



# Federal Register

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**Wednesday,  
April 11, 2007**

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**Part II**

## **Department of the Interior**

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**Fish and Wildlife Service**

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**50 CFR Part 92**

**Migratory Bird Subsistence Harvest in  
Alaska; Harvest Regulations for Migratory  
Birds in Alaska During the 2007 Season;  
Final Rule**

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

RIN 1018-AU59

**Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2007 Season****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or we) is publishing harvest regulations for migratory bird subsistence hunting in Alaska for the 2007 season. This final rule establishes regulations that prescribe frameworks, or outer limits, for dates when harvesting of birds may occur, species that can be taken, and methods and means that are 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 provide a framework to enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking establishes regulations that go into effect on April 2, 2007, and expire on August 31, 2007.

**DATES:** The amendments to subpart C of 50 CFR part 92 become effective May 11, 2007. The amendments to subparts A and D of 50 CFR part 92 are effective April 11, 2007, through August 31, 2007.

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

**SUPPLEMENTARY INFORMATION:****Background***How Do I Find the History of These Regulations?*

Background information, including past events leading to this action, accomplishments since the Migratory Bird Treaties with Canada and Mexico were amended, and a history of addressing conservation issues can be found in the following **Federal Register** notices: August 16, 2002 (67 FR 53511),

July 21, 2003 (68 FR 43010), April 2, 2004 (69 FR 17318), April 8, 2005 (70 FR 18244), and February 28, 2006 (71 FR 10404). These documents are readily available at <http://alaska.fws.gov/ambcc/regulations.htm>.

*Why Is This Current Rulemaking Necessary?*

This current rulemaking is necessary because the migratory bird harvest season is closed unless opened, and the regulations governing subsistence harvest of migratory birds in Alaska are subject to public review and annual approval. The Co-management Council held a meeting in April 2006 to develop recommendations for changes effective for the 2007 harvest season. These recommendations were presented to the Service Regulations Committee (SRC) on July 26 and 27, 2006, and were approved.

On December 13, 2006, we published in the **Federal Register** (71 FR 75061) a proposed rule to establish spring/summer migratory bird subsistence harvest regulations in Alaska for the 2007 subsistence season. The proposed rule provided for a public comment period of 60 days.

This rule finalizes regulations for the taking of migratory birds for subsistence uses in Alaska during 2007. This rule lists migratory bird species that are open or closed to harvest, as well as season openings and closures by region, and a change to the Fairbanks North Star Borough excluded area. It also describes a change in the methods and means of taking migratory birds for subsistence purposes.

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

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

Southeast Alaska were excluded from the eligible subsistence harvest areas.

Based on petitions requesting inclusion in the harvest, in 2004, we added 13 additional communities based on the five criteria set forth in 50 CFR 92.5(c). These communities included: Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina, Tatitlek, Chenega, Port Graham and Nanwalek, Tyonek, and Hoonah, with populations totaling 2,766. In 2005, we added three additional communities for glaucous-winged gull egg gathering only, based on petitions requesting inclusion. These southeastern communities included Craig, Hydaburg, and Yakutat, with a combined population of 2,459. These new communities increased the percentage of the State population included in the subsistence bird harvest to 14 percent.

In this rule, we have enacted the Alaska Department of Fish and Game's (ADFG) request to expand the Fairbanks North Star Borough excluded area to the Central Interior excluded area comprising the following: That portion of Unit 20(A) east of the Wood River drainage and south of Rex Trail, including the upper Wood River drainage south of its confluence with Chicken Creek; that portion of Unit 20(C) east of Denali National Park north to Rock Creek and east to Unit 20(A); and that portion of Unit 20(D) west of the Tanana River between its confluence with the Johnson and Delta Rivers, west of the east bank of the Johnson River, and north and west of the Volmar drainage, including the Goodpaster River drainage.

The purpose of the excluded area's expansion is to prevent new traditions and increased harvest levels that could result from inclusion of communities that have not traditionally hunted migratory birds in the spring and summer for subsistence. Specifically, this regulation would exclude residents of Delta Junction/Big Delta/Fort Greely, McKinley Park/Village, Healy and Ferry from eligibility to participate in spring/summer migratory bird subsistence hunts. There is no evidence that there has been a tradition of spring/summer subsistence migratory bird hunting in the excluded area. ADFG also cited the action by the Alaska Joint Boards of Fisheries and Game in 1992 creating the Fairbanks Non-subsistence area as additional rationale for this regulation. The report focused on a socio-economic study that was conducted to determine whether or not subsistence traits existed in the Fairbanks region to justify it being considered a subsistence eligible area. The summary report recommended the

Fairbanks area be considered a nonsubsistence use area. The study was based on the application of 12 socio-economic factors to each community to determine whether or not subsistence-related traits existed.

