

Authority: 5 U.S.C. 553 and 559; 11 U.S.C. 1172; 49 U.S.C. 721, 10502, 11323–11325.

2. Amend § 1180.2 by revising the first sentence of paragraph (d) introductory text and by adding a new paragraph (d)(8) to read as follows:

§ 1180.2 Types of Transactions.

* * * * *

(d) A transaction is exempt if it is within one of the following eight categories. * * *

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(8) Acquisition of temporary trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers that are:

- (i) Based on written agreements,
- (ii) Not filed or sought in responsive applications in rail consolidation proceedings, and
- (iii) Scheduled to expire on a specific date. Rail carriers acquiring temporary trackage rights need not seek authority from the Board to discontinue the trackage rights as of the expiration date specified under § 1180.4(g)(2)(iii).

3. Amend § 1180.4 by adding new paragraphs (g)(2)(iii) and (iv) to read as follows:

§ 1180.4 Procedures.

* * * * *

- (g) * * *
- (2) * * *

(iii) To qualify for an exemption under § 1180.2(d)(8) (acquisition of temporary trackage rights), in addition to the notice, the railroad must file a caption summary suitable for publication in the **Federal Register**. The caption summary must be in the following form:

Surface Transportation Board

Notice of Exemption

Finance Docket No.

- (1)—Temporary Trackage Rights—(2).
- (2) (3) to grant (4) temporary trackage rights to (1) between (5). The temporary trackage rights will be effective on (6). The authorization will expire on (7).

This notice is filed under § 1180.2(d)(8). Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: _____

By the Board.

[Insert name]

Secretary.

The following key identifies the information symbolized in the summary.

- (1) Name of the tenant railroad.
- (2) Name of the landlord railroad.

(3) If an agreement has been entered use “has agreed,” but if an agreement has been reached but not entered use “will agree.”

(4) Indicate whether “overhead” or “local” trackage rights are involved.

(5) Describe the temporary trackage rights.

(6) State the date the temporary trackage rights agreement is proposed to be consummated.

(7) State the date the authorization will expire.

(iv) The Board will publish the caption summary in the **Federal Register** within 20 days of the date that it is filed with the Board. The filing of a petition to revoke under 49 U.S.C. 10502(d) does not stay the effectiveness of an exemption.

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[FR Doc. 03–3251 Filed 2–7–03; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20, 21, and 92

RIN 1018–AI84

Migratory Bird Subsistence Harvest in Alaska; Proposed Spring/Summer Subsistence Harvest Regulations for Migratory Birds in Alaska During the 2003 Subsistence Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is proposing to establish spring/summer migratory bird subsistence harvest regulations in Alaska for the 2003 subsistence season. The proposed regulations prescribe frameworks, or outer limits, for dates when harvesting of birds may occur, species that can be taken, and methods and means excluded from use. These proposed regulations were developed under a new co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. They are not intended to be a complete, all-inclusive set of regulations, but are intended to provide an initial framework to legalize 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 public review. This rulemaking proposes regulations that expire on August 31, 2003, for the spring/summer subsistence harvest of migratory birds in

Alaska. Seasons will open after April 1 and close prior to September 1.

DATES: You must submit comments on the proposed spring/summer harvest regulations for migratory birds in Alaska on or before March 12, 2003.

ADDRESSES: Send your comments on this proposed rule to the Regional Director, Alaska Region, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska, 99503 or fax them to (907) 786–3641.

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, Alaska 99503.

SUPPLEMENTARY INFORMATION:

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 commercial hunting for, 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 took into account and allowed adequately for the traditional harvest of migratory birds by northern peoples during the spring and summer months. This harvest, which had occurred for centuries, was 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 spring/summer 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 will the Amended Treaty Accomplish?

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

The amendments are not intended to cause significant increases in the take of migratory birds relative to their continental population sizes. Therefore, the Letter of Submittal places limitations on who is eligible to harvest and where they can harvest migratory birds. Anchorage, the Matanuska-Susitna and Fairbanks North Star Boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, and Southeast Alaska generally do not qualify as subsistence harvest areas. Limited exceptions may be made so that some individual communities within these excluded areas may qualify for designation as subsistence harvest areas for specific purposes. For example, future regulations could allow some villages in Southeast Alaska to collect gull eggs.

The amended treaty with Canada calls for creation of management bodies to ensure an effective and meaningful role for Alaska's indigenous inhabitants in the conservation of migratory birds. According to the Letter of Submittal, management bodies are to include Alaska Native, Federal, and State of Alaska representatives as equals. Together they will develop recommendations for, among other things: seasons and bag limits, methods and means of take, law enforcement policies, population and harvest monitoring, education programs, research and use of traditional knowledge, and habitat protection. The management bodies will involve village

councils to the maximum extent possible in all aspects of management.

The management bodies will submit relevant recommendations to the Service and to the Flyway Councils. Restrictions in harvest levels for the purpose of conservation will be shared equitably by users in Alaska and users in other States, taking into account nutritional needs of subsistence users in Alaska. The treaty amendments are not intended to create a preference in favor of any group of users in the United States or to modify any preference that may exist, nor do they create any private rights of action under U.S. law.

