

3. The petitioners present information that the Act authorizes the listing of a species, subspecies, or DPS; the Service listed a United States DPS based on the international boundary with Canada, and no further distinctions (*e.g.*, limiting to specific States) can be made.

4. The petitioners discuss and provide information to support their assessment that the lynx should be listed in New Mexico (Ruediger *et al.* 2000; Frey 2006; Frey 2003; Malaney 2003; Malaney and Frey 2005; BISON 2003; Checklist 2003; and Shenk 2001, 2005a, 2005b, 2006, 2007). The petitioners indicate that the Southern Rockies include high elevation, mountainous habitat that extends into north-central New Mexico. They indicate that, although no known historical occurrence records of lynx in New Mexico exist (Frey 2006, p. 20), we should carefully review the forest zones in New Mexico to ascertain whether suitable habitat exists.

5. The petitioners discuss why the lynx final listing rule is not logical and is contrary to the purpose and goals of the Act that include conserving ecosystems upon which species depend. The petitioners indicate that lynx traveling into New Mexico could be legally shot and hunted, and that this is contrary to the purpose of the Act, which is to provide a means whereby the ecosystems upon which threatened and endangered species depend may be conserved.

### Finding

We reviewed the petition, supporting information provided by the petitioners, and information in our files.

We find that the petition presents substantial scientific or commercial information indicating that changing the listing status of Canada lynx to include New Mexico in the threatened contiguous United States Distinct Population Segment may be warranted. Therefore, we will initiate a review of the specific points raised by the petitioners and the best available information, and present our analysis and determination in our 12-month finding.

It is important to note that the "substantial information" standard for a 90-day finding is in contrast to the Act's "best scientific and commercial data" standard that applies to a 12-month finding as to whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is warranted is not made until we have completed a thorough review of issues raised in the petition that are

substantial, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

### References Cited

A complete list of all references cited herein is available upon request from the Montana Ecological Services Field Office (see the **FOR FURTHER INFORMATION CONTACT** section).

### Author

The primary authors of this document are staff from the Montana Ecological Services Field Office (see the **FOR FURTHER INFORMATION CONTACT** section).

### Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 12, 2008.

### Rowan W. Gould,

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. E8-30110 Filed 12-17-08; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 92

[FWS-R7-MB-2008-0099; 91200-1231-9BPP L2]

RIN 1018-AW29

#### Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2009 Season

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

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or we) proposes migratory bird subsistence harvest regulations in Alaska for the 2009 season. The proposed regulations would enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These proposed regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. The

rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking proposes region-specific regulations that would go into effect on April 2, 2009, and expire on August 31, 2009.

**DATES:** We will accept comments received or postmarked on or before January 20, 2009. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by February 2, 2009.

**ADDRESSES:** You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018-AW29, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

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

### SUPPLEMENTARY INFORMATION:

#### Public Comments

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by

appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Office of the Alaska Migratory Bird Co-management Council, 1011 E. Tudor Rd., Anchorage, AK 99503, (877) 229-2344.

#### Why Is This Current Rulemaking Necessary?

This current rulemaking is necessary because, by law, the migratory bird harvest season is closed unless opened by the Secretary of the Interior, and the regulations governing subsistence harvest of migratory birds in Alaska are subject to public review and annual approval. The Alaska Migratory Bird Co-management Council (Co-management Council) held a meeting in April 2008 to develop recommendations for changes effective for the 2009 harvest season. These recommendations were presented to the Service Regulations Committee (SRC) on July 30 and 31, 2008, and were approved.

This rule proposes regulations for the taking of migratory birds for subsistence uses in Alaska during 2009. This rule lists migratory bird season openings and closures by region.

#### 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 addressing conservation issues can be found in the following **Federal Register** documents:

Date	Federal Register citation
August 16, 2002 .....	67 FR 53511
July 21, 2003 .....	68 FR 43010
April 2, 2004 .....	69 FR 17318
April 8, 2005 .....	70 FR 18244
February 28, 2006 .....	71 FR 10404
April 11, 2007 .....	72 FR 18318
March 14, 2008 .....	73 FR 13788

These documents, which are all final rules setting forth the annual harvest regulations, are available at <http://alaska.fws.gov/ambcc/regulations.htm>.

