

**How Must My Mover Estimate Charges Under the Regulations?**

*Binding Estimates*

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(7) If you add additional services after your household goods are in transit, you will be billed for the additional services but only be expected to pay the full amount of the binding estimate to receive delivery. Your mover must bill you for the balance of any remaining charges for these additional services no sooner than 30 days after delivery. For example, if your binding estimate shows total charges at delivery should be \$1,000 but your actual charges at destination are \$1,500, your mover must deliver the shipment upon payment of \$1,000. The mover must bill you for the remaining \$500 no sooner than 30 days after the date of delivery.

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*Non-binding Estimates*

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A non-binding estimate is not a bid or contract. Your mover provides it to you to give you a general idea of the cost of the move, but it does not bind your mover to the estimated cost. You should expect the final cost to be more than the estimate. The actual cost will be in accordance with your mover's tariffs. Federal law requires your mover to collect the charges shown in its tariffs, regardless of what your mover writes in its non-binding estimates. That is why it is important to ask for copies of the applicable portions of the mover's tariffs before deciding on a mover. The charges contained in movers' tariffs are essentially the same for the same weight shipment moving the same distance. If you obtain different non-binding estimates from different movers, you must pay only the amount specified in your mover's tariff. Therefore, a non-binding estimate may have no effect on the amount that you will ultimately have to pay.

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(10) If you add additional services after your household goods are in transit, you will be billed for the additional services. To receive delivery, however, you are required to pay no more than 110 percent of the non-binding estimate. At least 30 days after delivery, your mover must bill you for any remaining balance, including the additional services you requested. For example, if your non-binding estimate shows total charges at delivery should be \$1,000 but your actual charges at destination are \$1,500, your mover must deliver the shipment upon payment of \$1,100. The mover must bill you for the remaining \$400 no sooner than 30 days after the date of delivery.

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**Subpart H—Collection of Charges**

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**How Must My Mover Present Its Freight or Expense Bill to Me?**

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On "collect" shipments, your mover must present its freight bill for transportation

charges on the date of delivery, or, at its discretion, within 15 days, calculated from the date the shipment was delivered at your destination. This period excludes Saturdays, Sundays, and Federal holidays. (Bills for charges exceeding 110 percent of a non-binding estimate, and for additional services requested or found necessary after the shipment is in transit, will be presented no sooner than 30 days from the date of delivery.)

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**If I Forced My Mover To Relinquish a Collect-on-Delivery Shipment Before the Payment of ALL Charges, How Must My Mover Collect the Balance?**

On "collect-on-delivery" shipments, your mover must present its freight bill for transportation charges within 15 days, calculated from the date the shipment was delivered at your destination. This period excludes Saturdays, Sundays, and Federal holidays. (Bills for charges exceeding 110 percent of a non-binding estimate, and charges for additional services requested or found necessary after the shipment is in transit, will be presented no sooner than 30 days after the date of delivery.)

**What Actions May My Mover Take To Collect From Me the Charges Upon Its Freight Bill?**

Your mover must present a freight bill within 15 days (excluding Saturdays, Sundays, and Federal holidays) of the date of delivery of a shipment at your destination. (Bills for charges exceeding 110 percent of a non-binding estimate, and for additional services requested or found necessary after the shipment is in transit, will be presented no sooner than 30 days after the date of delivery.)

The credit period must be 7 days (excluding Saturdays, Sundays, and Federal holidays).

Your mover must provide in its tariffs the following three things:

- (1) A provision automatically extending the credit period to a total of 30 calendar days for you if you have not paid its freight bill within the 7-day period.

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Issued on: March 30, 2004.

**Warren E. Hoemann,**  
*Deputy Administrator.*

[FR Doc. 04-7553 Filed 4-1-04; 8:45 am]

**BILLING CODE 4910-EX-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 92**

**RIN 1018-AJ27**

**Migratory Bird Subsistence Harvest in Alaska; Subsistence Harvest Regulations for Migratory Birds in Alaska During the Spring/Summer 2004 Subsistence Season**

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

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or we) is publishing spring/summer migratory bird subsistence harvest regulations in Alaska for the 2004 subsistence season. This final rule would set regulations that 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 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 promulgates regulations that start on April 2, 2004, and expire on August 31, 2004, for the spring/summer subsistence harvest of migratory birds in Alaska.

**DATES:** The amendments to Subparts A and C of this rule become effective on April 2, 2004. The amendment to Subpart D is effective April 2, 2004 through August 31, 2004.

**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 East Tudor Road, Anchorage, Alaska 99503.

**FOR FURTHER INFORMATION CONTACT:** Fred Armstrong, (907) 786-3887, or Donna Dewhurst, (907) 786-3499, U.S. Fish and Wildlife Service, 1011 East 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 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 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 Has the Service Accomplished Under 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 spring/summer 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 spring/summer migratory bird subsistence harvest.

The next step established the first spring/summer 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 spring/summer 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, and July 21, 2003, final rules for additional background information on the subsistence harvest program for migratory birds in Alaska.

