

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

RIN 1018-AT77

**Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2005 Season****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or we) is establishing migratory bird subsistence harvest regulations in Alaska for the 2005 season. This final rule prescribes frameworks, or outer limits, for dates when harvesting of birds may occur, species that can be taken, and methods and means that would be excluded from use. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. These regulations are intended to provide a framework to enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking establishes regulations that start on April 2, 2005, and expire on August 31, 2005, for the subsistence harvest of migratory birds in Alaska.

**DATES:** Amendments to subparts A and C of 50 CFR part 92 become effective April 8, 2005. Amendments to subpart D of 50 CFR part 92 are effective April 2, 2005, through August 31, 2005.

**ADDRESSES:** The administrative record for this rule may be viewed at the office of the Regional Director, Alaska Region, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503.

**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, or go to <http://alaska.fws.gov/ambcc/index.htm>.

**SUPPLEMENTARY INFORMATION:****Background***What Events Led to This Action?*

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 (Canada Treaty). The

treaty prohibited all commercial bird hunting and specified a closed season on the taking of 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 (Mexico Treaty). The Mexico treaty prohibited the taking of wild ducks between March 10 and September 1. Neither treaty allowed adequately for the traditional harvest of migratory birds by northern peoples during the spring and summer months. This harvest, which has occurred for centuries, was and is necessary to the subsistence way of life in the north and thus continued despite the closed season.

The Canada treaty and the Mexico treaty, as well as 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 ruled that the MBTA prohibits the Federal Government from permitting any harvest of migratory birds that is inconsistent with the terms of any of the migratory bird treaties. The more 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 negotiated Protocols amending both the Canada and Mexico treaties to allow for subsistence harvest of migratory birds by indigenous inhabitants of identified subsistence harvest areas in Alaska. The U.S. Senate approved the amendments to both treaties in 1997.

*What Has the Amended Treaty Accomplished?*

The major goals of the amended treaty with Canada were to allow traditional subsistence harvest and improve conservation of migratory birds by allowing effective regulation of this harvest. The amended treaty with Canada provides a means to allow permanent residents of villages within subsistence harvest areas, regardless of race, to continue harvesting migratory birds between March 10 and September 1 as they have done for thousands of years. The Letter of Submittal of May 20, 1996, from the Department of State to the White House that officially accompanied the treaty protocol set the geographic baseline with lands north and west of the Alaska Range and within the Alaska Peninsula, Kodiak Archipelago, and the Aleutian Islands as the initial subsistence harvest areas.

*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 to provide the most effective and efficient involvement for subsistence users. This process was concluded on March 28, 2000, when 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 establishment and organization of 12 regional management bodies plus the Alaska Migratory Bird Co-management Council (Co-management Council).

Establishment of a migratory bird subsistence harvest began on August 16, 2002, when we published in the **Federal Register** (67 FR 53511) a final rule at 50 CFR part 92 that set procedures for incorporating subsistence management into the continental migratory bird management program. These regulations established an annual procedure to develop harvest guidelines to implement a subsistence migratory bird harvest.

The next step established the first subsistence migratory bird harvest system. This was finalized on July 21, 2003, when we published in the **Federal Register** (68 FR 43010) a final rule at 50 CFR parts 20, 21, and 92 that created the first annual harvest regulations for the 2003 subsistence migratory bird season in Alaska. These annual frameworks were not intended to be a complete, all-inclusive set of regulations, but were intended to regulate continuation of customary and traditional subsistence uses of migratory birds in Alaska during the spring and summer. See the August 16, 2002, July 21, 2003, and April 2, 2004, final rules for additional background information on the subsistence harvest program for migratory birds in Alaska.

On December 20, 2004, we published a proposed rule in the **Federal Register** (69 FR 76362) to establish annual spring/summer subsistence migratory bird harvest regulations for Alaska, for the 2005 season. We received written responses from two entities. One of the responses was from a Co-management Council regional management body, and the other was from a nongovernmental organization.