#### Who Is Eligible To Hunt Under These Regulations?

Eligibility to harvest under the regulations established in 2003 was limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands and in areas north and west of the Alaska Range (50 CFR 92.5). These geographical restrictions opened the initial subsistence migratory bird harvest to 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 criteria set forth in 50 CFR 92.5(c). These communities were Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina, Tatitlek, Chenega, Port Graham, Nanwalek, Tyonek, and Hoonah, with a combined population of 2,766. In 2005, we added three additional communities for glaucous-winged gull egg gathering only, based on petitions requesting inclusion. These southeastern communities were Craig, Hydaburg, and Yakutat, with a combined population of 2,459.

In 2007, we enacted the Alaska Department of Fish and Game's request to expand the Fairbanks North Star Borough excluded area to include the Central Interior area. This action excluded the following communities from participation in this harvest: Big Delta/Fort Greely, Healy, McKinley Park/Village and Ferry, with a combined population of 2,812. These removed communities reduced the percentage of the State population included in the subsistence harvest to 13 percent.

#### How Will the Service Ensure That the Subsistence Harvest Will Not Raise Overall Migratory Bird Harvest or Threaten the Conservation of Endangered and Threatened Species?

We have monitored subsistence harvest for the past 15 years through the use of annual household surveys in the most heavily used subsistence harvest areas, e.g., the Yukon-Kuskokwim Delta. Continuation of this monitoring enables tracking of any major changes or trends in levels of harvest and user participation after legalization of the 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.

The Service will institute emergency harvest closures in 2009 if deemed necessary to prevent an imminent threat to the conservation of Steller's eiders. Steller's eiders are divided into Atlantic and Pacific populations; the Pacific population is further divided into the Russia-breeding population along the Russian eastern arctic coastal plain, and the Alaska-breeding population. In 1997, the Alaska-breeding population of

Steller's eiders was listed as threatened based on a substantial decrease in the species' breeding range in Alaska and the resulting increased vulnerability of the remaining Alaska-breeding population to extirpation (62 FR 31748; June 11, 1997).

The Alaska-breeding population of Steller's eiders now nests primarily only on the Alaska Coastal Plain, particularly around Barrow and at very low densities from Wainwright to at least as far east as Prudhoe Bay. A few pairs also apparently remain on the Yukon-Kuskokwim Delta. The apparent reduction in breeding range in Alaska was a major reason for listing the Alaska-breeding population as threatened. Although the cause of the original decline is not known with certainty, current threats to the recovery of Steller's eiders likely include mortality from hunting, exposure to lead shot and other contaminants such as oil, changes in marine habitat, and nest failure and possibly adult mortality from avian and mammalian predators associated with human settlements and development. While we have made progress working to reduce predation, substituting steel shot for lead, and instituting eider conservation outreach programs, mortality from hunting appears to be the greatest current threat.

A computer-based statistical model was developed by scientists to predict the prognosis for recovery or extinction of the Alaska-breeding population of Steller's eider. Although there is uncertainty surrounding the population size, survival rate, and reproductive rate estimates used to develop this model, results indicate that the Alaska-breeding population of Steller's eiders has a very high probability of becoming extirpated within 10 years without immediate concerted actions designed to reduce adult mortality. For years with available harvest survey data, it appears that possibly 10 percent or more of the Alaska-breeding population of Steller's eiders has been lost due to mortality from hunting. Regulatory and collaborative actions focused on this threat will be necessary to ensure that take is reduced in 2009. The Service will institute emergency closures if the Alaska subsistence harvest of migratory birds is deemed to cause an imminent threat to Steller's eiders in a specific geographic area during the spring migration or the summer breeding period.