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

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

On July 1, 1999, we published in the **Federal Register** (64 FR 35674) a notice of availability of an options document, entitled "Forming management bodies to implement legal spring and summer migratory bird subsistence hunting in Alaska." This document described four possible models for establishing management bodies and was released to the public for review and comment. We mailed copies of the document to approximately 1,350 individuals and organizations, including all tribal

councils and municipal governments in Alaska, Native regional corporations and their associated nonprofit organizations, the Alaska Department of Fish and Game, Federal land management agencies, representatives of the four Flyway Councils, conservation and other affected organizations, and interested businesses and individuals. We distributed an additional 600 copies at public meetings held in Alaska to discuss the four models. We also made the document available on the U.S. Fish and Wildlife Service Web page.

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

On March 28, 2000, we published in the **Federal Register** (65 FR 16405) the Notice of Decision, "Establishment of Management Bodies in Alaska To Develop Recommendations Related to the Spring/Summer Subsistence Harvest of Migratory Birds." This notice described the establishment and organization of management bodies.

Based on the wide range of views expressed on the options document, the decision incorporated key aspects of two of the models. The decision established one statewide management body consisting of 1 Federal member, 1 State member, and 7–12 Alaska Native members, with each component serving as equals. Decisions and recommendations of this management body will be by consensus wherever possible; however, if a vote becomes necessary, each component, Federal, State, and Native, will have one vote. This body will set a framework for annual regulations for spring and summer subsistence harvest of migratory birds.

The Alaska Regional Director of the Service divided Alaska into 12 geographic regions based on common subsistence resource use patterns and the 12 Alaska Native Regional Corporation boundaries under the Alaska Native Claims Settlement Act. Despite using the Alaska Native Regional Corporation boundaries, we are not working directly with the Regional Corporations in this program, and are instead working with the Alaska Native non-profit groups and local governments in those corresponding

regions. Eleven regional bodies have elected to participate in the statewide management body at this time. Out of all of the regions represented in the statewide management body, only eight regions actually represent included areas (50 CFR part 92.5). These eight eligible regions submitted proposals to open harvest in 2003.

In April 2000, we met with the Alaska Department of Fish and Game and the Native Migratory Bird Working Group to discuss bylaws for the statewide management body. At that meeting, participants decided to name the statewide management body the "Alaska Migratory Bird Co-management Council." On October 30, 2000, the Co-management Council convened for the first time to establish organizational guidelines and to begin preparation for the development of recommendations for regulations. On December 17, 2001, the Co-management Council met to refine organizational procedures and to discuss Alaska Frameworks/Guidelines for development of regulations for the first harvest season.

Over the winter of 2001/2002, the regional management bodies submitted recommendations for regulating the harvest within their regions. Recommendations were received only from the eight regions with communities included in the 2003 proposed harvest. The other four regions did not send in recommendations. On May 14, 2002, the Co-management Council met to make final recommendations on harvest dates and methods and means of harvest for the 2003 season as necessary to protect the migratory bird resource. The Co-management Council recommendations were sent to the four Flyway Councils for comments, and presentations were made at July 2002 meetings of the Pacific and Central Flyway Councils. The Co-management Council's harvest recommendations were initially presented to the Service Regulations Committee (SRC) on August 31, 2002, with final SRC action on October 24, 2002.

On April 8, 2002, we published in the **Federal Register** (67 FR 16709) a proposed rule to establish procedures for implementing a spring/summer migratory bird subsistence harvest in Alaska. The proposed rule provided for a public comment period of 46 days. We mailed copies of the proposed rule to more than 1,200 individuals and organizations that were on the project mailing list. We conducted two public meetings in Anchorage where people could ask questions or provide formal comment.

By the close of the public comment period on May 24, 2002, we had received written responses from 11 entities. Four of the responses were from individuals, five from organizations, one from the Alaska Legislature, and one from the Alaska Department of Fish and Game. On August 16, 2002, we published in the **Federal Register** (67 FR 53511) a final rule, which established procedures for incorporating subsistence management into the continental migratory bird management program. These procedural regulations establish an annual procedure to develop harvest guidelines for implementation of a spring/summer migratory bird subsistence harvest.

This is the first year that we will prescribe annual frameworks, or outer limits, for dates when subsistence harvest of birds may occur, the list of species that may be taken, methods and means excluded from use, etc. The proposed frameworks are not intended to be a complete, all-inclusive set of regulations, but are intended to provide an initial framework to legalize customary and traditional subsistence uses of migratory birds in Alaska during the spring and summer. The proposed rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual establishment and public review, *i.e.*, the season is closed unless opened. This proposed rule introduces regulations for reorganization of the regional areas, harvest seasons, methods, and means related to taking of migratory birds for subsistence uses in Alaska during the spring/summer of 2003. The creation of part 92 also necessitates the need for nonsubstantive changes to parts 20 and 21, and we have proposed these changes in the rule portion of this document.

How Did the Service Meet the International Aspects of the Migratory Bird Treaties?

The Service's authority arises from the four international treaties implemented by the Migratory Bird Treaty Act. Formerly, the 1916 Convention between the United States and Great Britain on behalf of Canada and the 1936 treaty with the United Mexican States contained language that precluded most spring/summer subsistence harvest of migratory birds in Alaska. Both of these treaties have now been amended to allow the U.S. government to implement subsistence harvests during the closed season by indigenous inhabitants of identified subsistence harvest areas in Alaska. Specifically, the Protocol with Canada, Article II of the Treaty was revised to

allow migratory birds and their eggs to be harvested by the indigenous inhabitants of the State of Alaska, regardless of the closed season provisions in Article II.