This rulemaking is necessary because the migratory bird harvest season is closed unless opened and the regulations governing subsistence

harvest of migratory birds in Alaska are subject to public review and annual approval. The Co-management Council held a meeting in April 2004, to develop recommendations for changes effective for the 2005 harvest season. These recommendations were presented to the Service Regulations Committee (SRC) on July 28 and 29, 2004, for action.

This rule establishes regulations for the taking of migratory birds for subsistence uses in Alaska during 2005. This rule lists migratory bird species that are open or closed to harvest, as well as season openings and closures by region. It also explains minor changes in the methods and means of taking migratory birds for subsistence purposes. We have amended 50 CFR 92.5 by adding three new communities to the list of included areas, and corresponding harvest areas and season dates to 50 CFR 92.33.

#### *How Will the Service Continue To Ensure That the Subsistence Harvest Will Not Raise Overall Migratory Bird Harvest?*

The Service has an emergency closure provision (50 CFR 92.21), so that if any significant increases in harvest are documented for one or more species in a region, an emergency closure can be requested and implemented. Eligibility to harvest under the regulations established in 2003 was limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands and in areas north and west of the Alaska Range (50 CFR 92.5). These geographical restrictions opened the initial subsistence migratory bird harvest to only about 13 percent of Alaska residents. High-population areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area and Southeast Alaska were excluded from the eligible subsistence harvest areas.

Based on petitions requesting inclusion in the harvest, in 2004, we added 13 additional communities based on the five criteria set forth in § 92.5(c). These communities included: Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina, Tatitlek, Chenega, Port Graham and Nanwalek, Tyonek and Hoonah (populations totaling 2,766). For 2005, we added three additional communities for glaucous-winged gull egg gathering only. These southeastern communities included: Craig, Hydaburg, and Yakutat, with a combined population of 2,459. These new regions would increase the percentage of the State population

included in the subsistence bird harvest to only 14 percent.

Subsistence harvest has been monitored for the past 15 years through the use of annual household surveys in the most heavily used subsistence harvest areas, e.g., Yukon-Kuskokwim Delta. Continuation of this monitoring would enable tracking of any major changes or trends in levels of harvest and user participation after legalization of the harvest. In the March 3, 2003, **Federal Register** (68 FR 10024), we published a notice of intent to submit the Alaska Subsistence Household Survey Information Collection Forms to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act, with a subsequent 60-day public comment period. In the July 31, 2003, **Federal Register** (68 FR 44961), we published a notice that the Alaska Subsistence Harvest Survey Information Collection Forms were submitted to OMB for approval under the Paperwork Reduction Act, with a 30-day public comment period. OMB approved the information collection on October 2, 2003, and assigned OMB control number 1018-0124, which expires on October 31, 2006.

#### *How Did the Service Develop the Methods and Means Prohibitions, and What Are the Changes for 2005?*

In development of the initial regulations (68 FR 6697), the Co-management Council encouraged the Service to adopt the existing methods and means prohibitions that occur in the Federal (50 CFR 20.21) and Alaska (5AAC92.100) migratory bird hunting regulations. We included some exceptions to the Federal regulations in the initial regulations and also in this proposed rule to allow the continuation of customary and traditional spring harvest methods, but not the creation of new proposed traditions. In this rule, we have incorporated the Bering Strait/Norton Sound region's request to add St. Lawrence Island to the list of areas where an exception allows the use of live decoys to harvest auklets.

#### *How Did the Service Decide the List of Birds Open To Harvest and What Are the Changes for 2005?*

We believed that it was necessary to develop a list of bird species that would be open to subsistence harvest. The original list was compiled from subsistence harvest data, with several species added based on their presence in Alaska. The original intent was for the list to be reviewed by the regional management bodies as a checklist. The list was adopted by the Co-management

Council as part of the guidelines for the 2003 season.

Most of the regions adopted the list as written; however, two regions created their own lists. One regional representative explained that it would take much more time than was available for his region to reduce the list and that, once a bird was removed, returning it to the list would be more difficult later. Going with the original list was viewed as protecting hunters from prosecution for the take of an unlisted bird.