### What Is Proposed for Change in the Region-Specific Regulations for 2009?

#### *Yellow-Billed Loons*

At the request of the North Slope Borough Fish and Game Management Committee, the Co-management Council recommended continuing into 2009 the provisions originally established in 2005 to allow subsistence use of yellow-billed loons inadvertently entangled in subsistence fishing (gill) nets on the North Slope. Yellow-billed loons are culturally important for the Inupiat Eskimo of the North Slope for use in traditional dance regalia. A maximum of 20 yellow-billed loons may be caught in 2009 under this provision. The intent of this provision is not to harvest yellow-billed loons, but to allow use of those loons inadvertently entangled during normal subsistence fishing activities. Individual reporting to the North Slope Borough Department of Wildlife is required by the end of each season. The North Slope Borough has asked fishermen, through announcements on the radio and through personal contact, to report inadvertent entanglements of loons to better estimate the level of mortality caused by gill nets. In 2007, 14 yellow-billed loons were reported taken in fishing nets and an additional 2 were released alive. 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.

#### *Aleutian and Arctic Terns*

We are proposing to open a season May 15–June 30 for harvesting Aleutian and arctic tern eggs in the Yakutat Harvest area, from Icy Bay (Icy Cape to Pt. Riou) and the coastal islands bordering the Gulf of Alaska from Pt. Manby southeast to and including Dry Bay. The Yakutat Tlingit Tribe requested this proposal, stating that this regulation would legalize a traditional gathering of tern eggs that has occurred for hundreds of years. The Tlingit refer to the terns as “sea pigeons” and gather eggs for sustenance during the salmon fishing season. “Pigeon eggs” are considered a highly desired food by many Native households in Yakutat. Harvested eggs are shared extensively throughout the community and especially with local Native elders. The Yakutat Tlingit Tribe has agreed to monitor the harvest of tern eggs and this summer would conduct a recall survey of the spring harvest. The Yakutat Ranger Station, U.S. Forest Service, in cooperation with the Service’s Alaska Office of Migratory Bird Management is developing methods for monitoring the Aleutian and arctic tern populations in

the Yakutat area. Work on this project is under way.

#### *Steller’s Eiders*

We are proposing to add local migratory bird hunting restrictions for the four communities of Barrow, Wainwright, Point Lay, and Point Hope along the North Slope of Alaska. These proposed restrictions include instituting shooting hours, an inspection requirement, a road closure, and clarification of a possession restriction. We are proposing these restrictions in response to the recent mortality of Steller’s eiders on the North Slope, the loss of nests and eggs during breeding, and mortality likely associated with crippling due to hunting. We are not proposing to authorize incidental take of Steller’s eiders.

The Service has concerns that harvest pursuant to regulations from previous subsistence seasons would pose an imminent threat to the threatened Steller’s eider. It is estimated that 19 (9–37, 95% Confidence Limits) Steller’s eiders were harvested on the North Slope during the 2005 subsistence season; the actual reported take was 9 Steller’s eiders (Co-Management Council unpublished data, 2006). In 2008, 27 Steller’s eiders were found dead at Barrow between June and August 2008; of these, 74 percent were shot. The number of Steller’s eiders killed from Barrow to Point Hope during the spring and summer subsistence hunt during 2004–08 requires the Service to develop and implement new regulations. The Service concludes that the subsistence hunt has resulted in an unknown amount of shooting and disturbance that has caused the direct loss of nests, eggs, young, and adults in breeding years. The Service must attempt to eliminate the take of Steller’s eiders resulting from the recognition and continuation of the spring and summer subsistence migratory bird hunting in order to conserve and eventually recover this species.

Of the regulations we are proposing, the shooting hours restriction parallels that found in 50 CFR 20.102. This regulation will help eliminate hunting under poor visibility to improve species identification and reduce the probability of mistaken shooting and crippling of Steller’s eiders. We are proposing to require that hunters in the field, when asked, must present their take for species identification to enable the Service to monitor the harvest for take of closed and protected species. Because of the critical status of the Alaska-breeding Steller’s eiders (the listed population), we need real-time, reliable information about the take of any

Steller’s eiders during the subsistence season. We are proposing to clarify, reinforce, and ensure that no person may possess migratory bird species that are not open for subsistence harvest. In Barrow, we are proposing to close a 1-mile buffer zone to migratory bird hunting around specific rural roads to protect birds from harvest and disturbance in the primary nesting area around Barrow. If there had been a 1-mile closed buffer zone for the 2008 breeding period, it would have protected 91 percent of Steller’s eider nests documented.

