

Corporation's Strategic Plan. In addition, as part of the competitive process, performance measures are used to assess how an applicant for a grant approaches the design of volunteer activities and the measurement of their impact on community needs.

**§ 2553.102 What performance measurement information must be part of an application for funding under RSVP?**

An application to the Corporation for funding under RSVP must contain:

- (a) Performance measures.
- (b) Estimated performance data for the project years covered by the application.
- (c) Actual performance data, where available, for the preceding completed project year.

**§ 2553.103 Who develops the performance measures?**

- (a) An applicant is responsible for developing its own project-specific performance measures.
- (b) In addition, the Corporation may establish performance measures that will apply to all Corporation-sponsored RSVP projects, which sponsors will be responsible for meeting.

**§ 2553.104 What performance measures must be submitted to the Corporation and how are these submitted?**

(a) An applicant for Corporation funds is required to submit at least one of each of the following types of performance measures as part of their application. The Corporation will provide standard forms.

- (1) Output indicators.
- (2) Outcome indicators.

(b) An applicant must also submit any uniform performance measures the Corporation may establish for all applications.

(c) The Corporation may specify additional requirements relating to performance measures on an annual basis in program guidance and related materials.

**§ 2553.105 How are performance measures approved and documented?**

(a) The Corporation reviews and approves performance measures for all applicants that apply for funding from the Corporation.

(b) An applicant must follow Corporation-provided guidance and formats provided when submitting performance measures.

(c) Final performance measures, as negotiated between the applicant and the Corporation, will be documented in the Notice of Grant Award (NGA).

**§ 2553.106 How does a sponsor report performance measures to the Corporation?**

(a) The Corporation will set specific reporting requirements, including

frequency and deadlines, concerning performance measures established in the grant award. A sponsor is required to report on the actual results that occurred when implementing the grant and to regularly measure the project's performance.

(b) At a minimum, a sponsor is required to report on outputs at the end of year one and outputs and outcomes at the end of years two and three. A sponsor may choose to exceed these minimum requirements and report results earlier.

**§ 2553.107 What must a sponsor do if it cannot meet its performance measures?**

Whenever a sponsor finds it is not on track to meet its performance measures, it must develop a plan to get back on track or submit a request to the Corporation to amend its performance measures. The request must include all of the following:

- (a) Why the project is not on track to meet its performance requirements;
- (b) How the project has been tracking performance measures;
- (c) Evidence of corrective steps taken;
- (d) Any new proposed performance measures; and
- (e) A plan to ensure that the project will meet the new proposed measure(s).

**§ 2553.108 When may a sponsor change a project's performance measures?**

Performance measures may be changed only if the Corporation approves the sponsor's request to do so.

**§ 2553.109 What happens if a sponsor fails to meet the performance measures included in the Notice of Grant Award (NGA)?**

If a sponsor fails to meet a target performance measure established in the NGA, the Corporation will negotiate a period of no more than one year for meeting the performance measure. At that point, if the sponsor still fails to meet the performance measure, the Corporation may take one or more of the following actions:

- (a) Reduce the amount of the grant;
- (b) Suspend, terminate, or deny refunding of the grant, in accordance with the provisions of § 2553.31 of this part;
- (c) Take this information into account in assessing any application from the organization for a new grant or augmentation of an existing grant under any program administered by the Corporation;
- (d) Amend the terms of any Corporation grant to the organization; or
- (e) Take other actions that the Corporation deems appropriate.

Dated: October 20, 2010.

**Wilsie Y. Minor,**

*Acting General Counsel.*

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 92**

[Docket No. FWS-R9-MB-2010-0082; 91200-1231-9BPP-L2]

RIN 1018-AX30

**Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2011 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 2011 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, 2011, and expire on August 31, 2011.

**DATES:** We will accept comments received or postmarked on or before December 27, 2010. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by December 10, 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-R9-MB-2010-0082.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R9-MB-2010-0082; 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](http://www.regulations.gov). This generally means that we will post any personal information you provide us (see the Public Comment Procedures section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Fred Armstrong, (907) 786-3887, or Donna Dewhurst, (907) 786-3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

#### SUPPLEMENTARY INFORMATION:

##### Public Comment Procedures

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

You must submit your comments and materials concerning this proposed rule by one of the methods listed above in the **ADDRESSES** section. We will not accept comments sent by 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 Enter Keyword or ID box, enter FWS-R9-MB-2010-0082, which is the docket number for this rulemaking.

(2) You can make an appointment, during normal business hours, to view the comments and materials in person at the Division of Migratory Bird Management, U.S. Fish and Wildlife Service; 4501 N. Fairfax Drive, Room 4107, Arlington, VA 22203-1610.

##### Public Availability of Comments

As stated above in more detail, before including your address, phone number, 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. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

##### Why is this rulemaking necessary?

This rulemaking is necessary because, by law, the migratory bird harvest season is closed unless opened by the Secretary of the Interior, and the regulations governing subsistence harvest of migratory birds in Alaska are subject to public review and annual approval. This rule proposes regulations for the taking of migratory birds for subsistence uses in Alaska during the spring and summer of 2011. This rule proposes a list of migratory bird season openings and closures in Alaska by region.