Although the Protocol with the United Mexican States was amended to allow for the taking of wild ducks by indigenous inhabitants of Alaska, the hunting season limitation specified in Article II Part C was not altered. Therefore, the length of the Alaskan spring/summer subsistence harvest of migratory birds cannot exceed the period specified within the Mexican convention, which is 4 months. Historically, we have interpreted this restriction as 124 days. Therefore, to be consistent with the Mexican Treaty, subsistence harvest between March 11 and September 1 must be limited to 124 days. The above interpretation of season length came late in this initial regulatory process. The Co-management Council had developed season recommendations without being aware of a 124-day season limitation; therefore, the Service has elected to open the season on April 2, 2003, and allow the "Closed Season Policy" (53 FR 16877, May 12, 1988) to remain in effect through April 1. Under the "Closed Season Policy," the closed season is selectively enforced to protect those species for which there is greatest conservation concern. Following April 1, 2003, the "Closed Season Policy" will no longer be in effect. The regulations in 50 CFR part 20 will apply to all migratory bird harvests by all people in Alaska from September 1, 2003 to March 11, 2004.

The 1974 Migratory Bird Treaty with Japan provides for "taking of migratory birds by Eskimos, Indians, and Indigenous peoples of the Trust Territory of the Pacific Islands for their own food and clothing." The Japan Treaty further stipulates that "Open seasons for harvesting migratory birds may be decided by each Contracting Party respectively. Such harvesting seasons shall be set so as to avoid their principal nesting seasons and to maintain their populations in optimum numbers." In conformance with this provision, the Service developed a provision that would allow the traditional subsistence harvesting of eggs while also providing protection during the most critical part of the production period. Using ducks and geese as the initial model (with applications later considered for seabirds), a 30-day closed period targets the last two weeks of the incubation period and the first two weeks of the brood rearing period. This concept still permits an opportunity for traditional

egg harvesting during the early period after egg laying, but protects the later developing eggs and newly hatched young. To determine the best protective closure periods for their harvest regions based on mean nest initiation and egg laying dates, regional management bodies within the Co-management Council worked with the Service's Division of Migratory Bird Management in Anchorage, Alaska. Closures in some regions were geographically subdivided to provide the best protection, while other regions were provided separate closures for waterfowl and seabirds (primarily murre).

In this proposed rule, the Yukon-Kuskokwim Delta region requested flexibility to set and announce the annual mid-season principal nesting closure period, based on local information, such as timing of snow melt and initiation of nesting. Thus, the closure period in the Yukon-Kuskokwim Delta region will be announced by the Alaska Regional Director or his or her designee, after consultation with biologists in the field, local subsistence users, and the region'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.

How Will the Service Ensure That This New Legalized Subsistence Harvest Will Not Raise Overall Migratory Bird Harvest?

The Preamble of the Protocol amending the Canada Treaty states one of its goals is to allow a traditional subsistence hunt while also improving conservation of migratory birds through effective regulation of this hunt. In addition, the Preamble notes that, by sanctioning a traditional subsistence hunt, the Parties do not intend to cause significant increases in the take of migratory birds, relative to their continental population sizes, compared to the take that is presently occurring. Any such increase in take as a result of the types of hunting provided for in the Protocol would be inconsistent with the Convention.

Eligibility to harvest under these new regulations is limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, or in areas north and west of the Alaska Range (50 CFR part 92.5). These geographical restrictions open the initial spring/summer subsistence migratory bird harvest to only about 13% 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 are currently excluded from the eligible subsistence harvest areas. The eligible subsistence harvest areas were determined by a history of customary and traditional use of migratory birds during the spring and summer as provided in the Protocol amending the Canada Treaty. Adoption of annual harvest regulations will legalize the spring/summer subsistence harvest, but is not intended to initiate or somehow increase it, since subsistence harvest has a long history of prior use in these regions. In addition, some regions, such as Bristol Bay and the Northwest Arctic, indicated that local interest in harvesting birds was declining due to increased commercial availability of alternative foods.

Alaska Natives have long-standing conservation ethics and traditions that are passed from generation to generation through the teachings of elders. These customary and traditional teachings have provided for the perpetuation of migratory birds prior to the ratification of the Canada and Mexico treaty amendments and will continue to do so following the opening of the legal subsistence season. Ultimately it is these components of Native Alaskan culture, rather than regulations, that will provide the more restrictive limits on the harvest of migratory birds.

We have long recognized that a legal and equitable harvest opportunity should be provided during traditional harvesting periods within a regulated framework that ensures conservation of the resource. Without regulating this ongoing activity, populations of the most heavily harvested species, principally waterfowl, could experience declines, and the recovery of depressed populations would be more difficult. Legalizing the subsistence harvest could make any documentation of the take easier and any reporting more accurate. In addition, the regulations will become part of the comprehensive, continental system of migratory bird management, thus integrating subsistence uses with other uses for the first time. Further, the Alaska subsistence migratory bird harvest is presently thought to constitute only approximately 2–3% of the aggregate national migratory bird harvest.