To understand this rationale, one must be aware that subsistence hunting is generally opportunistic and does not usually target individual species. Also, the scientific and corresponding common names of birds are constantly being adjusted by ornithologists, making it difficult to translate these taxonomic changes into the traditionally used Native bird names. Also, preferences for individual species differ greatly between villages and individual hunters. As a result, regions are hesitant to remove birds from the list open to harvest until they are certain the species are not taken for subsistence use. The list therefore contains some species that are taken infrequently and opportunistically, but this is still part of the subsistence tradition. The Co-management Council initially decided to call this list "potentially harvested birds" versus "traditionally harvested birds" because a detailed written documentation of the customary and traditional use patterns for the species listed had not yet been conducted. However, this terminology was leading to some confusion, so the Service renamed the list "subsistence birds" to cover the birds open to harvest.

The "customary and traditional use" of a wildlife species has been defined in Federal regulations (50 CFR 100.4) as a long-established, consistent pattern of use, incorporating beliefs and customs that have been transmitted from generation to generation. Much of the customary and traditional use information has not been documented in written form, but exists in the form of oral histories from elders, traditional stories, harvest methods taught to children, and traditional knowledge of the birds' natural history shared within a village or region. The primary source of quantitative data on customary and traditional use of the harvested bird species comes from Alaska subsistence migratory bird harvest surveys conducted by Service personnel and contractors and transferred to a computerized database. Because of difficulties in bird species identification, shorebird harvest information has been lumped into

“large shorebird” and “small shorebird” categories. In reality, Alaska subsistence harvests are also conducted in this manner, generally with no targeting or even recognition of individual shorebird species in most cases.

Based on conservation concerns, in this rule we closed the harvest of tundra swans in Units 9(D) and 10 starting in 2005. This decision was made to protect a small resident population segment of fewer than 500 tundra swans in the Izembek National Wildlife Refuge area. This small segment of the Pacific population is nonmigratory and appears to be morphologically distinct. Breeding pair surveys indicate that the local population has declined steadily over the past two decades and recruitment into the population is low.

At the request of the North Slope Borough Fish and Game Management Committee, the Co-Management Council recommended adding a provision to allow subsistence use of yellow-billed loons inadvertently caught in subsistence fishing (gill) nets on the North Slope. Justification given by the proponent was that yellow-billed loons are culturally important for the Inupiat Eskimo of the North Slope for use in traditional dance regalia. The Service Regulations Committee met on July 29, 2004, and proposed to set a maximum of 20 yellow-billed loons inadvertently caught annually in the North Slope Region. Individual reporting to the North Slope Borough Department of Wildlife will be required by the end of the season. In addition, the North Slope Borough is planning to ask fishermen, through announcements on the radio and personal contact, to report all entanglements of loons to better estimate the levels of injury or mortality caused by gill nets. This provision to allow subsistence possession and use of yellow-billed loons caught in fishing gill nets is subject to annual review and renewal as part of 50 CFR part 92's Subpart D—Annual Regulations Governing Subsistence Harvest.

*How Does the Service Address the Birds of Conservation Concern Relative to the Subsistence Harvest?*

*Birds of Conservation Concern (BCC) 2002* is the latest document in a continuing effort by the Service to assess and prioritize bird species for conservation purposes. It was published in the **Federal Register** on February 6, 2003 (68 FR 6179). The BCC list identifies bird species at risk because of inherently small populations, restricted ranges, severe population declines, or imminent threats. The species listed need increased conservation attention to maintain or stabilize populations. The

legal authority for this effort is the Fish and Wildlife Conservation Act (FWCA) of 1980, as amended (16 U.S.C. 2901–2912). Section 13(a)(3) of the FWCA (16 U.S.C. 2912(a)(3)) requires the Secretary of the Interior through the Service, to “identify species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543).”

The Co-management Council will continually review the list of subsistence birds. As appropriate, the Council will elevate hunter awareness of species that may have small or declining populations in an effort to directly involve subsistence hunters in conserving these vulnerable species.

#### Response to Public Comments

Only the Region Specific Regulations section of the proposed rule was addressed by commenters.