In addition, we clarified the definition of excluded areas to explain that persons living in excluded areas are not eligible to participate in the Alaska spring/summer subsistence harvest and that the excluded area is closed to harvesting.

#### *What Is Changing in the Methods and Means Prohibitions for 2007?*

When we established the initial methods and means regulations (68 FR 43010, July 21, 2003), we followed the Co-management Council recommendation to adopt those existing methods and means prohibitions that occur in the Federal (50 CFR 20.21) and Alaska (5AAC92.100) migratory bird hunting regulations and that do not conflict with the customary and traditional methods of taking birds. In this rule, we have incorporated the ADFG's request to prohibit baiting and shooting over a baited area (Statewide).

#### *What Is Changing in the List of Birds Open to Harvest for 2007?*

At the request of the North Slope Borough Fish and Game Management Committee, the Co-management Council recommended continuing into 2007 the provisions originally established in 2005 to allow subsistence use of yellow-billed loons inadvertently caught in subsistence fishing (gill) nets on the North Slope. Yellow-billed loons are culturally important for the Inupiat Eskimo of the North Slope for use in traditional dance regalia. A maximum of 20 yellow-billed loons may be caught in 2007 pursuant to this provision. The North Slope Borough Department of Wildlife requires individuals to report their take of yellow-billed loons by the end of each season. In addition, the North Slope Borough has asked fishermen, through announcements on the radio and through personal contact, to report all entanglements of loons to better estimate the levels of injury or mortality caused by gill nets. In 2006, four yellow-billed loons were reported taken in fishing nets and an additional one was found alive in a net and released. This provision, to allow subsistence possession and use of yellow-billed loons caught in fishing gill nets, is subject to annual review and renewal by the SRC.

#### **Summary of Public Involvement**

On December 13, 2006, we published in the **Federal Register** (71 FR 75061) a

proposed rule to establish spring/summer migratory bird subsistence harvest regulations in Alaska for the 2007 subsistence season. The proposed rule provided for a public comment period of 60 days. We posted an announcement of the comment period dates for the proposed rule, as well as the rule itself and related historical documents, on the Council's internet homepage. We issued a press release announcing our request for public comments and the pertinent deadlines for such comments, which was faxed to the media Statewide. By the close of the public comment period on February 12, 2007, we had received written responses from three entities. Two of the responses were from individuals and one from a non-governmental organization.

#### **Response to Public Comments**

##### *General Comments*

One general comment was received on the overall regulations by expressing strong opposition to the concept of allowing any harvest of migratory birds in Alaska.

*Service Response:* For centuries, indigenous inhabitants of Alaska have harvested migratory birds for subsistence purposes during the spring and summer months. The Canada and Mexico migratory bird treaties were recently amended for the express purpose of allowing subsistence hunting for migratory birds during the spring and summer and clearly contemplate that the Service would issue regulations allowing such hunting as provided in the Migratory Bird Treat Act, 16 U.S.C. 712(1). See **Statutory Authority** section for more details.

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. If at some point the subsistence harvest regulations result in increased harvest, management strategies will be implemented to ensure maintenance of continental populations.

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

Two comments were received regarding passage of a request to expand the Fairbanks North Star Borough excluded area to the Central Interior excluded area, which would exclude residents of Delta Junction/Big Delta/Fort Greely, McKinley Park/Village, Healy and Ferry from eligibility to participate in spring/summer migratory bird subsistence hunts. The expansion mirrors the current State of Alaska Fairbanks Non-subsistence Use Area boundaries. One commenter expressed support of expansion of the excluded area, stating that there is no evidence of a tradition of spring/summer subsistence hunting within the area. Another commenter brought up the question of whether due process was followed in the decision making process to take away the subsistence rights of the subsistence users in this area. The commenter further questions if all means (example: radio, television, local paper, State paper, flyers, meeting etc.) were exhausted in notifying the public (community) to weigh in on this issue involving taking away their subsistence right to hunt waterfowl. The commenter asks why other options were not brought to the table, such as alternate means of management including quotas or bag limits. The commenter also asks if there were any biological studies reflecting a negative impact on the waterfowl harvested in the area.

