

Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. §§ 154, 303, 334, and 336.

##### § 73.202 [Amended]

1. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Valparaiso, Channel 276C2 and removing De Funiak Springs, Channel 276C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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#### DEPARTMENT OF THE INTERIOR

##### Fish and Wildlife Service

##### 50 CFR Part 92

##### RIN 1018-AH88

#### Procedures for Establishing Spring/Summer Subsistence Harvest Regulations for Migratory Birds in Alaska

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

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or we) proposes

regulations establishing procedures for implementing a spring/summer migratory bird subsistence harvest in Alaska. The 1916 Convention for the Protection of Migratory Birds Between the United States and Great Britain (for Canada) established a closed season for the taking of migratory birds between March 10 and September 1. Residents of northern Alaska and Canada traditionally harvested migratory birds for nutritional purposes during the spring and summer months. The governments of Canada, Mexico, and the United States recently amended the 1916 Convention and the subsequent 1936 Mexico Convention for the Protection of Migratory Birds and Game Mammals. The amended treaties provide for the legal subsistence harvest of migratory birds and their eggs in Alaska and Canada during the closed season. The proposed regulations would establish procedures for implementing that change and for incorporating subsistence management into the continental migratory bird management program.

**DATES:** We will accept written comments until May 24, 2002.

**ADDRESSES:** Address comments to Regional Director, Alaska Region, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska, 99503, Attention: Bob Stevens, Stop 201. Electronic comments may be addressed to [FW7\\_MB\\_Counsel@fws.gov](mailto:FW7_MB_Counsel@fws.gov).

**FOR FURTHER INFORMATION CONTACT:** Bob Stevens, 907/786-3499 or Bill Ostrand, 907/786-3849, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Stop 201, Anchorage, Alaska 99503.

#### SUPPLEMENTARY INFORMATION:

##### What Events Led to This Action?

By the beginning of the twentieth century, this nation began to witness the depletion of many species of migratory birds. Commercial or "market" hunting took a significant toll as restaurant owners paid top dollar for wild birds and the millinery industry demanded large numbers of feathers for hats. Individual States did not establish regulations or other management programs to adequately protect the migratory bird resources.

In 1916, the United States and Great Britain (on behalf of Canada) signed the Convention for the Protection of Migratory Birds in Canada and the United States. The treaty prohibited market hunting and specified a closed season on taking migratory game birds between March 10 and September 1 of each year. In 1936, the United States and Mexico signed the Convention for the Protection of Migratory Birds and

Game Mammals. The Mexico treaty prohibited the taking of wild ducks between March 10 and September 1. Neither treaty, however, took into account and allowed for the traditional harvest of migratory birds by northern indigenous people during the spring and summer months. This harvest, which had occurred for centuries, was necessary to the subsistence lifestyle of the northern people and thus continued despite the closed season.

The Canada treaty and the Mexico treaty, as well as the other migratory bird treaties with Japan (1972) and Russia (1976), have been implemented in the United States through the Migratory Bird Treaty Act (MBTA). The courts have construed the MBTA as prohibiting the Federal government from permitting any harvest of migratory birds that is inconsistent with the terms of any of the migratory bird treaties. The restrictive terms of the Canada and Mexico treaties thus prevented the Federal government from permitting the traditional subsistence harvest of migratory birds during spring and summer in Alaska. To remedy this situation the United States therefore negotiated Protocols amending both the Canada and Mexico treaties to allow for spring/summer subsistence harvest of migratory birds by indigenous inhabitants of identified subsistence zones in Alaska. The U. S. Senate approved the amendments to both treaties in 1997.

##### What Will the Amended Treaty Accomplish?

The major goals of the amended treaty with Canada are to allow for traditional subsistence harvest and to improve conservation of migratory birds by allowing effective regulation of this harvest. The amended treaty with Canada allows permanent residents of villages within subsistence harvest areas, regardless of race, to continue harvesting migratory birds in the spring and summer as they have done for thousands of years. It states that lands north and west of the Alaska Range and within the Alaska Peninsula, Kodiak Archipelago, and the Aleutian Islands generally qualify as subsistence harvest areas. Treaty language provides for further refinement of this determination by management bodies.