#### **Why Is This Rule Necessary and What Does It Do?**

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 meetings in April, May, and July of 2003, to develop recommendations for changes effective for the 2004 harvest season. These recommendations were presented to the Service Regulations Committee (SRC) on July 30 and 31, 2003, for action.

On January 12, 2004, we published a proposed rule in the **Federal Register** (69 FR 1686) to establish annual spring/summer subsistence migratory bird harvest regulations for Alaska for the 2004 season. We received written responses from 11 entities. One of the responses was from an individual, two from the Co-management Council, one from the National Park Service, six from nongovernmental organizations, and one from the Alaska Department of Fish and Game.

This rule establishes regulations for the taking of migratory birds for subsistence uses in Alaska during the spring/summer of 2004. 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. This rule amends 50 CFR 92.5 by adding 13 new communities to the list of included areas, and adds corresponding harvest areas and season dates to 50 CFR 92.33. This rule also amends 50 CFR 92.6 to allow for permits to be issued for possession of bird parts or eggs for scientific research or educational purposes and to prohibit the use of taxidermy.

#### **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 (§ 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 (§ 92.5). These geographical restrictions open the initial spring/summer 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, the Co-management Council at its April and May 2003 meetings recommended that 13 additional communities be included, starting in 2004, based on the five criteria set forth in § 92.5(c). The Upper Copper River region would include the communities of Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, and Chistochina, totaling 1,172 people. The Gulf of Alaska region would include the Chugach communities of Tatitlek, Chenega, Port Graham, and Nanwalek, totaling 541 people. The Cook Inlet region proposed to add only the community of Tyonek, population 193, and the Southeast Alaska region proposed to add only the community of Hoonah, population 860. In addition, subsistence users of Hoonah are requesting only to continue their tradition of harvesting gull eggs. The land and waters of Glacier Bay National Park are regulated to remain closed to all subsistence harvesting (50 CFR part 100.3). These new regions would increase the percentage of the State population included in the spring/

summer subsistence bird harvest to 13.5 percent.

Upon publication of the 2003 proposed harvest regulations (68 FR 6697, February 10, 2003), five Kodiak area organizations expressed a need to close the Kodiak road system starting in the 2003 season. Their primary concern was the likelihood of overharvesting, primarily by user groups that have not demonstrated customary and traditional uses of migratory birds and will have easy access to this resource. On the basis of public testimony and written comments, the Service left closed to harvesting a buffer zone around the Kodiak Island road system under § 92.33(e). The conservation concern is the nontraditional access posed by the road system in a region where the migratory bird hunting is traditionally done by boat in marine waters. In April 2003, the Co-management Council recommended extending this closure to include an additional buffer strip of 500 feet extending beyond the water's edge, to be effective during the 2004 season. Closing the road system and water's edge to the spring and summer subsistence migratory bird harvest will help ensure that local increases in harvest do not occur under the 2004 regulations.

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 2004?**

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. Some exceptions to the Federal regulations were made in the initial regulations and also in this rule to allow the continuation of customary and traditional spring harvest methods, but not the creation of new traditions. In this rule, we have incorporated the Bristol Bay region's request to be added to the list of areas where use of air boats is prohibited for hunting or transporting hunters.

#### **What Is New With Establishing Bird Harvest Limits?**

The Co-management Council recommended the current set of regulations to the Service without setting harvest limits, with the recognition that setting limits by area or species may become necessary. These initial years' harvest regulations provide general frameworks to enable the customary and traditional subsistence uses of migratory birds in Alaska. Within these 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, either regionally or overall, is recognized and will be addressed by the Co-management Council on the basis of recommendations by the Council's Technical Committee on a species-by-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 Decide the List of Birds Open to Harvest?**

We 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 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. 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 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 we 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 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. 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. In addition, Red-

faceted 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.

### 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. Notice of its availability 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. 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).”

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 Endangered Species Act. 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.

Last year, of the 108 species considered for establishing regulations allowing subsistence hunting in Alaska, 22 were on BCC lists at one or more scales (e.g., National, FWS Regions, or Bird Conservation Regions—Alaska). We considered one additional species not

on the BCC list (Trumpeter Swan) to be “sensitive” because of its small population size and limited breeding distribution in Alaska. Of these 23 species, we authorized harvest of 14 BCC-listed species: Bar-tailed Godwits (*Limosa lapponica*), Dunlin (*Calidris alpina*), Red-legged Kittiwakes (*Rissa brevirostris*), Black Oystercatchers (*Haematopus bachmani*), Whiskered Auklets (*Aethia pygmaea*), Arctic and Aleutian Terns (*Sterna paradisaea* and *aleutica*), Black Turnstones (*Arenaria melanocephala*), Upland Sandpipers (*Bartramia longicauda*), Solitary Sandpipers (*Tringa solitaria*), Red-throated Loons (*Gavia stellata*), Red Knots (*Calidris canutus*), Short-eared Owls (*Asio flammeus*), and Red-faced Cormorants (*Phalacrocorax urile*). However, we stated that these species, as well as two non-BCC listed species recommended by the Alaska Department of Fish and Game, Wandering Tattler (*Heteroscelus incanus*) and the Northern Hawk-owl (*Surnia ulula*), should be given additional consideration by the Co-management Council over the coming year. We intended the Co-management Council to focus its attention on determining the importance of the harvest of these species for subsistence purposes, as well as any information on status that would be useful in future deliberations.