*Service Response:* A process for petitioning to exclude a community was approved by the Co-management Council on April 6, 2006. The approval process starts with petitions to exclude communities being sent to the Co-management Council during the November 1–December 15 open submission period. A petition should address the five criteria listed in 50 CFR 92.5(c). Upon submission, the petition will follow the normal review process outlined for regulatory proposals, including review by the Co-management Council's Technical Committee and petition dispersal to the regional management bodies for their review and recommendation(s). The affected regions are then responsible to conduct public meetings in the affected communities, after appropriate public notice.

In a public meeting held in Anchorage on April 6, 2006, the Co-management Council voted to recommend approval of the proposal to expand the Fairbanks North Star Borough excluded area and re-named it the Central Interior

excluded area. Justification to proceed was based on the fact that there is no evidence that there has been a tradition of spring and summer hunting of migratory birds in the proposed excluded area. The proposal cited previous action by the Alaska Joint Boards of Fisheries and Game in 1992 creating the Fairbanks Non-subsistence area as rationale for this regulation. The report focused on a socio-economic study that was conducted to determine whether or not subsistence traits existed in the Fairbanks region to justify it being considered a subsistence eligible area. The summary report recommended the Fairbanks area be considered a non-subsistence use area. The study was based on the application of 12 socio-economic factors to each community to determine whether or not subsistence-related traits existed. The Joint Boards of Fisheries and Game unanimously approved the non-subsistence use area.

To address the commenter's concern about public notification, we offer the following: The issue of excluding communities in the Interior of Alaska is not a new issue. Since the inception of the Co-management Council, we have had several proposals to expand or exclude either the Interior region or communities from participating in the spring and summer harvest of migratory birds in Alaska. The first year, a proposal was submitted to exclude several communities including Delta Junction, Tok, and other communities located on the Alaska Highway. At that time, the Co-management Council rejected the proposal based on the fact that there was no process or criteria for excluding communities or regions from participation in the spring/summer program. The second year, a proposal was submitted to exclude the agricultural fields located on the Alaska Highway that were the focus of the problem encountered by farmers and hunters. That proposal was rejected based on the fact that the regional management partner had not held any regional meetings to vet the proposal.

The Co-management Council is required by its by-laws to publicize the meetings 30 days prior to the meetings in a public newspaper. We also post the notices, draft agendas, and proposals on our website, which is available to anyone with internet access. The Co-management Council also utilizes the Service's Alaska Region External Affairs distribution system, which disseminates public notices to more than 40 newspaper and radio/television stations in Alaska, to invite public participation in the Co-management Council Meetings. The Co-management Council provides ample opportunity during their

meetings for people to comment and voice their concerns. Potential closing of the region to subsistence bird hunting has been discussed at the local Fish and Game Advisory Committee meetings, which are open to the public.

We also send **Federal Register** publications to the various conservation system units in Alaska, including the National Wildlife Refuge system in Alaska, the National Park Service, the Bureau of Land Management, and other conservation-oriented programs in Alaska.

Finally, the Co-management Council produces on an annual basis a user-friendly version of the regulations. This handbook is developed annually and dispersed to more than 26,000 households in eligible communities in Alaska. The handbooks reflect current regional and Statewide regulations as well as changes for the upcoming season.

The commenter asked if other management options, such as bag limits or quotas, were brought to the table for discussion prior to this exclusion decision. The options of going to bag limits or quotas were not discussed formally at the Co-management Council level. Relative to this proposal, however, these ideas have been discussed in other settings, and because of the spirit and intent of legitimizing the spring and summer harvest, such as sharing and passing down of customs and traditions, the notion of bag limits was dismissed because it did not fit into the local traditions of harvesting and sharing with others in a community. A parallel proposal, to close subsistence migratory bird hunting in a portion of the agricultural fields in Unit 20(D) for August 15–31 of each year, was brought forward and tabled for one year. The Co-management Council on April 6, 2006, opted to support ADFG's exclusion proposal instead of the option of a seasonal closure of the agricultural fields.

The commenter asked if there were any biological studies reflecting a negative impact on the waterfowl harvested in the area. Neither the Service nor ADFG has conducted any formal studies of the effects of spring/summer subsistence migratory bird hunting in the expanded exclusion area on either the local or nationwide waterfowl species populations. The Service has not conducted subsistence migratory bird harvest surveys of the communities that will be excluded under the exclusion area expansion during the 4 years of legal harvest (2003–06).