The amendments, however, are not intended to cause significant increases in the take of migratory birds relative to their continental population sizes. Therefore, the Canada treaty places limitations on who is eligible to harvest and where they can harvest migratory birds. Anchorage, the Matanuska-Susitna and Fairbanks North Star

Boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, and Southeast Alaska generally do not qualify as subsistence harvest areas. Limited exceptions may be made so that some individual communities within these excluded areas could qualify for designation as subsistence harvest areas for specific purposes. For example, future regulations could allow some villages in Southeast Alaska to collect gull eggs.

The amended treaty with Canada calls for creation of management bodies to ensure an effective and meaningful role for Alaska's indigenous inhabitants in the conservation of migratory birds. 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 programs, 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.

Relevant recommendations developed by the management bodies will be submitted to the Service and to the Flyway Councils. Restrictions in harvest levels for the purpose of conservation will be shared equitably by users in Alaska and users in other States, taking into account nutritional needs of subsistence users in Alaska. The treaty amendments are not intended to create a preference in favor of any group of users in the United States or to modify any preference that may exist.

#### **What Has the Service Accomplished Since Ratification of the Amended Treaty?**

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 for subsistence users. We began by publishing a notice in the **Federal Register** stating that we intended to establish management bodies to implement the spring and summer subsistence harvest (63 FR 49707, Sept. 17, 1998). Public forums attended by the Service, the Alaska Department of Fish and Game, and the Native Migratory Bird Working Group were held 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. Staff members from Alaska national wildlife refuges conducted public meetings in the villages within their refuge areas and discussed the amended treaties at those meetings.

On July 1, 1999, we published in the **Federal Register** (64 FR 35674) a notice of availability of an options document, entitled "Forming management bodies to implement legal spring and summer migratory bird subsistence hunting in Alaska." This document describes four possible models for establishing management bodies and was released to the public for review and comment. We mailed copies of the document to approximately 1,350 individuals and organizations, including all tribal councils and municipal governments in Alaska, Native regional corporations and their associated nonprofit organizations, the Alaska Department of Fish and Game, Federal land management agencies, representatives of the four Flyway Councils, conservation and other affected organizations, and interested businesses and individuals. We distributed an additional 600 copies at public meetings held in Alaska to discuss the four models. We also made the document available on the Fish and Wildlife Service web page.

During the public comment period, we received 60 written comments addressing the formation of management bodies. Of those 60 comments, 26 were from tribal governments, 20 from individuals, 10 from non-government organizations, 2 from the Federal Government, 1 from the State of Alaska, and 1 from the Native Migratory Bird Working Group. In addition to the 60 written comments, 9 of the 10 Federal Subsistence Regional Advisory Councils passed resolutions regarding the four models presented.

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 models. The decision established one statewide management body consisting of one Federal member, one State member, and 7–12 Alaska Native members, with each component serving as equals. Decisions and recommendations of the Council will be by consensus wherever possible; however, if a vote becomes necessary, each component, Federal, State, and Native, will have one vote. This body will set a framework for annual regulations for spring and summer subsistence harvest of migratory birds. Seven regional bodies, consisting of local subsistence users working within the framework, will forward their recommendations to the statewide management body. That body will act on those recommendations and forward its recommendations to the Service and to the Flyway Councils.

In April 2000, we met with the Alaska Department of Fish and Game and the Native Migratory Bird Working Group to discuss bylaws for the statewide management body. At that meeting, we decided to name the statewide management body the "Alaska Migratory Bird Co-management Council." On October 30, 2000, the Co-management Council convened for the first time and began preparation for the development of recommendations for regulations to be implemented in spring of 2003. The proposed regulations in this document will: (1) Provide the authority for the Co-management Council to operate; (2) establish the procedures by which the Co-management Council will conduct its business; (3) provide authority to the Co-management Council to make recommendations regarding applicability and scope of subsistence harvest and who is eligible to participate in subsistence harvest; (4) give the Co-management Council the authority to setup a process by which migratory birds can be used and possessed under subsistence harvest regulations; (5) define Regional management areas; (6) describe the relationship the rule has to the process for developing national hunting regulations for migratory birds; and (7) allow for future development of regulations pertaining to methods and means of harvest traditionally used for subsistence purposes. At future meetings, the Co-management Council will continue to develop recommendations on harvest and methods and means of harvest as necessary to protect the migratory bird resource.

### Public Comments Solicited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the address indicated under the caption **ADDRESSES**. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: 1018-AH88 and your name and return address" in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at the address indicated under the caption **ADDRESSES**. Finally, you may hand-deliver comments to the address indicated under the caption **ADDRESSES**. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would also withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

You may inspect comments received on the proposed regulations during normal business hours at the Service's office in Anchorage, Alaska. We will consider, but possibly may not respond in detail to, each comment. We will summarize all comments received during the comment period and respond to them after the closing date in any final rules.