#### *Section 92.33 Region Specific Regulations*

*Comment:* One respondent expressed strong opposition to how the migratory bird subsistence harvest is being managed in the Delta Junction portion of the Interior Region. The commenter explained that the agricultural fields were mostly created in the 1970s and so hunting waterfowl in these fields should not be considered customary and traditional. The respondent requested that the harvest be closed in Unit 20(D) or at least that portion of Unit 20(D) south of the Tanana River.

*Service Response:* A similar proposal has been received to change the 2006 harvest regulations and will be discussed with a recommendation subsequently made by the Co-Management Council at their May 2005 meeting. Since this issue is already in the system to be discussed, we have decided to defer any action until after receiving a Co-Management Council recommendation.

*Comment:* One commenter proposed to amend the 2005 regulations to close the season for black brant on August 16 versus August 31, only in the Cold Bay area, specifically Moffet and Glazenap lagoons, including Norma Bay and Applegate Cove. The commenter supported their proposal by describing an occurrence in the 2004 season in which two subsistence hunters harvested waterfowl, including black brant, in a way that was inconsistent with the community ethic of traditional sharing and taking only what was needed to satisfy subsistence needs.

*Service Response:* The proposed response to this incident was suggested by a regional management body of the Co-Management Council; however, the entire Co-Management Council was not given the opportunity to discuss and make a recommendation on the proposed regulatory action. We have decided to take no regulatory action for the 2005 season and will defer continued discussion until the May 2005 Co-Management Council meeting.

#### Effective Date

Under the Administrative Procedure Act, our normal practice is to publish rules with a 30-day delay in effective date. However, for this rule, we are using the “good cause” exemption under 5 U.S.C. 553(d)(3) to make this rule effective immediately upon publication in order to ensure conservation of the resource for the upcoming spring/summer subsistence harvest. The rule needs to be made effective immediately because the amended migratory bird treaty protocol allows for an April 2 opening of the subsistence harvest season. To limit negative impacts on the subsistence users, we need to open the harvest as close as possible to the originally agreed-upon opening date.

#### Statutory Authority

We derive our authority to issue these regulations from the four migratory bird treaties with Canada, Mexico, Japan and Russia and from the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703 *et seq.*), that implements these treaties. Specifically, these regulations are issued pursuant to 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with these four treaties, 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.”

#### Executive Order 12866

The Office of Management and Budget (OMB) has determined that this action is not a significant rule subject to OMB review under Executive Order 12866.

a. This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The rule does not provide for new or additional hunting opportunities and therefore will

have minimal economic or environmental impact. This 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 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). Using data from Wolfe's paper and applying it to the areas that will be included in this process, we determined a maximum economic value of \$6 million. This is the estimated economic benefit of the consumptive part of this rule 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, and these benefits are not included in this figure.

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

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

d. This 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 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 rule legalizes a pre-existing subsistence activity, and the resources harvested

will be consumed by the harvesters or persons within their local community.

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

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, as discussed in the Executive Order 12866 section above.

a. This 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 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. This 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 rule does not deal with traded commodities and, therefore, does not have an impact on prices for consumers.

c. This 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 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 pursuant to 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. 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 (Alaska Native non-profits and local governments) to be responsible for administering the regional programs. The Alaska Department of Fish and Game will also incur expenses for travel to Co-Management Council and regional management body's 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.

#### **Paperwork Reduction Act**

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements. We have, however, received OMB approval of associated voluntary annual household surveys used to determine levels of subsistence take. The OMB control number for the information collection is 1018-0124, which expires on October 31, 2006. 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 Executive Order 12866 and Unfunded Mandates Reform Act sections above, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 13132. We worked 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**

This 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 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 and evaluated the rule for possible effects on tribes or trust resources, and have determined that there are no significant effects. The rule will legally recognize the subsistence harvest of migratory birds and their eggs for tribal members, as well as for other indigenous inhabitants.

**Endangered Species Act Consideration**

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531-1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of the Act" and shall "insure that any action authorized, funded, or carried out \* \* \* is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. \* \* \*" Consequently, we consulted with the Anchorage Fish and Wildlife Field Office of the Service to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of Spectacled or Steller's Eiders or result in the destruction or adverse modification of their critical habitat. Findings from this consultation are included in the Biological Opinion on the Effects of the Proposed 2005 Spring and Summer Subsistence Harvest of Birds on the Threatened Steller's and Spectacled Eiders (dated March 1, 2005).