##### How do I find the history of these regulations?

Background information, including past events leading to this rulemaking, accomplishments since the Migratory Bird Treaties with Canada and Mexico were amended, and a history 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
April 13, 2010 .....	75 FR 18764

These documents, which are all 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 2011 season. These regulations 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 2011 spring and summer subsistence harvest of migratory birds in Alaska in a proposed rule published in the **Federal Register** on June 10, 2010 (75 FR 32872). While that proposed rule dealt primarily with the regulatory process for hunting migratory birds for all purposes throughout the United States, we also discussed the background and history of Alaska subsistence regulations, explained the annual process for their establishment, and requested proposals for the 2011 season. The rulemaking processes for both types of migratory bird harvest are related, and the June 10, 2010 proposed rule explained the connection between the two.

The Alaska Migratory Bird Co-management Council (Co-management Council) held a meeting in April 2010 to develop recommendations for changes that would take effect during the 2011 harvest season. These recommendations were presented first to the Flyway Councils and then to the Service Regulations Committee at the committee's meeting on July 28 and 29, 2010.

##### 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 about 13 percent of Alaska residents. High populated areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, and Southeast

Alaska were excluded from eligible subsistence harvest areas.

Based on petitions requesting inclusion in the harvest, in 2004, we added 13 additional communities based on criteria set forth in 50 CFR 92.5(c). These communities were Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina, Tatitlek, Chenega, Port Graham, Nanwalek, Tyonek, and Hoonah, with a combined population of 2,766. In 2005, we added three additional communities for glaucous-winged gull egg gathering only, based on petitions requesting inclusion. These southeastern communities were Craig, Hydaburg, and 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 25 years through the use of annual household surveys in the most heavily used subsistence harvest areas, such as the Yukon-Kuskokwim Delta. In recent years, more intensive surveys combined with outreach efforts focused on species identification have been added to improve the accuracy of information gathered from regions still reporting some subsistence harvest of listed or candidate species.

***Spectacled and Steller's Eiders***

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

The Service has dual goals and responsibilities for authorizing a subsistence harvest while protecting migratory birds and threatened species.

Although these goals continue to be challenging, they are not irreconcilable, providing sufficient recognition is given to the need to protect threatened species, measures to remedy documented threats are implemented, and the subsistence community and other conservation partners commit to working together. With these dual goals in mind, the Service, working with partners, developed measures in 2009 to further reduce the potential for shooting mortality or injury of closed species. These conservation measures included: (1) Increased waterfowl hunter outreach and community awareness partnering with the North Slope Migratory Bird Task Force; (2) continued enforcement of the migratory bird regulations that are protective of listed eiders; and (3) in-season Service verification of the harvest to detect Steller's eider mortality.

This proposed rule continues to focus on the North Slope from Barrow through Point Hope because Steller's eiders from the listed Alaska breeding population, are known to breed and migrate there. The proposed regulations address several ongoing eider management needs by continuing to restrict hunting to times of day with sufficient daylight to improve a hunter's ability to distinguish between species and minimize shooting species closed for harvest; clarifying for subsistence users that Service law enforcement personnel have authority to verify species of birds possessed by hunters; clarifying that it is illegal to possess any bird closed to harvest; and describing how the Service's existing authority of emergency closure would be implemented, if necessary, to protect Steller's eiders. These proposed regulations, implemented in accordance with the Endangered Species Act consultation, are considered the principal means by which the threat from shooting mortality of threatened eiders will be reduced. In addition, the emergency closure authority provides another level of assurance if an unexpected amount of Steller's eider shooting mortality occurs (50 CFR 92.21 and 50 CFR 92.32).

In-season harvest monitoring information will be used to independently evaluate harvest survey reports, as well as evaluate the efficacy of regulations, conservation measures, and outreach efforts. On the North Slope in 2009 and 2010, no Steller's eider harvest was reported, and no Steller's eiders were found shot during in-season verification of the subsistence harvest. However, 2009 was a non-nesting year for Steller's eiders on the North Slope, and in 2010, only one active nest was

found in the Barrow area. Based on these relative successes, the Service will continue the same regulations for the 2011 season. The 2010 conservation measures will also be continued, although there will be some modification of the amount of effort and emphasis each will receive. Specifically, as local communities develop greater responsibility for taking actions to ensure Steller's and spectacled eider conservation and recovery, and hunters demonstrate greater compliance with hunting regulations, the Service's Office of Law Enforcement plans to continue to monitor the threat of unlawful harvest of eiders on the North Slope and maintain a presence in Barrow as needed.