Because we conducted an extensive public involvement process prior to publishing the March 28, 2000, notice (65 FR 16405), we are soliciting comments on this proposed rule for only 30 days. We want to proceed with the development of seasonal regulations opening a legal subsistence harvest as soon as possible.

### Statutory Authority

We derive our authority to issue these proposed regulations from the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703

*et seq.*), which implements the 1916 Convention, as amended, between the United States and Great Britain (for Canada) for the protection of migratory birds.

Specifically, these regulations are issued pursuant to 16 U.S.C. § 712(1), which authorizes the Secretary of the Interior 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."

### Regulatory Planning and Review

E.O. 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov). The Office of Management and Budget (OMB) has determined that this document is not a significant rule subject to OMB review under E.O. 12866.

a. This proposed rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. This proposed rule is administrative, technical, and procedural in nature, establishing the procedures for implementing spring and summer harvest of migratory birds as

provided for in the amended Convention with Canada. The proposed rule does not provide for new or additional hunting opportunities and therefore will have minimal economic or environmental impact.

This proposed rule benefits those participants who engage in the subsistence harvest of migratory birds in Alaska in two identifiable ways: first, participants receive the consumptive value of the birds harvested and second, participants get the cultural benefit associated with the maintenance of a subsistence economy and way of life. The Fish and Wildlife Service can estimate the consumptive value for birds harvested under this rule but does not have a dollar value for the cultural benefit of maintaining a subsistence economy and way of life.

The economic value derived from the consumption of the harvested migratory birds has been estimated using the results of a paper by Robert J. Wolfe titled "Subsistence Food Harvests in Rural Alaska, and Food Safety Issues," August 13, 1996. Wolfe estimated the per capita consumption of birds harvested for subsistence to be approximately 24.4 pounds. When multiplied by approximately 70,000 people depending on subsistence harvests, this amounts to over 1.7 million pounds of birds. The economic value for the equivalent nutrition, if purchased at local stores, would be nearly \$6 million. This is the estimated economic benefit of the consumptive part of this rulemaking for participants in subsistence hunting.

The cultural benefits of maintaining a subsistence economy and way of life can be of considerable value to the participants. This makes the \$6 million estimate for the consumptive value of this rule an underestimate of the total benefit. However, we do not believe the total benefit would make this rule significant under the Executive Order.

b. This proposed rule will not create inconsistencies with other agencies' actions. We are the Federal agency responsible for management of migratory birds, coordinating with the Alaska Department of Fish and Game on management programs within the State of Alaska. The State of Alaska is a member of the Alaska Migratory Bird Co-management Council.

c. This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The proposed rule does not affect entitlement programs.

d. This proposed rule will not raise novel legal or policy issues. The subsistence harvest regulations will go

through the same National regulatory process as the existing migratory bird hunting regulations in 50 CFR part 20.

#### *Regulatory Flexibility Act*

The Department of the Interior certifies that this proposed rule will not have a significant economic effect 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 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 proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, as discussed in the Regulatory Planning and Review section above.

a. This proposed rule does 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 rulemaking 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. The Fish and Wildlife Service has no reason to believe that this rule will lead to a disproportionate distribution of benefits.

b. This proposed rule 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. This proposed rule 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 certify pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *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. A statement containing the information required by this Act is therefore not necessary.

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 to be responsible for administering the regional programs. When possible, we will make annual grant agreements available to the partner organizations to help offset their expenses. The Alaska Department of Fish and Game will incur expenses for travel to the Co-management Council meetings and to meetings of the regional management bodies. In addition, the State 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.

#### *Paperwork Reduction Act*

This proposed rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements. 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.

#### *Federalism Effects*

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 13132. We are working with the State of Alaska on development of these regulations.

#### *Civil Justice Reform—Executive Order 12988*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of section 3 of the Order.

#### *Takings Implication Assessment*

This proposed rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. Therefore, in accordance with Executive Order 12630, this proposed rule does not have significant takings implications.