*What Is Changing on the List of Birds Open to Harvest for 2007?*

One comment was received stating continued opposition to maintaining 15 species of conservation concern on the list of birds open to harvest for 2007. These 15 species included: brant (*Banta bernicula*), king and common eiders (*Somateria spectabilis* and *millissima*), black scoter (*Melanitta nigra*), long-tailed duck (*Clangula hyemalis*), red-throated and yellow-billed loons (*Gavia stellata* and *adamsii*), black oystercatcher (*Haematopus bachmani*), bar-tailed godwit (*Limosa lapponica*), ruddy turnstone (*Arenaria interpres*), dunlin (*Calidris alpina*), red-legged kittiwake (*Rissa brevirostris*), Arctic and Aleutian terns (*Sterna paradisaea* and *aleutica*), and whiskered auklet (*Aethia pygmaea*).

*Service Response:* The Service originally addressed the Birds of Conservation Concern relative to the subsistence harvest starting in July 2003, with a final decision published in the April 2, 2004, **Federal Register** (69 FR 17318). The Birds of Conservation Concern list does not include waterfowl species, so the first five species listed in the comment were not addressed. Brant population trends were extensively discussed in 2005 and 2006, and regional closures were put in place starting in the 2006 season (71 FR 10404; February 28, 2006).

If the commenter desires to pursue subsistence harvest restrictions on the bird species listed above, the commenter could submit one or more formal proposals to change harvest regulations during the annual open period of November 1–December 15, 2007. The proposal(s) should include any new and updated species population data that would justify a change in the original Service decisions. The Co-management Council is a Co-management system comprised of Alaska Natives, and State and Federal representatives, acting as equals, that provide recommendations to the SRC on conservation issues relative to the subsistence harvest of migratory birds in Alaska.

One commenter requested that ivory gulls (*Pagophila eburnea*) be removed from the List of Birds Open to Harvest in 2007. The documented population decline was cited as justification as well as the recent recommendation to list the species as endangered by the Committee on the Status of Endangered Wildlife in Canada.

*Service Response:* Ivory gulls are spring and fall migrants along Alaska's North Slope and northern Bering Sea. A similar concern was raised in comments

on the 2004 proposed rule (69 FR 17318; April 2, 2004), but no formal proposals have ever been submitted for closure. Ivory gulls are not on the Birds of Conservation Concern list on any scale, because the list does not include casual migrants/non-breeders. We will continue to monitor circumpolar management recommendations and species population trends. The Arctic Council's Conservation of Arctic Flora and Fauna-Circumpolar Seabird Working Group will be completing an Ivory Gull Conservation Strategy in 2007 that will document this bird's current, global population status and identify conservation issues. Proposals to remove ivory gulls from the 2009 harvest regulations may be submitted during the annual open period of November 1–December 15, 2007.

#### Statutory Authority

We derive our authority to issue these regulations from the Migratory Bird Treaty Act, 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to "issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds."

#### 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 more 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 annually. 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 will not have an annual effect on the economy of \$100 million or more. It will legalize and regulate a traditional subsistence activity. It will

not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns. The commodities being regulated under this rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this rule derives from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska would qualify as small businesses. We have no reason to believe that this rule will lead to a disproportionate distribution of benefits.

(b) 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 March 28, 2000, Notice of Decision (65 FR 16405), we identified 12 partner organizations (Alaska Native non-profits and local governments) to administer the regional programs. The ADFG will also incur expenses for travel to Co-management Council and regional management body meetings. In addition, the State of Alaska will be required to provide technical staff

support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed \$100,000 per year, but should not exceed \$150,000 per year. When funding permits, we make annual grant agreements available to the partner organizations and the ADFG to help offset their expenses.

#### **Paperwork Reduction Act**

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain information collection requirements. The Office of Management and Budget (OMB) has approved the collection of information associated with the voluntary annual household surveys that we use to determine levels of subsistence take. OMB has assigned OMB control number 1018-0124, which expires on January 31, 2010. We estimate the annual burden for this information collection to be 4,156 hours. We will seek OMB approval for other necessary information collections contained in 50 CFR part 92. 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**

The Department, in promulgating this rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

#### **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 legally recognize the subsistence harvest of migratory birds and their eggs for tribal members, as well as for other indigenous inhabitants.