Under the prior "Closed Season Policy" (53 FR 16877, May 12, 1988), it was the position of the Service to emphasize enforcement of restrictions on species of greatest conservation concern. Since its implementation, information on the "Closed Season Policy" has been broadly distributed in

Alaska. We believe it is reasonable to assume that most subsistence users were aware of the policy and continued their traditional harvest of non-protected migratory bird species, so few new subsistence users should be attracted by legalizing their customary and traditional harvests. Indications are that subsistence harvests of migratory birds have, in the past, been generally under reported due to fear of prosecution. Legalization of the harvest could make people more comfortable about reporting take. This could lead to more accurate reporting and ultimately help in regulation setting and bird conservation.

Subsistence harvest has been monitored for the past 14 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 significant changes or trends in levels of harvest and user participation after legalization of the harvest. The harvest survey forms that we used to collect information were not approved by the Office of Management and Budget (OMB). We are initiating the process to request OMB approval of these forms, and we will publish a notice in the **Federal Register** in the near future requesting public comment on this information collection. We will not conduct or sponsor these surveys until we obtain OMB approval of this information collection. If OMB approves the forms, we intend to begin a Statewide program to gather information that would provide a more comprehensive view of the overall subsistence harvest and more species-specific harvest data, especially on shore birds.

How Did the Service Come Up With the Methods and Means Prohibitions?

The Co-Management Council in general adopted the existing methods and means prohibitions that occur in the Federal (50 CFR part 20) and Alaska (AS 16.05.940(17)) migratory bird hunting regulations. Some exceptions were made to allow the continuation of customary and traditional spring harvest methods. For example, an exception was made to allow use of live birds as decoys for the harvest of auklets on Diomed Island.

Why Are No Daily Harvest Limits Proposed Under These Subsistence Regulations?

The concept of harvest or bag limits is difficult to apply to the traditional subsistence harvest. A subsistence harvest involves opportunistic use of resources when they are available or

abundant, usually for short periods such as bird migration stopovers. Also, subsistence hunting traditionally is often not for individual purposes, meaning hunters are taking birds to be shared within the community, among several families. Historically, local survival depended on sharing which is a cultural value broadly taught and practiced both within and between communities. Often these designated village hunters are proficient in the techniques necessary to take specific species, for example, hunting murrens from breeding areas along seacliff ledges. A restrictive daily limit for individual subsistence hunters would significantly constrain customary and traditional practices and limit opportunistic seasonal harvest opportunities within the Alaska subsistence communities.

The Co-management Council does recognize that setting harvest limits may become necessary, especially within local areas and individual species. However, these initial 2003 harvest regulations were not designed to be a complete, all-inclusive set of regulations, but intended to provide an initial framework to formally recognize and provide opportunities for the customary and traditional subsistence uses of migratory birds in Alaska. Within these initial frameworks, the first step in limiting the overall subsistence harvest was to establish a closed species list, that included regional restrictions. Establishing a 30-day closed period during the breeding season also limited the harvest impacts. The eventual need to further adjust levels of harvest take, either regionally or overall, is recognized and will be dealt with by the Co-management Council based on recommendations by their Technical Committee on an individual species basis. These decisions will likely be based on bird population status and past subsistence harvest data. Concepts such as community harvest limits and/or designated hunters may be considered to accommodate customary and traditional subsistence harvest methods.

How Did the Service Come Up With the List of Birds Open to Harvest?

The Service believed that it was necessary to develop a list of bird species that would be open to subsistence harvest during the spring/summer season. The original list was compiled from subsistence harvest data, with several species added based on their presence in Alaska without written records of subsistence take. The original intent was for the list to be reviewed by the regional management bodies as a

check list. 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, it would be more difficult to add it later. Going with the original list was viewed as protecting hunters from prosecution for the rare 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. Native language names for birds often group closely related species, with no separate names for species within these groups. Also, preferences for individual species differ greatly between villages and individual hunters. As a result, regions are hesitant to remove birds from the list until they are certain they are not taken. 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 106 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 in 2003.

The "customary and traditional use" of a wildlife species has been defined in Federal regulations (50 CFR part 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 only available empirical evidence of 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. Due to 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. In addition, red-faced cormorants, trumpeter swans, Aleutian terns, whiskered auklets, short-eared owls and others have not been targeted in subsistence harvest questionnaires, so little or no numerical harvest data exists. Available summaries of subsistence harvest data include: Page and Wolf 1997; Trost and Drut 2001, 2002; Wentworth 1998; Wentworth and Wong 2001; and Wong and Wentworth 2001.

What Are Birds of Conservation Concern and How Do They Apply to Subsistence Harvest?

Birds of Conservation Concern (BCC) 2002 (FWS 2002) is the latest document in a continuing effort by the Service to assess and prioritize bird species for conservation purposes (FWS 1982, 1987, 1995; and U.S. Department of the Interior 1990). It identifies bird species at risk due to inherently small populations or restricted ranges, severe population declines, or imminent threats, and thus in need of 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. The 1988 amendment (Pub. L. 100-653, Title VIII) to the FWCA requires the Secretary of the Interior (16 U.S.C. 2901-2912), 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 (ESA) of 1973, as amended (16 U.S.C. 1531-1543)."

In actuality, and fortunately, few of the species on the BCC lists are in such a precarious state that they will have to be considered for listing as endangered or threatened in the near future. Our goal is to implement preventive management measures that will serve to keep these species off the endangered species list. Proactive conservation clearly is more cost-effective than the extensive recovery efforts required once a species is federally listed under the ESA. The BCC lists are intended to stimulate coordinated and collaborative proactive conservation actions (including research, monitoring, and management) among Federal, State, and private partners. By focusing attention on these highest priority species, the Service hopes to promote greater study and protection of the habitats and ecological communities upon which

these species depend, thereby ensuring the future of healthy avian populations and communities (For more detailed information on the exact criteria used to select species for consideration and inclusion on the BCC lists, see FWS 2002).