#### *Government-to-Government Relations With Native American Tribal Governments*

In accordance with 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 have consulted with Alaska tribes, evaluated the proposed rule for possible effects on them and have determined that there are no significant effects. This proposed rule establishes procedures by which the individual tribes in Alaska will be able to become significantly involved in the annual regulatory process for spring and summer subsistence harvesting of migratory birds and their eggs. The proposed rule will legalize the subsistence harvest for tribal members, as well as for other indigenous inhabitants.

#### *Endangered Species Act Consideration*

Prior to issuance of annual spring and summer subsistence regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that harvesting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy their critical habitats, and that it is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change recommendations for annual regulations.

#### *National Environmental Policy Act Consideration*

We determined that establishing the procedures for future development of subsistence harvest regulations does not require an environmental assessment because the impacts to the environment

are negligible. We therefore filed a categorical exclusion dated April 30, 1999. Copies of the categorical exclusion are available at the address shown in the section of this document entitled, **ADDRESSES**. An environmental assessment will be prepared for the annual subsistence take regulations due to be published later as a proposed rule in the fall of 2001.

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

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only allows for traditional subsistence harvest and improves conservation of migratory birds by allowing effective regulation of this harvest, it is not a significant regulatory action under Executive Order 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not significant energy action and no Statement of Energy Effects is required.

**List of Subjects in 50 CFR Part 92**

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

For the reasons identified in the preamble, the U.S. Fish and Wildlife Service proposes to amend Subchapter G of Chapter 1, Title 50 of the Code of Federal Regulations, by adding part 92 to read as follows:

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

**Subpart A—General Provisions**

Sec.

- 92.1 Purpose of regulations.
- 92.2 Authority.
- 92.3 Applicability and scope.
- 92.4 Definitions.
- 92.5 Who is eligible to participate?
- 92.6 Use and possession of migratory birds.
- 92.7–92.9 [Reserved]

**Subpart B—Program Structure**

- 92.10 Alaska Migratory Bird Co-management Council.
- 92.11 Regional management areas.
- 92.12 Relationship to the process for developing national hunting regulations for migratory game birds.
- 92.13–92.19 [Reserved]

**Subpart C—Methods and Means**

- 92.20–92.29 [Reserved]

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

- 92.30 General overview of regulations.

92.31–92.39 [Reserved]

Authority: 16 U.S.C. 703–712.

**Subpart A—General Provisions**

**§ 92.1 Purpose of regulations.**

The regulations in this part implement the Alaska migratory bird subsistence program as provided for in Article II(4)(b) of the 1916 Convention for the Protection of Migratory Birds in Canada and the United States (the “Canada Treaty”), as amended.

**§ 92.2 Authority.**

The Secretary of the Interior issues these regulations under the authority granted to the Secretary by the Migratory Bird Treaty Act (MBTA), 16 U.S.C. 703–712.

**§ 92.3 Applicability and scope.**

(a) *In general.* The regulations in this part apply to all eligible persons harvesting migratory birds and their eggs for subsistence purposes in Alaska between the dates of March 10 and September 1. The provisions in this part do not replace or alter the regulations set forth in part 20 of this chapter, which relate to the hunting of migratory game birds and crows during the regular open season between September 1 through March 10. The provisions set forth in this part implement the exception to the closed season, which authorizes the taking of migratory birds in Alaska for subsistence purposes between March 10 and September 1.

(b) *Land ownership.* This part does not alter the legal authorities of Federal and State land managing agencies or the legal rights of private land owners to close their respective lands to the taking of migratory birds.

(c) *Federal public lands.* The provisions of this part are in addition to, and do not supersede, any other provision of law or regulation pertaining to national wildlife refuges or other Federally managed lands.

(d) *Migratory bird permits.* The provisions of this part do not alter the terms of any permit or other authorization issued pursuant to part 21 of this chapter.

(e) *State laws for the protection of migratory birds.* No statute or regulation of the State of Alaska relieves a person from the restrictions, conditions, and requirements contained in this part. Nothing in this part, however, prevents the State of Alaska from making and enforcing laws or regulations that are consistent with the regulations in this part, the conventions between the United States and any foreign country for the protection of migratory birds, and the Migratory Bird Treaty Act, and

that give further protection to migratory birds.

**§ 92.4 Definitions.**

The following definitions apply to all regulations contained in this part:

*Alaska Native* means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlakla (sic) Indian Community) Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group, as defined in the Alaska Native Claims Settlement Act in 43 U.S.C. 1602(b)).

*Co-management Council* means the Alaska Migratory Bird Co-management Council consisting of Alaska Native, Federal, and State of Alaska representatives as equals.