At a July 2003 meeting, the SRC decided to propose that 3 of the 14 BCC species (Bar-tailed Godwits [*Limosa lapponica*], Dunlin [*Calidris alpina*], and Red-legged Kittiwakes [*Rissa brevirostris*]) remain on the list of birds open to harvest in 2004. However, we continued to have conservation concerns about allowing harvest of the other 11 BCC-listed birds and the wandering tattler from last year’s authorized harvest list and solicited additional public comments as well as Co-management Council documentation of past and present use and dependence on these birds. The Co-management Council pulled together regional documentation of traditional subsistence use of 9 of the 12 species in which we solicited additional comment: Black Oystercatchers, Whiskered Auklets, Arctic and Aleutian Terns, Black Turnstones, Wandering Tattlers, Upland Sandpipers, Red-throated Loons, and Red-faced Cormorants. Additional information received from the public and our decision is contained below.

### Summary of Public Involvement

On January 12, 2004, we published in the **Federal Register** (69 FR 1686) a proposed rule to establish spring/

summer migratory bird subsistence harvest regulations in Alaska for the 2004 subsistence season. The proposed rule provided for a public comment period of 30 days. We posted an announcement of the comment period dates for the proposed rule on the Council’s internet homepage, as well as the rule itself and related historical documents. We issued a press release expressing the request for public comments and the pertinent deadlines for such comments, which was faxed to 26 members of the statewide media. By the close of the public comment period on February 11, 2004, we had received written responses from 11 entities. One of the responses was from an individual, two from the Co-management Council, one from the National Park Service, six from non-governmental organizations, and one from the Alaska Department of Fish and Game.

### Response to Public Comments

Most sections of the proposed rule were addressed by commenters. This discussion addresses comments section by section, beginning with those of a general nature.

#### General Comments

One respondent expressed opposition to all migratory bird subsistence hunting, citing that there is no legal tradition on which to base this action and that research shows that all migratory bird species are declining.

*Service Response:* International migratory bird treaties clearly provide authority for migratory bird subsistence hunting, and these annual harvest regulations are the direct application of those amendments.

Two respondents urged the expeditious review of these public comments and the subsequent decisionmaking for the final rule publication. These respondents emphasized the importance to the SRC and Department of the Interior officials to open the harvest season by the scheduled April 2, 2004, date.

*Service Response:* We concur and are making every effort to meet the scheduled harvest opening date.

One commenter stated that the future public comment period should be expanded to 90 days to allow reasonable time for precise analysis and development of regional comments. The commenter also requested that the Secretary of the Interior ensure timely publication of the proposed rules so that these extended public comment periods can be accommodated.

*Service Response:* We intend to allow for a 60-day public comment period in future rulemaking processes involving

Alaska migratory bird subsistence harvest regulations.

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

One commenter expressed concern that no harvest data were collected in 2003 and said that a statistically sound plan for collecting harvest data should be implemented immediately.

*Service Response:* Under the Paperwork Reduction Act, 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. We applied for and received OMB approval of the associated voluntary annual household surveys used to determine levels of subsistence take in October 2003; therefore, no harvest surveys could be collected during the 2003 spring/summer harvest season. In 2004, the harvest survey program is being initiated and expanded to the subsistence eligible areas statewide based on a statistical plan developed by the Co-management Council's harvest survey committee.

*How Did the Service Develop the Methods and Means Prohibitions, and What Are the Changes for 2004?*

One respondent expressed appreciation for expansion of the prohibition of airboats and jet skis for subsistence hunting to include the Bristol Bay region; however, this respondent felt that these means of transportation are not traditional for subsistence hunting anywhere in Alaska, and recommended adopting this prohibition statewide.

*Service Response:* The Co-management Council discussed this exact issue last spring and decided it should be dealt with on a regional case-by-case basis where current problems have been identified. The Service concurs with the Co-management Council's recommendation at this time.

*How Did the Service Decide the List of Birds Open to Harvest?*

One commenter requested that Ivory Gulls be removed from the list of birds open to harvest. The commenter cited evidence from neighboring arctic regions that suggests subsistence harvest and global warming have caused a 90 percent population decline over the last 20 years.