#### **Endangered Species Act Consideration**

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, “The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of the Act” and shall “insure that any action authorized, funded, or carried out \* \* \* is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. \* \* \*”

Consequently, we consulted with the Anchorage Fish and Wildlife Field Office of the Service to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of spectacled or Steller's eiders or result in the destruction or adverse modification of their critical habitat. Findings from this consultation are included in the Biological Opinion on the Effects of the Proposed 2007 Spring and Summer Subsistence Harvest of Birds on the Threatened Steller's and Spectacled Eiders (dated March 30, 2007). The consultation concluded that the 2007 regulations are not likely to jeopardize the continued existence of either the Steller's or spectacled eider. Additionally, any modifications resulting from this consultation to regulatory measures previously proposed are reflected in this final rule.

#### **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 2007 Spring/Summer Harvest,” issued August 15, 2006. 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 would allow only for traditional subsistence harvest and would improve conservation of migratory birds by allowing effective regulation of this harvest, it is not a significant regulatory action under Executive Order 13211. Consequently, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action under Executive Order 13211 and no Statement of Energy Effects is required.

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

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

■ For the reasons set out in the preamble, we amend title 50, chapter I, subchapter G, of the Code of Federal Regulations as follows:

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

■ 1. The authority citation for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

#### **Subpart A—General Provisions**

■ 2. In subpart A, amend § 92.5 by:  
 ■ a. Removing paragraph (a)(3); and  
 ■ b. Revising the introductory text and paragraphs (a)(1), (a)(2) introductory text, (a)(2)(iv), and (b).

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

If you are a permanent resident of a village within a subsistence harvest area, you will be eligible to harvest migratory birds and their eggs for subsistence purposes during the applicable periods specified in subpart D of this part.

(a) \* \* \*

(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. The Co-management Council will then consider each petition and will submit to the Service any recommendations to exclude areas from the spring and summer subsistence

harvest. The Service will publish any approved recommendations for public comment in the **Federal Register**.

(2) Based on petitions for inclusion recommended by the Co-management Council, the Service has added the following communities to the included areas under this part:

\* \* \* \* \*

(iv) Southeast Alaska Region—Hoonah, Craig, Hydaburg, and Yakutat.

(b) **Excluded areas.** Excluded areas are not subsistence harvest areas and are closed to harvest. Residents of excluded areas are not eligible persons as defined in § 92.4. Communities located within the excluded areas provided in paragraphs (b)(2) and (b)(3) of this section may petition the Co-management Council through their 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 Service any recommendations to designate a community as a spring and summer subsistence harvest area. The Service will publish any approved new designations of communities for public comment in the **Federal Register**. Excluded areas consist of the following:

(1) All areas outside of Alaska.

(2) Village areas located in Anchorage, the Matanuska-Susitna Borough, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, Southeast Alaska, and the Central Interior Excluded Area as described in paragraph (b)(3) of this section generally do not qualify for a spring and summer harvest.

(3) The Central Interior Excluded Area comprises the following: That portion of Unit 20(A) east of the Wood River drainage and south of Rex Trail, including the upper Wood River drainage south of its confluence with Chicken Creek; that portion of Unit 20(C) east of Denali National Park north to Rock Creek and east to Unit 20(A); and that portion of Unit 20(D) west of the Tanana River between its confluence with the Johnson and Delta Rivers, west of the east bank of the Johnson River, and north and west of the Volmar drainage, including the Goodpaster River drainage. The following communities are within the Excluded Area: Delta Junction/Big Delta/Fort Greely, McKinley Park/Village, Healy, Ferry, and all residents of the formerly named Fairbanks North Star Borough Excluded Area.

\* \* \* \* \*

### Subpart C—General Regulations Governing Subsistence Harvest

- 3. In subpart C, amend § 92.20 by:
  - a. Removing “or” from the end of paragraph (i);
  - b. Removing the period from, and adding in its place “; or” at, the end of paragraph (j); and
  - c. Adding a new paragraph (k) to read as set forth below.

#### § 92.20 Methods and means.

\* \* \* \* \*

(k) By the aid of baiting, or on or over any baited area, where a person knows or reasonably should know that the area is or has been baited, as provided at 50 CFR 20.21(i) and 16 U.S.C. 704(b).