*Eligible person* means an individual within the State of Alaska who qualifies to harvest migratory birds and their eggs for subsistence purposes.

*Excluded areas* are defined in § 92.5.

*Flyway Council* means the Atlantic, Mississippi, Central, or Pacific Flyway Council.

*Immediate family* means spouse, children, parents, grandparents, and siblings.

*Included areas* are defined in § 92.5.

*Indigenous inhabitant* means a permanent resident of a village within a subsistence harvest area, regardless of race.

*Migratory bird*, for the purposes of this part, means the same as defined in § 10.12 of this chapter. Species are listed in § 10.13 of this chapter.

*Native* means the same as “Alaska Native” as defined in this section.

*Non-wasteful taking* means making a reasonable effort to retrieve all birds killed or wounded, and retaining such birds in possession between the place where taken and the hunter's permanent or temporary place of residence, or to the location where the birds will be consumed for food.

*Partner organization or regional partner* means a regional or local organization, or a local or tribal government that has entered into a formal agreement with the U.S. Fish and Wildlife Service for the purpose of coordinating the regional programs necessary to involve subsistence hunters

in the regulatory process described in this part.

*Service Regulations Committee* means the Migratory Bird Regulations Committee of the Fish and Wildlife Service.

*State* means State of Alaska.

*Subsistence* means the customary and traditional harvest and use of migratory birds and their eggs by eligible indigenous inhabitants for their own nutritional and other essential needs.

*Subsistence harvest areas* encompass customary and traditional hunting areas of villages in Alaska that qualify for a spring or summer subsistence harvest of migratory birds under this part.

*Village* is defined as a permanent settlement with one or more year-round residents.

#### **§ 92.5 Who is eligible to participate?**

If you are a permanent resident of a village within a subsistence harvest area, you will be eligible to harvest migratory birds and their eggs for subsistence purposes in the spring and summer.

(a) *Included areas.* Village areas located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, or in areas north and west of the Alaska Range are subsistence harvest areas, except that villages within these areas not meeting the criteria for a subsistence harvest area as identified in paragraph (c) of this section will be excluded from the spring and summer subsistence harvest. Any person may request the Co-management Council to recommend that an otherwise included area be excluded by submitting a petition stating how the area does not meet the criteria identified in paragraph (c) of this section. The Co-management Council will consider each petition and will submit to the Fish and Wildlife Service any recommendations to exclude areas from the spring and summer subsistence harvest. The Fish and Wildlife Service will publish any approved recommendations to exclude in subpart D of this part.

(b) *Excluded areas.* Village areas located in Anchorage, the Matanuska-Susitna or Fairbanks North Star Boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, or Southeast Alaska generally do not qualify for a spring or summer harvest. Communities located within one of these areas may petition the Co-management Council through their designated regional management body for designation as a subsistence harvest area. The petition must state how the community meets the criteria identified in paragraph (c) of this section. The Co-management Council will consider each

petition and will submit to the Fish and Wildlife Service any recommendations to designate a community as a subsistence harvest area. The Fish and Wildlife Service will publish any approved recommendations to designate a community as a subsistence area in subpart D of this part.

(c) *Criteria for determining designation as a subsistence harvest area.* A community may be included in the spring/summer harvest regulations if the preponderance of evidence shows that the community demonstrates:

- (1) A pattern of use recurring in the spring and summer of each year prior to 1916, excluding interruptions by circumstances beyond the user's control;
- (2) The consistent harvest and use of migratory birds on or near the user's permanent residence;
- (3) A use pattern which includes the handing down of knowledge of hunting skills and values from generation to generation;
- (4) A use pattern in which migratory birds are shared or distributed among others within a definable community of persons; a community for purposes of subsistence uses may include specific villages or towns, with a historical pattern of subsistence use; and
- (5) A use pattern which includes reliance for subsistence purposes upon migratory birds or their eggs, and which meets nutritional and other essential needs including, but not limited to, cultural, social and economic elements of the subsistence way of life.

(d) *Participation by residents in excluded areas.* In cases where it is appropriate to assist indigenous inhabitants in meeting their nutritional and other essential needs, or for the teaching of cultural knowledge to or by their family members, residents of excluded areas may participate in the customary spring and summer subsistence harvest in a village's subsistence harvest area. Eligibility for participation will be developed and recommended by the Co-management Council and adopted or amended by regulation published in subpart D of this part.