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

***Yellow-Billed Loon and Kittlitz's Murrelet***

Yellow-billed loon (*Gavia adamsii*) and Kittlitz's murrelet (*Brachyramphus brevirostris*) are listed as candidate species for listing under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Their migration and breeding distribution overlaps with where the spring and summer migratory bird hunt is open in Alaska. Both species are closed to hunting, and there is no evidence Kittlitz's murrelets are harvested. On the other hand, harvest surveys have indicated that harvest of yellow-billed loons on the North Slope and St. Lawrence Island does occur. Most of the yellow-billed loons reported harvested on the North Slope were found to be entangled loons salvaged from subsistence fishing nets as described below. The Service will

continue outreach efforts in both areas in 2011, engaging partners to improve harvest estimates and decrease take of yellow-billed loons.

Consistent with the request of the North Slope Borough Fish and Game Management Committee and the recommendation of the Co-management Council, this proposed rule would continue into 2011 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 2011 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. Service support of this proposal is contingent upon the North Slope Region representative collaborating with the Service and Co-management Council to design and implement a scientifically defensible survey to estimate entanglement of yellow-billed loons by North Slope subsistence fishers starting in 2011. Additional information is needed relative to species and number entangled in subsistence nets, distribution of harvest across the North Slope Region, age of birds entangled (*adult* vs. *young-of-year*), and time of harvest. These data will allow the Service to better assess the potential effects of harvest on this species. Currently, individual reporting to the North Slope Borough Department of Wildlife is required by the end of each season. In 2009, two yellow-billed loons were reported entangled and found dead in fishing nets, while two others were released from fishing nets by the North Slope Borough staff.

#### 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 (Act), to ensure that the 2011 subsistence harvest is not likely to jeopardize the continued existence of any species designated as endangered or threatened, or modify or destroy its critical habitats, and that the regulations are consistent with conservation programs for those species. Consultation under section 7 of the Act for the annual subsistence take regulations may cause us to change these regulations. Our biological opinion resulting from the section 7 consultation is a public

document available from either person listed under **FOR FURTHER INFORMATION CONTACT**.

#### What is different in the region-specific regulations for 2011?

We are proposing no changes from the 2010 region-specific regulations.

#### 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.

#### Clarity of the Rule

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

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

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

##### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Will not have an annual effect on the economy of \$100 million or more. It 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 a Notice of Decision (65 FR 16405; March 28, 2000), we identified 12 partner organizations (Alaska Native nonprofits and local governments) to administer the regional programs. The Alaska Department of Fish and Game will also incur expenses for travel to Co-management Council and regional management body meetings. In addition, the State of Alaska will be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed \$100,000 per year, but should not exceed \$150,000 per year. When funding permits, we make annual grant agreements available to the partner organizations and the Alaska Department of Fish and Game to help offset their expenses.

#### *Takings (Executive Order 12630)*

Under the criteria in Executive Order 12630, this 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 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 changes in the regulations and determine 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) a Notice of Decision entitled, "Establishment of Management Bodies in Alaska To Develop Recommendations Related to the Spring/Summer Subsistence Harvest of Migratory Birds." This notice described the way in which management bodies would be established and organized. Based on the wide range of views expressed on the options document, the decision incorporated key aspects of two of the modules. The decision established one Statewide management body consisting of 1 Federal member, 1 State member, and 7–12 Alaska Native members, with all components serving as equals.

#### *Paperwork Reduction Act*

This rule has been examined under the Paperwork Reduction Act of 1995 and does not contain any new collections of information that require Office of Management and Budget approval. OMB has approved our collection of information associated with the voluntary annual household surveys used to determine levels of subsistence take. The OMB control number is 1018–0124, which expires April 30, 2013. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

#### *National Environmental Policy Act Consideration*

The annual regulations and options were considered in the environmental assessment, "Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the 2011 Spring/Summer Harvest," October 18, 2010. Copies are available from the person listed under **FOR FURTHER INFORMATION CONTACT** or at <http://www.regulations.gov>.

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

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This is not a significant regulatory action under this Executive Order; it would allow only for traditional subsistence harvest and would improve conservation of migratory birds by allowing effective

regulation of this harvest. Further, this 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 2011 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 Ikpikpuk River, and everything south of the latitude line 69°45' N between the west bank of the Ikpikpuk 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 Nokotek 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 Ikpikpuk River, and everything north of the latitude line 69°45' N between the west bank of the Ikpikpuk 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 Sagavanirktok River):

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

(ii) Closure: June 20–July 19.

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

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

(i) 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).

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

(2) Closure: June 1–July 31.

(l) *Southeast Alaska.*

(1) Community of Hoonah (Harvest area: National Forest lands in Icy Strait and Cross Sound, including Middle Pass Rock near the Inian Islands, Table Rock in Cross Sound, and other traditional locations on the coast of Yakobi Island. The land and waters of Glacier Bay National Park remain closed to all subsistence harvesting (50 CFR 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. These closures or temporary suspensions will remain in effect until the Regional Director, in consultation with the Co-management Council, determines that the potential for additional Steller's eiders to be taken no longer exists.

Dated: October 7, 2010.

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

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