The goal of these proposed restrictions is to eliminate or significantly reduce the potential impact of the subsistence migratory bird hunt to Steller’s eiders. In addition to the regulations, the Service is developing and implementing more effective hunter training on eider identification, harvest monitoring, law enforcement, and outreach. In the event that some or all of the conservation measures and regulations are unsuccessful, and the existing harvest is deemed to pose an imminent threat to the conservation of Steller’s eiders, we will apply the emergency closure provision provided in 50 CFR 92.21. In addition, as discussed under “Endangered Species Act Consideration,” we will consult on these proposed regulations under Section 7 of the Endangered Species Act to ensure that they are not likely to jeopardize the continued existence of Steller’s eiders or any other listed species.

#### **Statutory Authority**

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918, 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to “issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.”

#### **Clarity of the Rule**

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

- (a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

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

### Required Determinations

#### *Regulatory Planning and Review (Executive Order 12866)*

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

#### *Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The rule legalizes a pre-existing subsistence activity, and the resources harvested will be consumed by the harvesters or persons within their local community.

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

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

(a) Will not have an annual effect on the economy of \$100 million or more. It

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

(b) Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This rule does not deal with traded commodities and, therefore, does not have an impact on prices for consumers.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule deals with the harvesting of wildlife for personal consumption. It does not regulate the marketplace in any way to generate effects on the economy or the ability of businesses to compete.

#### *Unfunded Mandates Reform Act*

We have determined and certified under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, State, or tribal governments or private entities. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required. Participation on regional management bodies and the Co-management Council will require travel expenses for some Alaska Native organizations and local governments. In addition, they will assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than \$300,000 per year. In the Notice of Decision (65 FR 16405; March 28, 2000), we identified 12 partner organizations (Alaska Native nonprofits and local governments) to administer the regional programs. The Alaska

Department of Fish and Game will also incur expenses for travel to Co-management Council and regional management body meetings. In addition, the State of Alaska will be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed \$100,000 per year, but should not exceed \$150,000 per year. When funding permits, we make annual grant agreements available to the partner organizations and the Alaska Department of Fish and Game to help offset their expenses.

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

Under the criteria in Executive Order 12630, this rule does not have significant takings implications. This rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. A takings implication assessment is not required.

#### *Federalism (Executive Order 13132)*

Under the criteria in Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. We discuss effects of this proposed rule on the State of Alaska in the Executive Order 12866 and Unfunded Mandates Reform Act sections above. We worked with the State of Alaska to develop these proposed regulations. Therefore, a Federalism Assessment is not required.

#### *Civil Justice Reform (Executive Order 12988)*

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

#### *Government-to-Government Relations With Native American Tribal Governments*

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.

#### *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 January 31, 2010. 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.

#### *Endangered Species Act Consideration*

Prior to issuance of annual spring and summer subsistence regulations, we will consult under section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543; hereinafter the Act), to ensure that the 2009 subsistence harvest is not likely to jeopardize the continued existence of any species designated as endangered or threatened, or modify or destroy its critical habitats, and that the regulations are consistent with conservation programs for those species. Consultation under section 7 of the Act for the annual subsistence take regulations may cause us to change these regulations. Our biological opinion resulting from the section 7 consultation is a public document available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### *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 2009 Spring/Summer Harvest," issued December 12, 2008. Copies are available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### *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. This is not a significant regulatory action under Executive Order 12866; it would allow only for traditional subsistence harvest and would improve conservation of migratory birds by allowing effective

regulation of this harvest. Further, this rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action under Executive Order 13211 and no Statement of Energy Effects is required.

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

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

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

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

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

**Authority:** 16 U.S.C. 703-712.

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

2. In subpart D, add § 92.31 to read as follows:

##### **§ 92.31 Region-specific regulations.**

The 2009 season dates for the eligible subsistence harvest areas are as follows:

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

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

##### (c) *Bristol Bay Region*.

(1) Season: April 2–June 14 and July 16–August 31 (general season); April 2–July 15 for seabird egg gathering only.

(2) Closure: June 15–July 15 (general season); July 16–August 31 (seabird egg gathering).