*Service Response:* The 2002 North American Waterbird Conservation Plan cites less than 2,400 breeding Ivory Gulls in North America, all in Canada's high arctic, placing them in a category

of "moderate" conservation concern. Ivory Gulls winter in the polynyas in the Chukchi and Beaufort seas and move through these areas during spring migration back to their breeding grounds in Canada. They primarily feed on small fish, but can be attracted to marine mammal carcasses such as walrus, making them available on a limited basis for subsistence harvest, primarily from St. Lawrence and Little Diomedé islands. Ivory Gulls are not on the Birds of Conservation Concern list on any scale. At this time, we do not believe removal of Ivory Gulls from the list of species open to harvest is warranted. However, we will continue to seek additional information on both the biology and distribution of these gulls in Alaskan marine waters and on the customary and traditional significance of this species. Proposals to remove them from the 2005 harvest regulations can be submitted during the annual open period of November 1–December 15, 2004, and we will reconsidered them at that time.

One commenter emphasized a serious concern of a history of wasteful taking on Snowy Owls (*e.g.*, birds being shot and killed or wounded with no attempts to retrieve) in Barrow along the road system. Supporting details are provided in the letter. The commenter has contacted the Service's law enforcement division to request an investigation and stepped-up enforcement efforts. The commenter is now requesting a voluntary regulatory closure of Snowy Owls from harvest in Barrow until this issue is resolved.

*Service Response:* We are aware of the enforcement issue presented and are taking appropriate actions. Closing the legal subsistence harvest of Snowy Owls along the Barrow road system would not prevent the malicious shooting of these birds since they are likely not being shot with any intention of use for subsistence.

One commenter offered general recommendations on how the Service should approach management of the subsistence harvest of all shorebird species. The commenter suggested: (1) Managing shorebirds in a global, year-round context; (2) managing species at the population or local level; (3) managing species conservatively; (4) restricting harvest to customary and traditional areas; (5) confirming the identity of traditional harvested species; (6) monitoring harvest at appropriate levels of resolution; and (7) initiating outreach activities with subsistence hunters.

*Service Response:* We have initiated outreach with the subsistence users; however, initial efforts have focused on

identification of the closed species. As this effort is expanded, efforts will focus on species groups with known hunter identification problems such as many of the shorebirds. We agree that the intention of the international migratory bird treaties is to promote species management between countries, but this regulatory process focuses primarily on Alaska at this time. Improving the harvest monitoring of subsistence-taken migratory birds in Alaska is a high priority for the Service, with a statistically sound plan being developed and implemented in 2004.

One respondent tackled the entire issue of determining which bird species should be open for harvest. The respondent pointed out that this subject has consumed a substantial amount of time over the past 2 years, and the respondent hopes that the 2004 regulations will establish a list of open species that will be generally acceptable for the next few years. The respondent expressed that the process of designating species open or closed for harvest has been inhibited by: (1) Pressure on the Co-management Council to reduce the overall number of species open to hunting; (2) a lack of population status and trends data to back conservation concerns for species in question; and (3) by the absence of species evaluation criteria based on both biology and treaty implementation guidelines. This respondent followed up with a recommendation that the Service and Co-management Council promptly develop a process and criteria for evaluating species open or closed to harvest. Criteria for evaluation should include: (1) A customary and traditional use determination; (2) species population status and trends data; (3) harvest data; and (4) other factors affecting the population such as habitat and climate changes and hunting in other portions of the species' range.

This same respondent expresses appreciation that the public in other parts of the country may not understand the full scope of subsistence in Alaska and how we can manage this traditional harvest in a sustainable manner. In the respondent's view, during the 2003 and 2004 regulatory cycles, too much pressure was placed on the regional groups to gather evidence of customary and traditional use, and then agency staff did not coordinate or supplement the largely anecdotal information that was submitted. The respondent feels that the Service needs to accept the responsibility for conducting research on traditional use, with appropriate expertise including the State, to develop thorough records from ethnographic

studies, biological data, and sources of local knowledge.

*Service Response:* The species selection process occurs annually in Co-management Council deliberations and the Service's regulatory process. These recommendations will be brought to the attention of the Co-management Council to develop a course of action for a more consistent deliberation process in regard to the list of bird species open to harvest. We are currently researching the best way to gather and bring together traditional ecological knowledge. A workshop on this subject is scheduled for the April 2004 meeting of the Co-management Council.

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

Two respondents reminded the Service that 7 of the 12 species of conservation concern are also on the Audubon Watchlist because of well-documented population declines, giving further support for removal of these species from the harvest list. However, one respondent did recognize the need to consider traditional use and dependence on these species and recommended that if they are left open to harvest, then (1) harvest lists should be regionalized and (2) the Service should specify that only traditional uses of these birds are permitted.

*Service Response:* The issue of regionalizing bird harvest lists has been proposed for the 2005 harvest season, and the Co-management Council will be making recommendations on this issue in April 2004. As for requiring only traditional uses of birds, the Migratory Bird Treaty Amendments and current regulations already specify that birds may be taken for human consumption only, with nonedible byproducts available to be used for other purposes, except taxidermy. In addition, no migratory birds, their parts, or their eggs may be sold, offered for sale, or purchased.

