migratory Bird Treaties with Canada and Mexico were amended, and a history addressing conservation issues can be found in the following **Federal Register** documents:

Date	Federal Register Citation
August 16, 2002 .....	67 FR 53511
July 21, 2003 .....	68 FR 43010
April 2, 2004 .....	69 FR 17318
April 8, 2005 .....	70 FR 18244
February 28, 2006 ...	71 FR 10404
April 11, 2007 .....	72 FR 18318
March 14, 2008 .....	73 FR 13788
May 19, 2009 .....	74 FR 23336

These final rules setting forth the annual harvest regulations, are available at <http://alaska.fws.gov/ambcc/regulations.htm>.

#### 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 migratory bird subsistence harvest regulations in Alaska for the 2010 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.

We opened the process to establish regulations for the 2010 spring and summer subsistence harvest of migratory birds in Alaska this past spring in a proposed rule published in the **Federal Register** on April 10, 2009 (74 FR 16339). 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 the Alaska subsistence regulations, explained the annual process for their establishment, and requested proposals for the 2010 season. The rulemaking processes for both types of migratory bird harvest are related, and the April 10, 2009, proposed rule explained the connection between the two.

The Alaska Migratory Bird Co-management Council (Co-management Council) held a meeting in April 2009 to develop recommendations for changes effective for the 2010 harvest season. The April 10, 2009, proposed rule set a deadline of June 15, 2009, for the Co-management Council to submit proposals for the 2010 spring and summer migratory bird subsistence harvest season to us and the Flyway Councils. This timeframe allowed the Flyway Councils and the Service to consider the proposals and present recommendations to the Service Regulations Committee at the committee's meeting on July 29 and 30, 2009.

#### 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 subsistence migratory bird harvest to only about 13 percent of Alaska residents. High-population 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 the 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 Yakutat, with a combined population of 2,459.

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. These removed communities reduced the percentage of the State population included in the subsistence harvest to 13 percent.

#### 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 15 years through the use of annual household surveys in the most heavily used subsistence harvest areas, such as the Yukon-Kuskokwim Delta. Continuation of this monitoring enables tracking of any major changes or trends in levels of harvest and user participation after legalization of the harvest. This rule proposes for the second year to restrict hunting on the North Slope to times of day with sufficient daylight to enable hunters to distinguish and avoid shooting closed species. In addition, three conservation measures, which focus on increased migratory bird hunter outreach prior to hunts, increased regulatory enforcement and in-season harvest verification of Steller's eider mortality, would continue to provide additional protection for

threatened spectacled and Steller's eiders. Finally, we have an emergency closure provision (50 CFR 92.21), which specifies that the harvest may be closed or temporarily suspended upon a finding that a continuation of the regulation allowing the harvest would pose an imminent threat to the conservation of any endangered or threatened species or other migratory bird population.

With regard to Steller's eiders, the proposed regulation at 50 CFR 92.32, carried over from last year, clarifies that we will take action under 50 CFR 92.21 as is necessary to prevent further take of Steller's eiders, which 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 the Co-management Council when an emergency closure is being considered. Any emergency closure deemed necessary will be designed to minimize its impact on the subsistence harvest.

#### **What Is Different in the Region-Specific Regulations for 2010?**

##### *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 proposed rule continues into 2010 the provisions originally established in 2005 to allow subsistence use of yellow-billed loons (*Gavia adamsii*) inadvertently entangled in subsistence fishing (gill) nets on the North Slope. Yellow-billed loons are culturally important for the Inupiat Eskimo of the North Slope for use in traditional dance regalia. A maximum of 20 yellow-billed loons may be caught in 2010 under this provision. This provision does not authorize intentional harvest of yellow-billed loons, but allows use of those loons inadvertently entangled during normal subsistence fishing activities. Individual reporting to the North Slope Borough Department of Wildlife is required by the end of each season. However, the North Slope Borough has asked fishermen, through announcements on the radio and through personal contact, to report inadvertent entanglements of loons as they occur, to better estimate the level of mortality caused by gill nets. In 2008, one yellow-billed loon was reported to be found dead in a fishing net; one severely injured yellow-billed loon was observed by Borough staff; and two were

released uninjured from fishing nets by Borough staff.

##### *Aleutian and Arctic Terns*

We propose to remove the provision that opened a season May 15–June 30 for harvesting Aleutian (*Onychoprion aleutica*) and arctic tern (*Sterna paradisaea*) eggs in the Yakutat Harvest area, from Icy Bay (Icy Cape to Point Riou) and the coastal islands bordering the Gulf of Alaska from Point Manby southeast to and including Dry Bay. The Yakutat Tlingit Tribe requested this regulation be removed at the April 2009 Co-Management Council meeting, stating that they will not be able to adequately monitor the tern subsistence take as requested by the Service, so they would prefer to withdraw the regulation at this time.

##### *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, and their migration and breeding distribution overlaps with the spring and summer subsistence harvest on the Yukon-Kuskokwim Delta and the North Slope. Both spectacled and Steller's eiders are closed to hunting in the subsistence harvest, but harvest surveys and Service documentation indicate substantial numbers of both species have been taken during recent subsistence harvests on the North Slope.