##### (d) *Bering Strait/Norton Sound Region*.

(1) Stebbins/St. Michael Area (Point Romanof to Canal Point):

(i) Season: April 15–June 14 and July 16–August 31.

(ii) Closure: June 15–July 15.

(2) Remainder of the region:

(i) Season: April 2–June 14 and July 16–August 31 for waterfowl; April 2–July 19 and August 21–August 31 for all other birds.

(ii) Closure: June 15–July 15 for waterfowl; July 20–August 20 for all other birds.

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

(1) Season: April 2–June 30 and July 31–August 31 for seabirds; April 2–June 20 and July 22–August 31 for all other birds.

(2) Closure: July 1–July 30 for seabirds; June 21–July 21 for all other birds.

##### (f) *Northwest Arctic Region*.

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

(2) Closure: June 10–August 14, except for the taking of seabird eggs and molting/non-nesting waterfowl as

provided in paragraph (f)(1) of this section.

(g) *North Slope Region.*

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

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

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

(iii) Special Black Brant Hunting Opening: From June 20–July 5. The open area would consist of the coastline, from mean high water line outward to include open water, from Nokotlek Point east to longitude line 158°30'W. This includes Peard Bay, Kugrua Bay, and Wainwright Inlet, but not the Kuk and Kugrua river drainages.

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

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

(ii) Closure: June 7–July 6 for king and common eiders; June 16–July 15 for all other birds.

(iii) Special Hunting Restrictions for Barrow: Migratory bird hunting is not permitted within 1 mile of either side or end of Cakeeater/Gaswell, Nunavak and Freshwater Lake roads and any spur roads.

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

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

(ii) Closure: June 20–July 19.

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

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

(i) Migratory bird hunting is permitted from one-half hour before sunrise until sunset.

(ii) No person shall at any time, by any means, or in any manner, possess or have in custody any migratory bird or part thereof, taken in violation of subpart C and D of this part.

(iii) Upon request from a Service law enforcement officer, hunters taking, attempting to take, or transporting migratory birds taken during the subsistence harvest season must present them to the officer for species identification.

(h) *Interior Region.*

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

(2) Closure: June 15–July 15.

(i) *Upper Copper River Region* (Harvest Area: Units 11 and 13) (Eligible communities: Gulkana, Chitina, Tazlina, Copper Center, Gakona, Mentasta Lake, Chistochina and Cantwell).

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

(2) Closure: May 27–June 26.

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

(j) *Gulf of Alaska Region.*

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

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

(ii) Closure: June 1–30.

(2) Kachemak Bay Area (Harvest area: Unit 15[C] South of a line connecting the tip of Homer Spit to the mouth of Fox River) (Eligible Chugach Communities: Port Graham, Nanwalek).

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

(ii) Closure: June 1–30.

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

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

(2) Closure: June 1–July 31.

(l) *Southeast Alaska.*

(1) Community of Hoonah (Harvest area: National Forest lands in Icy Strait and Cross Sound, including Middle Pass Rock near the Inian Islands, Table Rock in Cross Sound, and other traditional locations on the coast of Yakobi Island. The land and waters of Glacier Bay National Park remain closed to all subsistence harvesting [50 CFR 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, aleutian and arctic tern egg gathering: May 15–June 30.

(ii) Closure: July 1–August 31.

3. In subpart D, add § 92.32 to read as follows:

**§ 92.32 Emergency regulations to protect Steller's eiders.**

Upon finding that continuation of these subsistence regulations would pose an imminent threat to the conservation of threatened Steller's eiders, the U.S. Fish and Wildlife Service Alaska Regional Director, in consultation with the Co-management Council, will immediately under § 92.21 take action as is necessary to prevent further take. Regulation changes implemented could range from a temporary closure of duck hunting in a small geographic area to large-scale regional or State-wide long-term closures of all subsistence migratory bird hunting. Such closures or temporary suspensions will remain in effect until the Regional Director, in consultation with the Co-management Council, determines that the potential for additional Steller's eiders to be taken no longer exists.

Dated: December 10, 2008.

**Lyle Laverty,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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