*Bar-tailed Godwits, Dunlin, and Red-legged Kittiwakes:* Two respondents recommended that the Service reconsider removing Bar-tailed Godwits, Dunlin, and Red-legged Kittiwakes from the list of birds open to harvest. It was pointed out that no justification was offered in the **Federal Register** documents to justify the prior decision of the SRC to keep them open to harvest. In the case of Dunlin, the primary concern is the arctic race (*Calidris alpina articola*), which is on the Audubon WatchList. The respondents also stated that for Bar-tailed Godwits, the concern is poor reproductive

success and the "look-alike" issue with the other Godwits.

One additional respondent also requested reconsideration for Bar-tailed Godwits. This respondent explained that they are concerned with subsistence harvest of the Bar-tailed Godwit because of the high likelihood that the current level of harvest is above that which is sustainable. First, post-breeding surveys suggest that large-scale reproductive failures have occurred repeatedly during the past five years within the Alaska breeding population for unknown reasons. Secondly, Godwits from this population are harvested for subsistence in other portions of the flyway (e.g., China and New Zealand) in addition to Alaska; the levels of such harvest and their cumulative impacts on the population are largely unknown but could be significant. In addition, allowing hunting of Bar-tailed Godwits may result in incidental harvest of closely related hudsonian and marbled godwits. This respondent further requests that the Service: (1) Develop a population-viability model to estimate the effect of the harvest on the population; (2) set up an international agreement on the level of subsistence harvest among all countries hosting significant portions of the species population; (3) acquire harvest data from the other countries involved in take of this species; and (4) acquire accurate subsistence harvest data from villages in the key staging areas in western Alaska.

*Service Response:* As for reconsideration for Bar-tailed Godwits, Dunlin, and Red-legged Kittiwakes, the Service decided to keep these on the list of birds open to harvest in 2004, based on a comparison of documented traditional take and subsistence importance with the population data used to place these birds on the BCC list. Red-legged Kittiwakes are of well-documented importance in the Pribilof Islands, and continued harvest actually promotes closer protection of their nesting habitat among the local residents. Bar-tailed Godwits are an important subsistence resource for a small number of villages in the Yukon-Kuskokwim Delta, where there is little overlap with the other godwit species. Dunlin are lumped with other small shorebirds in the harvest data, but this harvest is documented as locally important for some small, coastal villages in the Yukon-Kuskokwim Delta and the Bering Straits region. For all three of these species, a significant local dependence was well documented; however, their actual reported take was very low relative to the species' population size and limited in scope to

only a few small communities in western Alaska. We note that proposals can be submitted to request removal of these species with further justification for future seasons, and these proposals will be reconsidered at that time.

*Service Response Note:* Because of the wide-ranging views and comments we received on the remainder of this subject, we have responded to these additional concerns at the end of this summary of public comments (§ 92.32).

*Solitary Sandpiper:* One respondent requests removal from the list of birds open to harvest. Despite having one of the largest breeding ranges of any North American sandpiper, the current continental population of the Solitary Sandpiper is estimated to be only 25,000 individuals. The respondent explains that the estimated population size of the Alaskan-breeding race, *T. s. cinnamomea*, is only 4,000 individuals. If accurate, this population estimate indicates that the Alaskan-breeding race of the Solitary Sandpiper is among the most rare shorebirds in North America. Breeding Bird Survey data from Alaska since 1980 reveal a population decline of 4.1 percent per year, suggesting that the Alaskan population today is only a third as large as it was a quarter century ago.

*Black Oystercatcher:* One commenter requests removal from the list of birds open to harvest. The commenter explains that the worldwide population of the Black Oystercatcher is estimated to number fewer than 11,000 individuals, with 60 percent of those residing in Alaska. Oystercatchers are completely dependent upon a narrow coastal area throughout their life cycle, where they are highly susceptible to human disturbance and oil spills. Their strong fidelity to breeding territories, easy accessibility, conspicuous behavior, and limited reproductive potential make them particularly vulnerable to local extirpation through persistent subsistence harvest of either breeding adults or eggs.

*Red Knot:* One commenter requests removal from the list of birds open to harvest. The commenter explains that recent evidence suggests that populations of at least three of the five subspecies of Red Knot have been declining, some precipitously so, within the past 3 years. Little is known about the distribution or status of the population occurring in Alaska (*C. c. roselaari*), but its population size is thought to total only about 20,000 individuals. This subspecies may mix on some wintering areas in South America with the subspecies *C. c. rufa*, whose population size plummeted by 47 percent 2000–02 and whose adult

survival rate dropped by 37 percent 2000–01. Knots are taken for food in some regions of South America, especially in the Guianas, and for sport in Barbados. The extent of this take is suspected to be substantial. All of the major migration staging sites and most of the major nonbreeding range are on temperate coastlines where sea level change is predicted to be greatest. Concentration of the entire population of Knots at these few staging sites also makes them vulnerable to habitat degradation.