The North Slope breeding population of spectacled eiders was estimated to be 12,916 (10,942–14,890, 95% Confidence Limits) individual birds during 2002–06 (Service unpublished data), and they nest relatively widely across the North Slope. It is estimated that 35 (33–40, 95% Confidence Limits) spectacled eiders were taken on the North Slope during the 2005 subsistence season (Service unpublished data, 2006); 99 (44–155, 95% Confidence Limits) were taken during the 2007 subsistence season; and 9 (1–25, 184% confidence limits) were taken during the 2008 subsistence season (Alaska Department of Fish and Game, preliminary data).

The North Slope breeding population of Steller's eider was estimated to be 576 annually (292–859, 90% Confidence Limits) individual birds during 1993–2008 (Service, unpublished data), and most of their nesting appears to be concentrated near Barrow, the northernmost point in Alaska. It is estimated that 19 (9–37, 95% Confidence Limits) Steller's eiders were taken on the North Slope during the 2005 subsistence season; 36 (1–85, 135% Confidence Limits) were taken during the 2007 subsistence season; and

0 were taken during the 2008 subsistence season (Alaska Department of Fish and Game, preliminary data). However, during the 2008 subsistence season, the Service documented 20 Steller's eiders shot at Barrow, with another 7 found dead but too heavily scavenged to determine cause of death.

Therefore, harvest survey estimates and direct observation of shot birds indicated that direct shooting occurs during the subsistence harvest, with impacts probably on the order of tens of each threatened eider species taken per year. Take is not authorized for either species during the subsistence harvest, and, in the case of Steller's eider, this amount of shooting mortality is likely not sustainable for the small Alaska-breeding population. Because of the Steller's eider small breeding population size, their breeding concentration near Barrow, and the relatively high proportion of the estimated population shot during recent subsistence harvests, the Service focused on considering regulations and conservation efforts on the North Slope to benefit the Alaska-breeding population of Steller's eiders.

Several spectacled and Steller's eider management needs are addressed by this proposed rule. It restricts hunting on the North Slope, from Barrow through Point Hope, to time of day with sufficient daylight to ensure hunters can distinguish and avoid shooting species closed for harvest; it clarifies for subsistence users that Service law enforcement personnel have authority to verify species of birds possessed by hunters; it clarifies that it is illegal to possess any bird closed to harvest; and it describes how the Service's existing authority of emergency closure would be implemented, if necessary, to protect Steller's eiders. The regulations, implemented in accordance with conservation measures (described below), are considered the principal way in which shooting mortality of threatened eider will be substantially reduced or eliminated. The emergency closure authority provides an additional level of assurance that, if an unexpected amount of Steller's eider shooting mortality occurs, it will be curtailed to avoid approaching jeopardy to the existence of the species.

The Service developed three conservation measures that are an integral part of the proposed harvest and were approved for implementation by the Alaska Regional Director on April 6, 2009. The conservation measures substantially increased protection for spectacled and, particularly, Steller's eiders on the North Slope in 2009, and described how the Service would detect,

remedy, and quickly curtail any shooting mortality or injury of Steller's eiders that might occur during the harvest. In January 2009, the Service commenced planning for implementation of each measure in anticipation of the subsistence harvest. The three conservation measures were:

*1. Increase Migratory Bird Hunter Outreach Prior to the Hunts*

The Service with North Slope partners would provide migratory bird hunter outreach in Wainwright, Point Hope, Point Lay, and Barrow prior to each subsistence harvest. The outreach educational objectives included: hunter understanding of the hunting regulations; ability to distinguish among the open and closed species of eiders in flight; the need to reduce crippling loss; and an understanding of the Service's role and obligation for enforcement and monitoring. This was done prior to and during the 2009 subsistence season.

*2. Increased Service Enforcement of Migratory Bird Regulations*

During the 2009 subsistence season, the Service sustained a law enforcement presence on the North Slope during the migratory bird hunts. The Service believes this action was necessary to increase community understanding and acceptance of the shooting mortality problem, deter violations, and obtain compliance with the regulations. The Service conducted real-time monitoring of the harvest to meet the primary objective of detecting Steller's eider mortality during the hunts so that appropriate and timely corrective action could be taken. Regulatory enforcement objectives will continue to be achieved through a two-part strategy: (i) pre-season community and hunter education and outreach, and (ii) in-season implementation of the law enforcement portion of this plan and enforcement of all Service regulations.

*3. In-season Harvest Verification of Steller's Eider Mortality and Injury*

Three types of monitoring efforts were used during the 2009 subsistence harvest and fall hunts on the North Slope: (i) Steller's eider breeding surveys to inform the coordination of the conservation measures, (ii) harvest verification by Service law enforcement to meet the objective of detecting Steller's eider mortality during the hunts so appropriate and timely corrective action can be taken to prevent further mortality; and (iii) monitoring for injured and dead birds to begin to quantify crippling rate and loss. We will continue to use all in-season monitoring information to independently evaluate

harvest survey reports, the efficiency of the regulations, conservation measures, and outreach efforts.