### Subpart D—Annual Regulations Governing Subsistence Harvest

- 4. In subpart D, revise §§ 92.31 through 92.33 to read as follows:

#### § 92.31 Migratory bird species closed to subsistence harvest.

(a) Because of conservation concerns, you may not harvest birds or gather eggs from the following species in 2007:

- (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.
- (5) Yellow-billed Loons (*Gavia adamsii*)—Except that in the North Slope Region only, up to 20 yellow-billed loons total for the region may be inadvertently caught in fishing nets and kept for subsistence purposes.

(b) In addition, you may not gather eggs from the following species in 2007:

- (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 areas. 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*)—except in Units 9(D) and 10.

(9) Gadwall (*Anas strepera*).

(10) Eurasian Wigeon (*Anas penelope*).

(11) American Wigeon (*Anas americana*).

(12) Mallard (*Anas platyrhynchos*).

(13) Blue-winged Teal (*Anas discors*).

(14) Northern Shoveler (*Anas clypeata*).

(15) Northern Pintail (*Anas acuta*).

(16) Green-winged Teal (*Anas crecca*).

(17) Canvasback (*Aythya valisineria*).

(18) Redhead (*Aythya americana*).

(19) Ring-necked Duck (*Aythya collaris*).

(20) Greater Scaup (*Aythya marila*).

(21) Lesser Scaup (*Aythya affinis*).

(22) King Eider (*Somateria spectabilis*).

(23) Common Eider (*Somateria mollissima*).

(24) Harlequin Duck (*Histrionicus histrionicus*).

(25) Surf Scoter (*Melanitta perspicillata*).

(26) White-winged Scoter (*Melanitta fusca*).

(27) Black Scoter (*Melanitta nigra*).

(28) Long-tailed Duck (*Clangula hyemalis*).

(29) Bufflehead (*Bucephala albeola*).

(30) Common Goldeneye (*Bucephala clangula*).

(31) Barrow's Goldeneye (*Bucephala islandica*).

(32) Hooded Merganser (*Lophodytes cucullatus*).

(33) Common Merganser (*Mergus merganser*).

(34) Red-breasted Merganser (*Mergus serrator*).

(b) Family Gaviidae.

(1) Red-throated Loon (*Gavia stellata*).

(2) Arctic Loon (*Gavia arctica*).

(3) Pacific Loon (*Gavia pacifica*).

(4) Common Loon (*Gavia immer*).

(5) Yellow-billed Loon (*Gavia adamsii*)—In the North Slope Region only, a total of up to 20 yellow-billed loons inadvertently caught in fishing nets may be kept for subsistence purposes.

(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 virginianus*).  
 (2) Snowy Owl (*Nyctea scandiaca*).

#### § 92.33 Region-specific regulations.

The 2007 season dates for the eligible subsistence harvest areas are as follows:

- (a) Aleutian/Pribilof Islands Region.  
 (1) Northern Unit (Pribilof Islands):  
 (i) Season: April 2–June 30.  
 (ii) Closure: July 1–August 31.  
 (2) Central Unit (Aleut Region's eastern boundary on the Alaska Peninsula westward to and including Unalaska Island):  
 (i) Season: April 2–June 15 and July 16–August 31.  
 (ii) Closure: June 16–July 15.  
 (iii) Special Black Brant Season Closure: August 16–August 31, only in Izembek and Moffet lagoons.  
 (iv) Special Tundra Swan Closure: All hunting and egg gathering closed in units 9(D) and 10.  
 (3) Western Unit (Umnak Island west to and including Attu Island):  
 (i) Season: April 2–July 15 and August 16–August 31.  
 (ii) Closure: July 16–August 15.  
 (b) Yukon/Kuskokwim Delta Region.  
 (1) Season: April 2–August 31.  
 (2) Closure: 30-day closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with local subsistence users, field biologists, and the Association of Village Council President's Waterfowl Conservation Committee. This 30-day period will occur between June 1 and August 15 of each year. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.

(3) Special Black Brant and Cackling Goose Season Hunting Closure: From the period when egg laying begins until young birds are fledged. Closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President's Waterfowl Conservation Committee. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.