One respondent requests that harvest should be continued for Wandering Tattlers, Upland Sandpipers and Black Turnstones only if: (1) Subsistence harvest is allowed only within the regions in which there is documented customary and traditional harvest; and (2) accurate subsistence harvest data are gathered at the regional level to monitor possible impacts of such harvest on the populations. The respondent explained that harvest of geographically restricted or isolated populations could result in local extirpation, and that accurate harvest data would be necessary to monitor potential impacts.

One commenter requests that all of the 12 birds with conservation concerns remain open to subsistence harvest except for Red-faced Cormorants and Black Oystercatchers, based on information that the indigenous people of the Bering Strait/Norton Sound continue to utilize these species for subsistence purposes. The commenter believes that regional harvests of these birds in question do not have an overall negative impact on the species' population. The commenter also explains that despite the SRC's request for customary and traditional use information on these species, funding was not made available to gather this information, so information used is of a more general nature.

One commenter requests that all of the 12 species with conservation concerns remain open to harvest in 2004 except for Wandering Tattler, because it is identified as a species of high conservation concern in the 2001 United States Shorebird Conservation Plan. The commenter also suggests that concerns about the continued harvest of the other species of concern may be mitigated by establishing regional species restrictions.

The Co-management Council responded to the Service's request for documentation of traditional use of the BCC birds by providing written testimony of traditional subsistence use of 9 of the 12 species: Black Oystercatchers, Whiskered Auklets, Arctic and Aleutian Terns, Black

Turnstones, Wandering Tattlers, Upland Sandpipers, Red-throated Loons, and Red-faced Cormorants. Based on the data provided, the Co-management Council petitioned the Service to keep 5 of the 12 species in question on the list of birds open to harvest. These five species were: Red-throated Loons, Black Oystercatchers, Arctic and Aleutian Terns, and Whiskered Auklets. The Co-management Council remained silent on the remaining seven species.

*Service Response:* We considered the broad array of public sentiment received and carefully weighed the biological details of the conservation concerns with the information provided on the traditional use and dependence on these species and the subsistence mandates given us through the amended migratory bird treaty protocol. Based on this thorough analysis, we have determined that harvest will be allowed in 2004 on the five species petitioned by the Co-management Council. The substantial documentation provided on subsistence traditional use and dependence on these species supported allowing continued harvest at this time. In most cases, a strong, local dependence on these species was well documented; however, their actual reported take was very low relative to the species' population size and limited in scope, such as the use of oystercatchers and terns primarily for egg gathering.

Harvest will not be allowed in 2004 on the other seven species of birds with conservation concerns listed in the proposed rule: Red-faced Cormorants, Solitary Sandpipers, Wandering Tattlers, Upland Sandpipers, Black Turnstones, Red Knots, and Short-eared Owls. Due to the limited amount of documented subsistence use and dependence on these species, the conservation concerns warranted removal from the harvest list.

#### *Section 92.5 Who Is Eligible to Participate?*

The respondent endorses inclusion of the listed communities that petitioned the Co-management Council for participation in the harvest beginning in 2004. In general, the petitions were well supported with documentation of customary and traditional harvests, concurrence with basic regulations (*e.g.*, species open to hunting, methods, *etc.*), cooperative development of practical boundaries of hunt areas, and application of conservation measures for some species of concern (*i.e.*, Tule White-fronted Geese, Dusky Canada Geese).

Given that the 2004 regulations cycle provided the first examples of petitions from excluded areas, the Co-

management Council gained some appreciation for the particular issues to be considered and recognized some potential problems that need further attention. The respondent, however, is concerned that, in the absence of harvest quantity regulations, the Co-management Council is faced with an "all or nothing" decision in evaluating petitions from communities that have a historic pattern of minor spring harvest, but request full participation. Although some communities have requested limited harvests of specific resources (*e.g.*, Hoonah and only gull eggs), others may request broad hunting seasons on all species regardless that most of their historic harvest has been in fall and winter. The respondent recognizes that seasonal harvest patterns are a matter of degree, and does not want to overly restrict traditional harvest patterns. However, without more detailed criteria for regulating harvest by petitioning communities, there is a potential for authorizing harvests that exceed traditional levels or that include more diverse resources than those taken in the past. The respondent recommends that the Service and Co-management Council work toward development of criteria that more specifically evaluate levels of significance of traditional spring and summer harvests in considering petitions for inclusion; regulations that result from positive findings should more precisely authorize traditional patterns of resource use.

*Service Response:* We concur with these observations and suggestions and, using a sub-committee from the Co-management Council, are in the initial phases of developing a draft set of inclusion/exclusion criteria to be used for future decisions.

#### *Section 92.6 Use and Possession of Migratory Birds*

The Co-management Council requested that language be added to prohibit possession of taxidermy mounts (in lifelike representations) of subsistence-taken birds, since it is not a customary and traditional use of these birds. They also stated that they do not want to restrict use of taxidermy techniques to preserve bird parts for use in traditional crafts such as the making of clothing, nor do they want to restrict birds from being used under permit for scientific research or education. One additional commenter also supported the view of the Co-management Council requesting that taxidermy be prohibited.