#### **§ 92.6 Use and possession of migratory birds.**

Harvest and possession of migratory birds must be done using non-wasteful taking. You may not take birds for purposes other than human consumption. You may not sell, offer for sale, purchase or offer to purchase migratory birds, their parts, or their eggs taken under this part. Non-edible by-products of migratory birds taken for food may be used for other purposes only by individuals qualified to possess those birds. You may possess migratory birds, their parts, and their eggs, taken under this part, only if you are an

eligible participant as determined in § 92.5.

#### **§§ 92.7–92.9 [Reserved]**

#### **Subpart B—Program Structure.**

#### **§ 92.10 Alaska Migratory Bird Co-management Council.**

(a) *Establishment.* The U.S. Fish and Wildlife Service hereby establishes, as mandated by the Protocol amending the Canada Treaty, a statewide management body to be known as the Alaska Migratory Bird Co-management Council.

(b) *Membership.* The Co-management Council must include Alaska Native, Federal, and State of Alaska representatives, as equals.

(1) The Federal and State governments will each seat one representative. The Federal representative will be appointed by the Alaska Regional Director of the U.S. Fish and Wildlife Service, and the State representative will be appointed by the Commissioner of the Alaska Department of Fish and Game. Regional partner organizations will seat one representative from each of the seven regions identified in § 92.11(a), except that a region having more than one partner organization may send a representative from each partner organization for a maximum of 12 regional representatives.

(2) The Federal and State representatives and the collective Native representatives will each have one vote, for a total of three votes for the entire council.

(c) *Roles and responsibilities.* The Co-management Council is authorized to:

(1) Hold public meetings for the purpose of conducting business related to spring and summer subsistence harvest of migratory birds;

(2) Develop recommendations for regulations governing the spring and summer subsistence harvest of migratory birds and their eggs;

(3) Develop recommendations for, among other things, law enforcement policies, population and harvest monitoring, education programs, research and use of traditional knowledge, and habitat protection;

(4) Develop procedures and criteria by which areas and communities can be determined to be eligible or ineligible for a spring/summer subsistence harvest;

(5) Provide guidelines to the regional management bodies each year for formulation of annual regulations;

(6) Consolidate regional recommendations and resolve interregional differences in order to prepare statewide recommendations;

(7) Establish committees to gather or review data, develop plans for Co-management Council actions, and coordinate programs with regional management bodies;

(8) Send Alaska Native Co-management Council representatives to meetings of the Pacific Flyway Council and to meetings of the other Flyway Councils as needed, and to meetings of the Service Regulations Committee;

(9) Elect officers; and

(10) Conduct other business as the Council may determine is necessary to accomplish its purpose.

(d) *Meetings.* The Co-management Council will:

(1) Hold meetings at least twice annually;

(2) Conduct meetings in accordance with bylaws approved by the Co-management Council;

(3) Provide opportunity at each meeting for public comment;

(4) Establish the dates, times, and locations of meetings; and

(5) Maintain a written record of all meetings.

(e) *Staff support.* Administrative support for the Co-management Council will be provided by the U.S. Fish and Wildlife Service and will include, but not be limited to:

(1) Making arrangements for the meeting rooms and associated logistics related to Co-management Council meetings;

(2) Preparing public notices announcing Co-management Council meetings;

(3) Maintaining records of discussions and actions taken by the Co-management Council;

(4) Coordinating with the Alaska Department of Fish and Game to provide technical information needed by the Co-management Council for its deliberations;

(5) Preparing documents and gathering information needed by the Co-management Council for its meetings; and

(6) Preparing the annual subpart D regulations package recommended by the Co-management Council for submission to the flyway councils and the Service Regulations Committee.

#### **§ 92.11 Regional management areas.**

(a) *Regions identified.* The Alaska Regional Director of the U.S. Fish and Wildlife Service hereby establishes seven geographic regions based on common subsistence resource use patterns. You may obtain maps delineating the boundaries of the seven regions from the U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503. The regions are identified as follows:

- (1) Southeast, Gulf of Alaska and Cook Inlet;
- (2) Aleutian/Pribilof Islands and Kodiak Archipelago;
- (3) Bristol Bay;
- (4) Yukon-Kuskokwim Delta;
- (5) Bering Straits;
- (6) Northwest Arctic and Arctic Slope; and
- (7) Interior.