#### (4) Special Area Closure:

- (i) The following described goose nesting colonies are closed to all hunting and egg gathering from the period of nest initiation until young birds are fledged:  
 (A) Kokechik Bay Colony—bounded by 61.61° N to 61.67° N and 165.83° W to 166.08° W;  
 (B) Tutakoke River Colony—bounded by 61.20° N to 61.28° N and 165.08° W to 165.13° W;  
 (C) Kigigak Island Colony—bounded by island's edge;  
 (D) Baird Peninsula Colony—bounded by 60.87° N to 60.91° N and 164.65° W to 165.80° W; and  
 (E) Baird Island Colony—bounded by island's edge.  
 (ii) Closure dates to be announced by the Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President's Waterfowl Conservation Committee. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.  
 (c) Bristol Bay Region.  
 (1) Season: April 2–June 14 and July 16–August 31 (general season); April 2–July 15 for seabird egg gathering only.  
 (2) Closure: June 15–July 15 (general season); July 16–August 31 (seabird egg gathering).  
 (d) Bering Strait/Norton Sound Region.  
 (1) Stebbins/St. Michael Area (Point Romanof to Canal Point):  
 (i) Season: April 15–June 14 and July 16–August 31.  
 (ii) Closure: June 15–July 15.  
 (2) Remainder of the region:  
 (i) Season: April 2–June 14 and July 16–August 31 for waterfowl; April 2–July 19 and August 21–August 31 for all other birds.  
 (ii) Closure: June 15–July 15 for waterfowl; July 20–August 20 for all other birds.  
 (e) Kodiak Archipelago Region, except for the Kodiak Island roaded area, 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 only.

(2) Closure: June 21–July 21.

(f) Northwest Arctic Region.

(1) Season: April 2–June 9 and August 15–August 31 (hunting in general); waterfowl egg gathering May 20–June 9 only; seabird egg gathering July 3–July 12 only; hunting molting/non-nesting waterfowl July 1–July 31 only.

(2) Closure: June 10–August 14, except for the taking of seabird eggs and molting/non-nesting waterfowl as provided in paragraph (f)(1) of this section.

(g) North Slope Region.

(1) Southern Unit (Southwestern North Slope regional boundary east to Peard Bay, everything west of the longitude line 158°30' W and south of the latitude line 70°45' N to the west bank of the Ikpikpuk River, and everything south of the latitude line 69°45' N between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

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

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

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

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

(3) Eastern Unit (East of eastern bank of the Sagavanirktok River):

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

(ii) Closure: June 20–July 19.

(4) All Units: yellow-billed loons.

Annually, up to 20 yellow-billed loons total for the region may be caught inadvertently in subsistence fishing nets in the North Slope Region and kept for subsistence use. Individuals must report each yellow-billed loon inadvertently caught while subsistence gill net fishing to the North Slope Borough Department of Wildlife Management by the end of the season.

(h) Interior Region.

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

(2) Closure: June 15–July 15.

(i) Upper Copper River (Harvest Area: State of Alaska Game Management Units 11 and 13) (Eligible communities: Gulkana, Chitina, Tazlina, Copper Center, Gakona, Mentasta Lake, Chistochina and Cantwell).

(1) Season: April 15–May 26 and June 27–August 31.

(2) Closure: May 27–June 26.

(3) The Copper River Basin communities listed above also documented traditional use harvesting birds in Unit 12, making them eligible to hunt in this unit using the seasons specified in paragraph (h) of this section.

(j) Gulf of Alaska Region.

(1) Prince William Sound Area (Harvest area: Unit 6 [D]), (Eligible Chugach communities: Chenega Bay, Tatitlek).

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(2) Kachemak Bay Area (Harvest area: Unit 15[C] South of a line connecting the tip of Homer Spit to the mouth of

Fox River) (Eligible Chugach Communities: Port Graham, Nanwalek).

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(k) Cook Inlet (Harvest area: portions of Unit 16[B] as specified below) (Eligible communities: Tyonek only).

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

(2) Closure: June 1–July 31.

(l) Southeast Alaska.

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

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

(ii) Closure: July 1–August 31.

(2) Communities of Craig and Hydaburg (Harvest area: small islands and adjacent shoreline of western Prince of Wales Island from Point Baker to Cape Chacon, but also including Coronation and Warren islands).

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

(ii) Closure: July 1–August 31.

(3) Community of Yakutat (Harvest area: Icy Bay [Icy Cape to Pt. Riou], and coastal lands and islands bordering the Gulf of Alaska from Pt. Manby southeast to Dry Bay).

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

(ii) Closure: July 1–August 31.

Dated: March 30, 2007.

**Todd Willens,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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