*Service Response:* We concur with this request and have added prohibitory language to this section as well as

defining taxidermy under § 92.4 Definitions.

One respondent supported allowing access to subsistence-harvested birds for research and educational purposes; however, this respondent also expressed that, given that these birds must be, by regulation, harvested as food, it may be more emphatic to word the regulation as permission to “receive portions of birds or their eggs not salvaged for human consumption \* \* \*.” We need to prevent harvest and transfer of birds by persons having no intent to consume the primary edible portions.

*Service Response:* We do not concur with this request for a wording change. In paragraph (a) of this section, it clearly states that birds may be taken for human consumption only. Also, the term “salvage” has very different definitions and connotations in State and Federal Harvest regulations. Currently in Federal regulations, it refers to the retrieving of birds found already dead, whereas in State regulations it refers to what animal parts constitute “edible” portions and must be retrieved from the field. Inserting this word into the possession regulations without it being clearly defined elsewhere could create an ambiguity for the reader.

#### *Section 92.33 Region-Specific Regulations*

One commenter complimented the new proposed language describing the egg collection area for Hoonah, but requested that language be added to the preamble clarifying that Glacier Bay National Park will remain closed and explain the rationale for this regulatory language.

*Service Response:* We concur with this request and have added this language to the preamble.

One respondent supported the additional closure of a water buffer zone around the Kodiak roaded area but expressed that the offshore islands should also be closed due to their easy access by Kodiak town residents, many of whom are nontraditional users.

*Service Response:* Testimony has been documented at past Co-management Council meetings expressing that use of the islands and their surrounding waters is the primary customary and traditional use zone within the Kodiak roaded area. More documentation of conservation concerns would be necessary to justify closing this customary and traditional harvest area.

One respondent requested that all the resident-zone communities of Wrangell-St. Elias National Park be included in the list of communities eligible for harvest in the Copper River Basin. The additional communities would be:

Chisana, Glennallen, Gakona Junction, Kenny Lake, Lower Tonsina, McCarthy, Nebesna, Slana, and Tonsina. The respondent explained that listing only half of the area communities is unwise and goes against the spirit of the Alaska National Interest Lands Conservation Act (ANILCA).

*Service Response:* Development of the spring/summer subsistence migratory bird harvest regulations is guided solely by the international migratory bird treaties, and not by ANILCA legislation. New communities can be granted eligibility only by petitioning to the Co-management Council and the Service for inclusion (50 CFR Part 92.5). We have received no formal requests by the above-listed additional communities to be included in the subsistence migratory bird harvest.

#### **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 for the following reason. 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 original agreed-upon opening date.

#### **Statutory Authority**

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703 *et seq.*), which implements the four migratory bird treaties with Canada, Mexico, Japan, and Russia. Specifically, these regulations are issued consistent with the applicable treaties 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 document 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 used 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 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 Co-management Council and regional management bodies' 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.

### 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 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 and evaluated the rule for possible effects on tribes or trust resources, and have determined that there are no significant effects. The rule will legalize 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 as an appendix to the Biological Opinion on the Effects of Legalization of a Spring and Summer Subsistence Harvest of Birds on the Threatened Steller's and Spectacled Eiders (dated March 30, 2003). The appended consultation concluded that changes from the 2003 regulations are not likely to adversely affect 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 2004," issued September 16, 2003, modified, with a Finding of No Significant Impact issued February 18, 2004. 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 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 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 § 92.4 by adding the definitions "Game Management Unit," "Seabirds," "Shorebirds," "Taxidermy," and "Waterfowl," to read as follows:

#### § 92.4 Definitions

\* \* \* \* \*

*Game Management Unit*, also referred to simply as *Unit*, means 1 of the 26 geographical areas listed in the codified State of Alaska hunting and trapping regulations and on maps of the Alaska State Game Management Units.

\* \* \* \* \*

*Seabirds* refers to all bird species listed in § 92.32 within the families Alcidae, Laridae, Procellariidae, and Phalacrocoracidae.

\* \* \* \* \*

*Shorebirds* refers to all bird species listed in § 92.32 within the families Charadriidae, Haematopodidae, and Scolopacidae.

\* \* \* \* \*

*Taxidermy* refers to birds preserved and mounted in lifelike representations. Taxidermy does not include preserving bird parts to be integrated into traditional arts and crafts.

\* \* \* \* \*

*Waterfowl* refers to all bird species listed in § 92.32 within the family Anatidae.

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

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

\* \* \* \* \*

(a) *Included areas*. Village areas located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, or in areas north and west of the Alaska Range are subsistence harvest areas, except that villages within these areas not meeting the criteria for a subsistence harvest area as identified in paragraph (c) of this section will be excluded from the spring and summer subsistence harvest.