To summarize, the Service has dual goals and responsibilities of authorizing a subsistence harvest while protecting migratory birds and threatened species. Although these goals were and continue to be challenging, they are not irreconcilable with sufficient recognition of the need to protect threatened species, measures to remedy documented threats, and commitment from the subsistence community and other conservation partners to work together toward these dual goals. With these dual goals in mind, the Service is proposing to continue the provision that restricts hunting on the North Slope to times of day with sufficient daylight to enable hunters to avoid shooting closed species. Moreover, the Service, working with partners, developed additional measures to eliminate the potential for shooting mortality or injury of the Alaska-breeding population of Steller's eider on the North Slope. These measures include: (1) increased waterfowl hunter outreach and community awareness; (2) increased enforcement of the migratory bird regulations that are protective of listed eiders; and (3) in-season Service verification of the harvest to detect any Steller's eider mortality.

For the 2009 season, the Service and the community planned to immediately address and remedy any detected Steller's eider mortality; and, as a matter of Service policy, any detected Steller's eider shooting mortality was curtailed to an amount estimated to be sustainable by the population. The summer of 2009 was not a breeding year for Steller's eiders in the Barrow area. Even so, the Service conducted an extensive outreach program including eight public meetings in all of the affected eider communities, three radio shows, and five newspaper articles. The Service increased its law enforcement presence in Barrow as well as harvest monitoring. No Steller's eiders were found shot during monitoring of the subsistence harvest.

In 2009, the Service also continued working into July refining and implementing the Memorandum of Understanding (MOU) established between the Service and North Slope government and Native organizations. The reason to initiate an MOU was to increase involvement by Alaska Native organizations in the conservation of Steller's eiders on the North Slope of Alaska. The purposes outlined were to: (1) conserve and manage Steller's eiders; (2) preserve the customary and traditional subsistence hunt, and (3)

reduce or eliminate the take of Steller's eiders.

A review of the conservation strategy implemented by the Service in 2009 based on the conservation measures developed, showed that overall the Service made advancements in several areas. These conservation measures and the subsequent MOU engaged our partners on the North Slope, encouraging local ownership of the conservation goal, and ultimately heightening awareness of what actions were necessary to move in a positive direction to protect Steller's eiders. Based on these successes, the Service proposes to continue these conservation measures into the 2010 season with some modification as to the amount of effort and emphasis each will receive. The Service also proposes to continue the regulatory changes implemented in 2009 for the North Slope through the 2010 subsistence season, including the emergency closure provisions.

**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 rule legalizes a pre-existing subsistence activity, and the resources harvested will be consumed by the harvesters or persons within their local community.

### **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 will 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 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 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 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 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 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 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 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 the 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 rule does not have significant takings implications. This 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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. 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 regulations. Therefore, a Federalism Assessment is not required.

### **Civil Justice Reform (Executive Order 12988)**

The Department, in promulgating this 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**

Because eligibility to hunt under these regulations is not limited to tribal members, but rather extends to all indigenous inhabitants of the subsistence harvest areas, we are not required to engage in formal consultation with tribes. However, 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 conducted meetings with the affected tribes and tribal nonprofit organizations to discuss the proposed changes in the regulations for possible effects on tribes or trust resources, and have determined that there are no significant effects. The rule will 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) the Notice of Decision: "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 7–12 Alaska Native members, with each component serving as equals.

#### **Paperwork Reduction Act**

This rule has been examined under the Paperwork Reduction Act of 1995 and does not contain 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 on January 31, 2010. 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 Consideration**

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 (16 U.S.C. 1531–1543; hereinafter the Act), to ensure that the 2010 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 the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### **National Environmental Policy Act Consideration**

The annual regulations and options were considered in the Environmental Assessment, "Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the 2010 Spring/

Summer Harvest," issued October 9, 2009. Copies are available from the person listed under **FOR FURTHER INFORMATION CONTACT** or at [www.Regulations.gov](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 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**

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Subsistence, Treaties, Wildlife.

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. In subpart D, add § 92.31 to read as follows:

##### **§ 92.31 Region-specific regulations.**

The 2010 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 local subsistence users, 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 and posted in village post offices and stores.

(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 and posted in village post offices and stores.

(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 Ikpiqpuq River, and everything south of the latitude line 69°45'N between the west bank of the Ikpiqpuq 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 Ikpiqpuq River, and everything north of the latitude line 69°45'N between the west bank of the Ikpiqpuq 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. Individuals must report each yellow-billed loon inadvertently entangled while subsistence gill net fishing to the North Slope Borough Department of Wildlife Management by the end of the season.

(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) Migratory bird hunting is permitted from one-half hour before sunrise until sunset, during August.

(ii) 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.

(iii) 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).

That portion of (1) Season: April 2–May 31 Unit 16(B) south of the

Skwentna River and west of the Yentna River That, and August 1–31 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 Part 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. In subpart D, add § 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 State-wide long-term closures of all subsistence migratory bird hunting. Such 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: November 3, 2009.

**Thomas L. Strickland,**  
Assistant Secretary for Fish and Wildlife and Parks.

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