Of the 106 species for which the Service proposes to establish regulations allowing subsistence hunting in Alaska, 22 are on BCC lists at one or more scales (e.g., National, FWS Regions, or Bird Conservation Regions—Alaska). The Service considers one additional species (Trumpeter Swan) to be “sensitive” because of its small population size and limited breeding distribution in Alaska. Of the 22 species on BCC lists, 14 are technically considered “gamebirds” (as defined by bilateral migratory bird conventions with Canada and Mexico), although frameworks allowing sport hunting seasons have never been established for any of them in the 85-year history of the Migratory Bird Treaty Act. These species are included on the list of birds that could be hunted for subsistence at the request of the Co-management Council based on a continuing history of customary and traditional use, and the fact that they will continue to be taken for subsistence in the future. Although designation of these species by the Service as “birds of conservation concern” or “sensitive” does not automatically exclude them from consideration for subsistence hunting, we believe that it is incumbent upon the Service to make sure that appropriate conditions are in place to ensure that a limited subsistence harvest of these species will not worsen their conservation status.

The following 23 species are birds of conservation concern or considered sensitive for other reasons. We request public comments as to whether or not these bird species should be removed from the list of birds open for the spring/summer subsistence harvest in Alaska.

Family Gaviidae

Red-throated Loon (*Gavia stellata*)
Yellow-billed Loon (*Gavia adamsii*)

Family Phalacrocoracidae

Red-faced Cormorant (*Phalacrocorax urile*)

Family Anatidae

Trumpeter Swan (*Cygnus buccinator*)

Family Charadriidae

American Golden-Plover (*Pluvialis dominicus*)
Pacific Golden-Plover (*Pluvialis fulva*)

Family Haematopodidae

Black Oystercatcher (*Haematopus bachmani*)

Family Scolopacidae

Solitary Sandpiper (*Tringa solitaria*)
Upland Sandpiper (*Bartramia longicauda*)
Whimbrel (*Numenius phaeopus*)
Bristle-thighed Curlew (*Numenius tahitiensis*)
Hudsonian Godwit (*Limosa haemastica*)
Bar-tailed Godwit (*Limosa lapponica*)
Marbled Godwit (*Limosa fedoa*)
Black Turnstone (*Arenaria melanocephala*)
Red Knot (*Calidris canutus*)
Dunlin (*Calidris alpina*)
Buff-breasted Sandpiper (*Tryngites subruficollis*)

Family Laridae

Red-legged Kittiwake (*Rissa brevirostris*)
Arctic Tern (*Sterna paradisaea*)
Aleutian Tern (*Sterna aleutica*)

Family Alcidae

Whiskered Auklet (*Aethia pygmaea*)

Family Strigidae

Short-eared Owl (*Asio flammeus*)

In addition to whether or not these birds should be open for subsistence hunting, we specifically request information and comments from the public on the following four questions regarding the above list of bird species. Responses may reflect personal knowledge or opinion, or be based on a review of historical or contemporary documents and published literature.

1. What measurable impacts do you think a limited subsistence harvest would have on populations of these species?

2. Which bird species are more important in terms of food value and/or customary and traditional uses?

3. Apart from their designation as “birds of conservation concern,” are there particular reasons why subsistence harvest should be restricted or closed for any of these species?

4. In the event that subsistence hunting were allowed for some or all of these species, do you believe that certain conditions should be imposed to ensure that the population status of these species is maintained or improved? If so, what would you recommend?

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Wong, D. and C. Wentworth. 2001. Subsistence migratory bird harvest survey, Bristol Bay, 1995–1999. U.S. Fish Wildl. Serv., Migratory Bird Mgt. Div., Alaska Peninsula NWR, Togiak NWR., and Bristol Bay Native Assoc., Anchorage, AK.

Public Comments Solicited

The Department of the Interior’s policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. If you wish to comment, you may submit your comments by any one of several

methods. You may mail or fax comments to the address indicated under the caption **ADDRESSES**. You may hand-deliver comments to the address indicated under the caption **ADDRESSES**. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would also withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

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

Because we conducted an extensive public involvement process prior to formulating these regulations, we are soliciting comments on this proposed rule for only 30 days. We need to finalize these regulations as soon as possible to open the first legal subsistence harvest in April 2003.

Statutory Authority

We derive our authority to issue these proposed 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.*), which implements the 1916 Convention, as amended, between the United States and Great Britain (for Canada) and other treaties for the protection of migratory birds. Specifically, these regulations are issued pursuant to 16 U.S.C. 712 (1), which authorizes the Secretary of the Interior to "issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the

preservation and maintenance of stocks of migratory birds."

Executive Order 12866

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

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

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

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

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

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

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

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

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

a. This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. This rule is administrative, technical, and procedural in nature, establishing the procedures for implementing spring and summer harvest of migratory birds as provided for in the amended Canada Treaty. 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 U.S. Fish and Wildlife Service can estimate the consumptive value for birds harvested under this rule but does not have a

dollar value for the cultural benefit of maintaining a subsistence economy and way of life.