(1) Any person may request the Co-management Council to recommend that an otherwise included area be excluded by submitting a petition stating how the area does not meet the criteria identified in paragraph (c) of this section. The Co-management Council will forward petitions to the appropriate regional management body for review and recommendation. The Co-management Council will then consider each petition and will submit to the U.S. Fish and Wildlife Service any recommendations to exclude areas from the spring and summer subsistence harvest. The U.S. Fish and Wildlife Service will publish any approved recommendations to exclude areas in subpart D of this part.

(2) Based on petitions for inclusion recommended by the Co-management Council in 2003, the Service is adding the following communities to the included areas under this part starting in the 2004 harvest season:

(i) Upper Copper River Region—Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina.

(ii) Gulf of Alaska Region—Chugach Community of Tatitlek, Chugach Community of Chenega, Chugach Community of Port Graham, Chugach Community of Nanwalek.

(iii) Cook Inlet Region—Tyonek.

(iv) Southeast Alaska Region—Hoonah.

\* \* \* \* \*

■ 4. In subpart A, revise § 92.6 to read as follows:

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

You may not sell, offer for sale, purchase, or offer to purchase migratory birds, their parts, or their eggs taken under this part.

(a) *Eligible persons*. Under this part, you may take birds for human consumption only. Harvest and possession of migratory birds must be done using nonwasteful taking. Nonedible byproducts of migratory birds taken for food may be used for other purposes, except that taxidermy is not allowed.

(b) *Noneligible persons*. You may receive portions of birds or their eggs not kept for human consumption from eligible persons only if you have a valid permit issued under 50 CFR 21.27 for scientific research or education, and consistent with the terms and conditions of that permit.

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

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

#### § 92.20 Methods and means.

\* \* \* \* \*

(i) Using an air boat (Interior and Bristol Bay Regions only) or jet ski (Interior Region only) for hunting or transporting hunters.

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

■ 6. 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 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) Lesser Canada Goose (*Branta canadensis parvipes*).

(4) Taverner's Canada Goose (*Branta canadensis taverneri*).

(5) Aleutian Canada Goose (*Branta canadensis leucopareia*)—except in the Semidi Islands.

(6) Cackling Canada Goose (*Branta canadensis minima*)—except no egg gathering is permitted.

(7) Black Brant (*Branta bernicla nigricans*)—except no egg gathering is permitted in the Yukon/Kuskokwim Delta and the North Slope regions.

(8) Tundra Swan (*Cygnus columbianus*).

(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*).

(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 macularia*).

(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) Common Snipe (*Gallinago gallinago*).

(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 2004 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 closed to the harvesting of migratory birds and their eggs. The closed area consists of all lands and waters (including exposed tidelands) east of a line extending from Crag Point in the north to the west end of Saltery Cove in the south and all lands and water south of a line extending from Termination Point along the north side of Cascade Lake extending to Anton Larson Bay. Waters adjacent to the closed area are closed to harvest within 500 feet from the water's edge. The offshore islands are open to harvest.

(1) Season: April 2–June 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 Ikpiqpuq River, and everything south of the latitude line 69°45' E between the west bank of the Ikpiqpuq River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 29 and July 30–August 31 for seabirds; April 2–June 19 and July 20–August 31 for all other birds.

(ii) Closure: June 30–July 29 for seabirds; June 20–July 19 for all other birds.

(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 Ikpiqpuq River, and everything north of the latitude line 69°45' E between the west bank of the Ikpiqpuq River to the east bank of Sagavinirktok River):

(i) Season: April 6–June 6 and July 7–August 31 for king and common eiders 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.

(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) **Note:** The Copper River Basin communities listed in this paragraph (i) also documented traditional use harvesting birds in Unit 12, making them eligible to hunt in this unit using the seasons specified in paragraph (h)(1) 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—That portion of Unit 16(B) south of the Skwentna River and west of the Yentna River and August 1–31—that portion of Unit 16(B) south of the Beluga River, Beluga Lake, and the Triumvirate Glacier.

(2) Closure: June 1–July 31.

(l) Southeast Alaska (Harvest area: National Forest lands in Icy Strait and Cross Sound, including Middle Pass Rock near the Inian Islands, Table Rock in Cross Sound, and other traditional locations on the coast of Yakobi Island. The land and waters of Glacier Bay National Park remain closed to all subsistence harvesting [50 CFR 100.3]). (Eligible communities: Hoonah only).

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

(2) Closure: July 1–August 31.

Dated: March 25, 2004.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 04–7307 Filed 4–1–04; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 0401130013–4098–02; I.D. 122403A]

RIN 0648–AR84

#### Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Pelagic Longline Fishing Restrictions, Seasonal Area Closure, Limit on Swordfish Fishing Effort, Gear Restrictions, and Other Sea Turtle Take Mitigation Measures

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS has approved a regulatory amendment under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) submitted by the Western Pacific Fishery Management Council (Council) and issues this final rule to establish a number of conservation and