The consultation concluded that the 2005 regulations are not likely to jeopardize the continued existence of either the Steller's or Spectacled Eider. Additionally, any modifications resulting from this consultation to regulatory measures previously proposed are reflected in the final rule.

The complete administrative record for this consultation is on file at the Anchorage Fish and Wildlife Field Office and is also available for public

inspection at the address indicated under the caption **ADDRESSES**.

**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 First Legal Spring/Summer Harvest in 2005," issued August 15, 2004, with a Finding of No Significant Impact issued March 2, 2005. Copies are available from the address indicated under the caption **ADDRESSES**.

**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 allows only 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. Consequently, it is not expected to significantly affect energy supplies, distribution and 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 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 A—General Provisions**

■ 2. In subpart A, amend § 92.5 by revising paragraph (a)(2) introductory text and adding paragraph (a)(3) to read as follows:

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

\* \* \* \* \*  
(a) \* \* \*

(2) Based on petitions for inclusion recommended by the Co-management Council in 2003, the Service added the following communities to the included

areas under this part starting in the 2004 harvest season:

\* \* \* \* \*

(3) Based on petitions for inclusion recommended by the Co-management Council in 2004, the Service added the following communities to the included areas under this part starting in the 2005 harvest season:

- (i) Southeast Region—Craig, Hydaburg, Yakutat.
- (ii) [Reserved]

**Subpart C—General Regulations Governing Subsistence Harvest**

■ 3. In subpart C, amend § 92.20 by revising paragraph (d) to read as follows:

**§ 92.20 Methods and means.**

\* \* \* \* \*

(d) Taking waterfowl and other species using live birds as decoys, except for auklets on Diomede and St. Lawrence islands (Use of live birds as decoys is a customary and traditional means of harvesting auklets on Diomede and St. Lawrence islands.);

\* \* \* \* \*

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

■ 4. In Subpart D, add §§ 92.31 through 92.33 to read as follows:

**§ 92.31 Migratory bird species not authorized for subsistence harvest.**

- (a) You may not harvest birds or gather eggs from the following species:
  - (1) Spectacled Eider (*Somateria fischeri*).
  - (2) Steller's Eider (*Polysticta stelleri*).
  - (3) Emperor Goose (*Chen canagica*).
  - (4) Aleutian Cackling Goose (*Branta hutchinsii leucopareia*)—Semidi Islands only.
  - (5) Tundra Swan (*Cygnus columbianus*)—Units 9(D) and 10 only.
  - (6) Yellow-billed Loon (*Gavia adamsii*)—except North Slope Region. (Requirements for harvest and reporting are described in § 92.33(g)(4).).
- (b) In addition, you may not gather eggs from the following species:
  - (1) Cackling Goose (*Branta hutchinsii minima*).
  - (2) Black Brant (*Branta bernicla nigricans*)—in the Yukon/Kuskokwim Delta and North Slope regions only.

(b) In addition, you may not gather eggs from the following species:

- (1) Cackling Goose (*Branta hutchinsii minima*).
- (2) Black Brant (*Branta bernicla nigricans*)—in the Yukon/Kuskokwim Delta and North Slope regions only.

**§ 92.32 Subsistence migratory bird species.**

You may harvest birds or gather eggs from the following species, listed in taxonomic order, within all included regions. When birds are listed only to the species level, all subspecies existing in Alaska are open to harvest.

- (a) Family Anatidae.