The economic value derived from the consumption of the harvested migratory birds has been estimated using the results of a paper by Robert J. Wolfe titled "Subsistence Food Harvests in Rural Alaska, and Food Safety Issues," August 13, 1996." Using data from Wolfe's paper and applying it to the areas that will be included in this process, a maximum economic value of \$6 million is determined. 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 E.O. 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. The U.S. Fish and Wildlife Service has 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 certify 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 to be responsible for administering the regional programs. When possible, we will make annual grant agreements available to the partner organizations to help offset their expenses. The Alaska Department of

Fish and Game will incur expenses for travel to the Co-management Council meetings and to meetings of the regional management bodies. In addition, the State 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.

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 are, however, beginning the process to request OMB approval of associated voluntary annual household surveys used to determine levels of subsistence take. We will publish a notice in the **Federal Register** in the near future requesting public comment on that information collection. 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 E.O. 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 are working with the State of Alaska on development of these regulations.

Civil Justice Reform—Executive Order 12988

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

Takings Implication Assessment

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

Endangered Species Act Consideration

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

National Environmental Policy Act Consideration

We previously determined that establishing the procedures for future development of subsistence harvest regulations does not require an environmental assessment because the impacts to the environment are negligible. We therefore filed a categorical exclusion dated April 30, 1999. Copies of the categorical exclusion are available at the address shown in the section of this document entitled **ADDRESSES**. An environmental assessment was prepared in September 2002 for the 2003 subsistence harvest regulations.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only allows for traditional subsistence harvest and improves conservation of migratory birds by allowing effective regulation of this harvest, it is not a significant regulatory action under Executive Order 12866. Consequently it is not expected to

significantly affect energy supplies, distribution, and use. Therefore, this action is a not significant energy action under Executive Order 13211 and no Statement of Energy Effects is required.

List of Subjects

Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

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, subchapters B and F, of the Code of Federal Regulations as follows:

PART 20—Migratory Bird Hunting

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 742 a–j; Pub. L. 106–108.

2. Amend § 20.2 by adding paragraph (e) to read as follows:

§ 20.2 Relation to other provisions.

* * * * *

(e) Migratory Bird Subsistence Harvest in Alaska. The provisions of this part are not applicable to the migratory bird subsistence harvest in Alaska issued pursuant to part 92 unless specifically referenced in part 92 of this subchapter.

3. Amend § 20.22 by revising the existing paragraph to read as follows:

§ 20.22 Closed seasons.

No person may take migratory game birds during the closed season except as provided in parts 21 and 92 of this chapter.

§ 20.132 [Removed and Reserved]

4. Remove and reserve § 20.132.

PART 21—MIGRATORY BIRD PERMITS

5. The authority citation for part 21 continues to read as follows:

Authority: Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106–108.

6. Amend § 21.11 by revising the section to read as follows:

§ 21.11 General permit requirements.

No person may take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any

migratory bird, or the parts, nests, or eggs of such bird except as may be permitted under the terms of a valid permit issued pursuant to the provisions of this part and part 13, or as permitted by regulations in this part, or part 20 of this subchapter (the hunting regulations), or part 92 of subchapter F of this chapter (the spring/summer subsistence harvest regulations). Birds taken or possessed under this part in subsistence included areas of Alaska are subject to this part and not to part 92. Subsistence included areas are defined in § 92.5(a).

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

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

Authority: 16 U.S.C. 703–712.

Subpart A—General Provisions

8. In subpart A amend § 92.4 by revising the definition for “migratory bird” to read as follows:

§ 92.4 Definitions.

* * * * *

Migratory bird, for the purposes of this part, means the same as defined in § 10.12 of this chapter. Species eligible to harvest are listed in § 92.32.

* * * * *

9. In subpart A amend § 92.5 by revising paragraphs (b) and (d) to read as follows:

§ 92.5 Who is eligible to participate?

* * * * *

(b) *Excluded areas*. Village areas located in Anchorage, the Matanuska-Susitna or Fairbanks North Star Boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, or Southeast Alaska generally do not qualify for a spring or summer harvest. Communities located within one of these areas may petition the Co-management Council through their designated regional management body for designation as a spring and summer subsistence harvest area. The petition must state how the community meets the criteria identified in paragraph (c) of this section. The Co-management Council will consider each petition and will submit to the U.S. Fish and Wildlife Service any recommendations to designate a community as a spring and summer subsistence harvest area. The U.S. Fish and Wildlife Service will publish any approved recommendations to designate a community as a spring and summer subsistence harvest area in subpart D of this part. All areas outside Alaska are ineligible.

* * * * *

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

10. In subpart A amend § 92.6 by revising the section to read as follows:

§ 92.6 Use and possession of migratory birds.

Harvest and possession of migratory birds must be done using nonwasteful taking. You may not take birds for purposes other than human consumption. You may not sell, offer for sale, purchase, or offer to purchase migratory birds, their parts, or their eggs taken under this part. Nonedible by-products of migratory birds taken for food may be used for other non-commercial purposes only by individuals qualified to possess those birds. You may possess migratory birds, their parts, and their eggs, taken under this part, only if you are an eligible person as determined in § 92.5.

Subpart B—Program Structure

11. In subpart B amend § 92.10 by revising paragraph (b)(1) to read as follows:

§ 92.10 Alaska Migratory Bird Co-management Council.