(b) *Regional partnerships.* The Fish and Wildlife Service will establish partner agreements with at least one partner organization in each of the seven regions. The partner organization identified must be willing and able to coordinate the regional program on behalf of the subsistence hunters within that region. A regional partner will:

(1) Organize or identify one or more management bodies within the region in which it is located.

(2) Determine how the management body for the region should be organized and the manner in which it should function and determine its size, who serves on it, the length of terms, methods of involving subsistence users, and other related matters.

(3) Coordinate regional meetings and the solicitation of proposals.

(4) Ensure appointment of a person to represent the region by serving on the Co-management Council. If a region consists of more than one partner organization, each partner organization may appoint a member to sit on the Co-management Council.

(5) Keep the residents of villages within the region informed of issues related to the subsistence harvest of migratory birds.

(6) Work cooperatively with the U.S. Fish and Wildlife Service and the Alaska Department of Fish and Game to gather harvest data, numbers of subsistence users, and other management data and traditional knowledge for the benefit of the management bodies.

(c) *Regional management bodies.* (1) Regional management bodies must provide a forum for the collection and expression of opinions and recommendations regarding spring and summer subsistence harvesting of migratory birds. They must develop requests and recommendations from the region to be presented to the Co-management Council for deliberation. They must provide for public participation in the meetings at which recommendations and requests are formulated.

(2) Requests and recommendations to the Co-management Council may involve seasons and bag limits, methods and means, law enforcement policies, population and harvest monitoring, education programs, research and use of traditional knowledge, habitat

protection, and other concerns related to migratory bird subsistence programs.

(3) Regional management bodies may be established specifically for the purpose of carrying out the responsibilities identified in this part, or they may be existing entities that can add these responsibilities to their existing duties.

#### **§ 92.12 Relationship to the process for developing national hunting regulations for migratory game birds.**

(a) *Flyway councils.* (1) Proposed annual regulations recommended by the Co-management Council will be submitted to all flyway councils for review and comment. The flyway councils may forward comments to the Service Regulations Committee for consideration before proposed regulations are issued in final.

(2) Alaska Native representatives may be appointed by the Co-management Council to attend meetings of one or more of the four flyway councils to discuss recommended regulations or other proposed management actions.

(b) *Service Regulations Committee.* Proposed annual regulations recommended by the Co-management Council will be submitted to the Service Regulations Committee to be incorporated into the recommendations for national migratory bird hunting regulations (found in part 20 of this chapter) and published in this part 92. The Council's recommendations must be submitted prior to the Committee's last regular meeting of the calendar year in order to be approved for spring/summer harvest beginning March 11 of the following calendar year. Proposed spring/summer subsistence regulations for Alaska may be published in the **Federal Register** with either the proposed rule for the early-season or the proposed rule for the late-season national regulations. After comments are incorporated from the proposed rules, the spring/summer regulations for Alaska will then be published in the **Federal Register** with either the early-season final rule or late-season final rule, for the national regulations.

#### **§§ 92.13–92.19 [Reserved]**

#### **Subpart C—Methods and Means**

#### **§§ 92.20–92.29 [Reserved]**

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

#### **§ 92.30 General overview of regulations.**

(a) The taking, possession, transportation, and other uses of migratory birds are generally prohibited unless specifically authorized by

regulation developed in accordance with the Migratory Bird Treaty Act. Therefore, harvesting migratory birds is prohibited unless regulations are established ensuring the protection of the various populations of migratory birds. Migratory bird population levels, production, and habitat conditions vary annually. These conditions differ within Alaska and throughout North America. Therefore, the regulations governing migratory bird hunting may include annual adjustments to keep harvests within acceptable levels.

(b) The development of the regulations in this part 92, like the development of the national regulations

in part 20 of this chapter, involves annual data gathering programs to determine migratory bird population status and trends, evaluate habitat conditions, determine harvests, and consider other factors having an impact on the anticipated size of annual populations.

(c) The Service proposes national hunting regulations in the **Federal Register** in the spring for the regulatory year beginning September 1. Following consideration of additional biological information and public comment, the Service publishes supplemental proposals throughout the summer. These are also open to public comment.

Public hearings are held for the purpose of providing additional opportunity for public participation in the rulemaking process.

(d) Sections 92.31 through 92.39, provide for the annual harvest of migratory birds and their eggs during spring and summer for subsistence users in Alaska.

**§§ 92.31—92.39 [Reserved]**

Dated: March 18, 2002.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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