- (1) Greater White-fronted Goose (*Anser albifrons*).
- (2) Snow Goose (*Chen caerulescens*).
- (3) Black Brant (*Branta bernicla nigricans*)—except no egg gathering is permitted in the Yukon/Kuskokwim Delta and the North Slope regions.
- (4) Taverner's Cackling Goose (*Branta hutchinsii taverneri*).
- (5) Aleutian Cackling Goose (*Branta hutchinsii leucopareia*)—except in the Semidi Islands.
- (6) Cackling Goose (*Branta hutchinsii minima*)—except no egg gathering is permitted.
- (7) Lesser Canada Goose (*Branta canadensis parvipes*).
- (8) Tundra Swan (*Cygnus columbianus*)—except in Units 9(D) and 10.
- (9) Gadwall (*Anas strepera*).
- (10) Eurasian Wigeon (*Anas penelope*).
- (11) American Wigeon (*Anas americana*).
- (12) Mallard (*Anas platyrhynchos*).
- (13) Blue-winged Teal (*Anas discors*).
- (14) Northern Shoveler (*Anas clypeata*).
- (15) Northern Pintail (*Anas acuta*).
- (16) Green-winged Teal (*Anas crecca*).
- (17) Canvasback (*Aythya valisineria*).
- (18) Redhead (*Aythya americana*).
- (19) Ring-necked Duck (*Aythya collaris*).
- (20) Greater Scaup (*Aythya marila*).
- (21) Lesser Scaup (*Aythya affinis*).
- (22) King Eider (*Somateria spectabilis*).
- (23) Common Eider (*Somateria mollissima*).
- (24) Harlequin Duck (*Histrionicus histrionicus*).
- (25) Surf Scoter (*Melanitta perspicillata*).
- (26) White-winged Scoter (*Melanitta fusca*).
- (27) Black Scoter (*Melanitta nigra*).
- (28) Long-tailed Duck (*Clangula hyemalis*).
- (29) Bufflehead (*Bucephala albeola*).
- (30) Common Goldeneye (*Bucephala clangula*).
- (31) Barrow's Goldeneye (*Bucephala islandica*).
- (32) Hooded Merganser (*Lophodytes cucullatus*).
- (33) Common Merganser (*Mergus merganser*).
- (34) Red-breasted Merganser (*Mergus serrator*).
- (b) Family Gaviidae.
- (1) Red-throated Loon (*Gavia stellata*).
- (2) Arctic Loon (*Gavia arctica*).
- (3) Pacific Loon (*Gavia pacifica*).
- (4) Common Loon (*Gavia immer*).
- (5) Yellow-billed Loon (*Gavia adamsii*)—North Slope Region only. (Requirements for harvest and reporting are described in § 92.33(g)(4).).
- (c) Family Podicipedidae.
- (1) Horned Grebe (*Podiceps auritus*).
- (2) Red-necked Grebe (*Podiceps grisegena*).
- (d) Family Procellariidae.
- (1) Northern Fulmar (*Fulmarus glacialis*).
- (2) [Reserved].
- (e) Family Phalacrocoracidae.
- (1) Double-crested Cormorant (*Phalacrocorax auritus*).
- (2) Pelagic Cormorant (*Phalacrocorax pelagicus*).
- (f) Family Gruidae.
- (1) Sandhill Crane (*Grus canadensis*).
- (2) [Reserved].
- (g) Family Charadriidae.
- (1) Black-bellied Plover (*Pluvialis squatarola*).
- (2) Common Ringed Plover (*Charadrius hiaticula*).
- (h) Family Haematopodidae.
- (1) Black Oystercatcher (*Haematopus bachmani*).
- (2) [Reserved].
- (i) Family Scolopacidae.
- (1) Greater Yellowlegs (*Tringa melanoleuca*).
- (2) Lesser Yellowlegs (*Tringa flavipes*).
- (3) Spotted Sandpiper (*Actitis macularius*).
- (4) Bar-tailed Godwit (*Limosa lapponica*).
- (5) Ruddy Turnstone (*Arenaria interpres*).
- (6) Semipalmated Sandpiper (*Calidris pusilla*).
- (7) Western Sandpiper (*Calidris mauri*).
- (8) Least Sandpiper (*Calidris minutilla*).
- (9) Baird's Sandpiper (*Calidris bairdii*).
- (10) Sharp-tailed Sandpiper (*Calidris acuminata*).
- (11) Dunlin (*Calidris alpina*).
- (12) Long-billed Dowitcher (*Limnodromus scolopaceus*).
- (13) Wilson's Snipe (*Gallinago delicata*).
- (14) Red-necked phalarope (*Phalaropus lobatus*).
- (15) Red phalarope (*Phalaropus fulicaria*).
- (j) Family Laridae.
- (1) Pomarine Jaeger (*Stercorarius pomarinus*).
- (2) Parasitic Jaeger (*Stercorarius parasiticus*).
- (3) Long-tailed Jaeger (*Stercorarius longicaudus*).
- (4) Bonaparte's Gull (*Larus philadelphia*).
- (5) Mew Gull (*Larus canus*).
- (6) Herring Gull (*Larus argentatus*).
- (7) Slaty-backed Gull (*Larus schistisagus*).
- (8) Glaucous-winged Gull (*Larus glaucescens*).
- (9) Glaucous Gull (*Larus hyperboreus*).
- (10) Sabine's Gull (*Xema sabini*).
- (11) Black-legged Kittiwake (*Rissa tridactyla*).
- (12) Red-legged Kittiwake (*Rissa brevirostris*).
- (13) Ivory Gull (*Pagophila eburnea*).
- (14) Arctic Tern (*Sterna paradisaea*).
- (15) Aleutian Tern (*Sterna aleutica*).
- (k) Family Alcidae.
- (1) Common Murre (*Uria aalge*).
- (2) Thick-billed Murre (*Uria lomvia*).
- (3) Black Guillemot (*Cepphus grylle*).
- (4) Pigeon Guillemot (*Cepphus columba*).
- (5) Cassin's Auklet (*Ptychoramphus aleuticus*).
- (6) Parakeet Auklet (*Aethia psittacula*).
- (7) Least Auklet (*Aethia pusilla*).
- (8) Whiskered Auklet (*Aethia pygmaea*).
- (9) Crested Auklet (*Aethia cristatella*).
- (10) Rhinoceros Auklet (*Cerorhinca monocerata*).
- (11) Horned Puffin (*Fratercula corniculata*).
- (12) Tufted Puffin (*Fratercula cirrhata*).
- (l) Family Strigidae.
- (1) Great Horned Owl (*Bubo scandiacus*).
- (2) Snowy Owl (*Nyctea scandiaca*).