* * * * *

(b) * * *

(1) The Federal and State governments will each seat one representative. The Federal representative will be appointed by the Alaska Regional Director of the U.S. Fish and Wildlife Service, and the State representative will be appointed by the Commissioner of the Alaska Department of Fish and Game. Regional partner organizations may seat 1 representative from each of the 12 regions identified in § 92.11(a).

* * * * *

12. In subpart B, amend § 92.11 by revising paragraphs (a) and (b) introductory text to read as follows:

§ 92.11 Regional management areas.

(a) *Regions identified*. To allow for maximum participation by residents of

subsistence eligible areas, the Alaska Regional Director of the Service established 12 geographic regions based on common subsistence resource use patterns and the 12 Alaska Native Regional Corporation boundaries established under the Alaska Native Claims Settlement Act. Despite using the Alaska Native Regional Corporation boundaries, we are not working directly with the Regional Corporations in this program and are instead working with the Alaska Native nonprofit groups and local governments in those corresponding regions. You may obtain records and maps delineating the boundaries of the 12 regions from the U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, 222 West 7th Ave., No. 13, Anchorage, AK 99513. The regions are identified as follows:

- (1) Aleutian/Pribilof Islands;
- (2) Kodiak Archipelago;
- (3) Bristol Bay;
- (4) Yukon/Kuskokwim Delta;
- (5) Bering Strait/Norton Sound;
- (6) Northwest Arctic;
- (7) North Slope;
- (8) Interior;
- (9) Southeast;
- (10) Gulf of Alaska;
- (11) Upper Copper River; and
- (12) Cook Inlet.

(b) *Regional partnerships.* The U.S. Fish and Wildlife Service will establish partner agreements with at least 1 partner organization in each of the 12 regions. The partner organization identified must be willing and able to coordinate the regional program on behalf of all subsistence hunters within that region. A regional partner will:

* * * * *

Subpart C—General Regulations Governing Subsistence Harvest

13. In subpart C, add § 92.20 to read as follows:

§ 92.20 Methods and means.

You may not use the following devices and methods to harvest migratory birds:

(a) Swivel guns, shotguns larger than 10 gauge, punt guns, battery guns, machine guns, fish hooks, poisons, drugs, explosives, or stupefying substances;

(b) Shooting from a sinkbox or any other type of low-floating device that affords the hunter a means of concealment beneath the surface of the water;

(c) Hunting from any type of aircraft;

(d) Taking waterfowl and other species using live birds as decoys, except for auklets on Diomedes Island

(Use of live birds as decoys is a customary and traditional means of harvesting auklets on Diomedes Island);

(e) Hunting with the aid of recorded bird calls;

(f) Using any type of vehicle, aircraft, or boat for the purpose of concentrating, driving, rallying, or stirring up of any migratory bird, except boats may be used to position a hunter;

(g) The possession or use of lead or other toxic shot while hunting all migratory birds (Approved nontoxic shot types are listed in § 20.21(j) of this subchapter);

(h) Shooting while on or across any road or highway.

Subpart D—Annual Regulations Governing Subsistence Harvest

14. In subpart D, amend § 92.30 by adding an introductory paragraph to read as follows:

§ 92.30 General overview of regulations.

These regulations establish a spring/summer migratory bird subsistence harvest in Alaska. The regulations list migratory bird species that are authorized for harvest, species that are not authorized for harvest, season dates, and dates for a 30-day closure to protect nesting birds. The Co-management Council will review and, if necessary, modify these harvest regulations on an annual basis, working within the schedule of the Federal late season waterfowl regulations.

* * * * *

15. 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 Canada Goose, *Branta canadensis leucopareia*—Semidi Islands only.

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

- (1) Cackling Canada Goose, *Branta canadensis 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 open regions. When birds are listed only to the species level, assume all subspecies existing in Alaska are open to harvest.

Family Gaviidae

Red-throated Loon (*Gavia stellata*)
Arctic Loon (*Gavia arctica*)
Pacific Loon (*Gavia pacifica*)
Common Loon (*Gavia immer*)
Yellow-billed Loon (*Gavia adamsii*)

Family Podicipedidae

Horned Grebe (*Podiceps auritus*)
Red-necked Grebe (*Podiceps grisegena*)

Family Procellariidae

Northern Fulmar (*Fulmarus glacialis*)

Family Phalacrocoracidae

Double-crested Cormorant (*Phalacrocorax auritus*)
Red-faced Cormorant (*Phalacrocorax urile*)
Pelagic Cormorant (*Phalacrocorax pelagicus*)

Family Anatidae

Greater White-fronted Goose (*Anser albifrons*)
Snow Goose (*Chen caerulescens*)
Lesser Canada Goose (*Branta canadensis parvipes*)
Taverner's Canada Goose (*Branta canadensis taverneri*)
Aleutian Canada Goose (*Branta canadensis leucopareia*)—except in the Semidi Islands
Cackling Canada Goose (*Branta canadensis minima*)—except no egg gathering is permitted
Black Brant (*Branta bernicla nigricans*)—except no egg gathering is permitted in the Yukon/Kuskokwim Delta and the North Slope Regions
Trumpeter Swan (*Cygnus buccinator*)
Tundra Swan (*Cygnus columbianus*)
Gadwall (*Anas strepera*)
Eurasian Wigeon (*Anas penelope*)
American Wigeon (*Anas americana*)
Mallard (*Anas platyrhynchos*)
Blue-winged Teal (*Anas discors*)
Northern Shoveler (*Anas clypeata*)
Northern Pintail (*Anas acuta*)
Green-winged Teal (*Anas crecca*)
Canvasback (*Aythya valisineria*)
Redhead (*Aythya americana*)
Ring-necked Duck (*Aythya collaris*)
Greater Scaup (*Aythya marila*)
Lesser Scaup (*Aythya affinis*)
King Eider (*Somateria spectabilis*)
Common Eider (*Somateria mollissima*)
Harlequin Duck (*Histrionicus histrionicus*)
Surf Scoter (*Melanitta perspicillata*)
White-winged Scoter (*Melanitta fusca*)
Black Scoter (*Melanitta nigra*)
Long-tailed Duck (*Clangula hyemalis*)
Bufflehead (*Bucephala albeola*)
Common Goldeneye (*Bucephala clangula*)
Barrow's Goldeneye (*Bucephala islandica*)
Hooded Merganser (*Lophodytes cucullatus*)

Common Merganser (*Mergus merganser*)
Red-breasted Merganser (*Mergus serrator*)

Family Gruidae

Sandhill Crane (*Grus canadensis*)

Family Charadriidae

Black-bellied Plover (*Pluvialis squatarola*)

American Golden-Plover (*Pluvialis dominicus*)

Pacific Golden-Plover (*Pluvialis fulva*)

Common Ringed Plover (*Charadrius hiaticula*)

Family Haematopodidae

Black Oystercatcher (*Haematopus bachmani*)

Family Scolopacidae

Greater Yellowlegs (*Tringa melanoleuca*)

Lesser Yellowlegs (*Tringa flavipes*)

Solitary Sandpiper (*Tringa solitaria*)

Wandering Tattler (*Heteroscelus incanus*)

Spotted Sandpiper (*Actitis macularia*)

Upland Sandpiper (*Bartramia longicauda*)

Whimbrel (*Numenius phaeopus*)

Bristle-thighed Curlew (*Numenius tahitiensis*)

Hudsonian Godwit (*Limosa haemastica*)

Bar-tailed Godwit (*Limosa lapponica*)

Marbled Godwit (*Limosa fedoa*)

Ruddy Turnstone (*Arenaria interpres*)

Black Turnstone (*Arenaria melanocephala*)

Red Knot (*Calidris canutus*)

Semipalmated Sandpiper (*Calidris pusilla*)

Western Sandpiper (*Calidris mauri*)

Least Sandpiper (*Calidris minutilla*)

Baird's Sandpiper (*Calidris bairdii*)

Sharp-tailed Sandpiper (*Calidris acuminata*)

Dunlin (*Calidris alpina*)

Buff-breasted Sandpiper (*Tryngites subruficollis*)

Long-billed Dowitcher (*Limnodromus scolopaceus*)

Common Snipe (*Gallinago gallinago*)

Red-necked phalarope (*Phalaropus lobatus*)

Red phalarope (*Phalaropus fulicaria*)

Family Laridae

Pomarine Jaeger (*Stercorarius pomarinus*)

Parasitic Jaeger (*Stercorarius parasiticus*)

Long-tailed Jaeger (*Stercorarius longicaudus*)

Bonaparte's Gull (*Larus philadelphia*)

Mew Gull (*Larus canus*)

Herring Gull (*Larus argentatus*)

Slaty-backed Gull (*Larus schistisagus*)

Glaucous-winged Gull (*Larus glaucescens*)

Glaucous Gull (*Larus hyperboreus*)

Sabine's Gull (*Xema sabini*)

Black-legged Kittiwake (*Rissa tridactyla*)

Red-legged Kittiwake (*Rissa brevirostris*)

Ivory Gull (*Pagophila eburnea*)

Arctic Tern (*Sterna paradisaea*)

Aleutian Tern (*Sterna aleutica*)

Family Alcidae

Common Murre (*Uria aalge*)

Thick-billed Murre (*Uria lomvia*)

Black Guillemot (*Cephus grylle*)

Pigeon Guillemot (*Cephus columba*)

Cassin's Auklet (*Ptychoramphus aleuticus*)

Parakeet Auklet (*Aethia psittacula*)

Least Auklet (*Aethia pusilla*)

Whiskered Auklet (*Aethia pygmaea*)

Crested Auklet (*Aethia cristatella*)

Rhinoceros Auklet (*Cerorhinca monocerata*)

Horned Puffin (*Fratercula corniculata*)

Tufted Puffin (*Fratercula cirrhata*)

Family Strigidae

Great Horned Owl (*Bubo virginianus*)

Snowy Owl (*Nyctea scandiaca*)

Northern Hawk Owl (*Surnia ulula*)

Short-eared Owl (*Asio flammeus*)

§ 92.33 Region-specific regulations.

The season dates for the 2003 season for eight 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 westwards to 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 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.

(2) Closure: June 15—July 15.

(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.

(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 (Pt. Hope to Wainwright, along the Chuckchi coast, south and east to Atkasuk and Anaktuvuk Pass):

(i) Season: April 2—June 19 and July 20—August 31 for waterfowl; April 2—June 29 and July 30—August 31 for seabirds.

(ii) Closure: June 20—July 19 for waterfowl, June 30—July 29 for seabirds.

(2) Northern Unit (Barrow to Nuiqsut):

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

(ii) Closure: June 16—July 15.

(3) Eastern Unit (East of Nuiqsut):

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

(ii) Closure: June 20—July 19.

(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.

Dated: January 31, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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