### § 92.33 Region-specific regulations.

The 2005 season dates for the eligible subsistence regions 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.
- (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 Alaska Regional Director or his designee, after consultation with local subsistence users and the region'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.
- (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, is open 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 20 and July 22–August 31; egg gathering: May 1–June 20.

(2) Closure: June 21–July 21.

(f) Northwest Arctic Region.

(1) Season: April 2–August 31 (in general); waterfowl egg gathering May 20–June 9; seabird egg gathering July 3–July 12; molting/non-nesting waterfowl July 1–July 31.

(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' S and south of the latitude line 70°45' E to west bank of the Ikpikpuk River, and everything south of the latitude line 69°45' E 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.

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

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

(ii) Closure: June 7–July 6 for king and common eiders and 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 may be caught inadvertently in subsistence fishing nets in the North Slope Region and kept for subsistence use. Individuals must report each yellow-billed loon inadvertently caught while subsistence gill net fishing to the North Slope Borough Department of Wildlife Management by the end of the season.

(h) Interior Region.

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

(2) Closure: June 15–July 15.

(i) Upper Copper River (Harvest Area: State of Alaska Game Management 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 in this paragraph 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 in this paragraph (k).) (Eligible communities: Tyonek only).

(1) Season: April 2–May 31 for that portion of Unit 16(B) south of the Skwentna River and west of the Yentna River, and August 1–31 for 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: Lands in Icy Strait and Cross Sound, including Middle Pass Rock near the Inian Islands, Table Rock in Cross Sound, and other traditional locations on the coast of Yakobi Island. The land and waters of Glacier Bay National Park remain closed to all subsistence harvesting [50 CFR 100.3]).

(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 Pt. Riou] and coastal lands and islands bordering the Gulf of Alaska from Pt. Manby southeast to and including Dry Bay).

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

(ii) Closure: July 1–August 31.

Dated: March 30, 2005.

**Craig Manson,**

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