

## List of Subjects in 47 CFR Part 73

Radio broadcasting.

## 47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

## § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 245A and adding Channel 245C3 at Spokane.

Federal Communications Commission

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

RIN 1018-AB75

Endangered and Threatened Wildlife and Plants; Final Rule to List Spectacled Eider as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) determines that the spectacled eider (*Somateria fischeri*) is a threatened species throughout its range in Alaska and Russia. This action is being taken because the species has declined by as much as 94–98 percent on its principal breeding range in Alaska and breeding birds in Alaska continue to decline by about 14 percent per year. Critical habitat is not being designated at this time. The rule implements the protection of the Endangered Species Act of 1973, as amended, for the spectacled eider.

**EFFECTIVE DATE:** June 9, 1993.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Anchorage Field Office, U.S. Fish and Wildlife Service, 605 West 4th Avenue, room G-62, Anchorage, Alaska, 99501.

**FOR FURTHER INFORMATION CONTACT:** Jean Cochran, Endangered Species Specialist (see ADDRESSES above) (907/271-2888).

**SUPPLEMENTARY INFORMATION:****Species Description and Range**

The spectacled, or Fisher's, eider (also known as Quageq in Yupik and

Quvaasuk in Inupiat) is a large-bodied marine diving duck and one of three eiders in the genus *Somateria*. It was first described by Brandt in 1847 as *Fuligula fischeri*, then later placed in the genera *Lampronetta* and *Arctonetta*, and finally under *Somateria* (American Ornithologist's Union (AOU) 1983). The adult male spectacled eider has a green head with a long, sloping forehead, large, distinctive white eye patches, a black chest and a white back. Juveniles and adult females are brown with less distinct spectacle eye patches.

Spectacled eiders breed discontinuously along the coast of Alaska from the Nushagak Peninsula on Bristol Bay north to Barrow and east nearly to the Yukon border (Christian P. Dau, U.S. Fish and Wildlife Service, Cold Bay, Alaska, pers. comm., 1991, North 1990, Kessel 1989, Dau and Kistchinski 1977). They also nest on St. Lawrence Island, Alaska (Fay and Cade 1959) and along the Arctic coast of Russia from the Chukotsk Peninsula west to the Yana Delta (AOU 1983). High density breeding grounds for this eider are the Yukon-Kuskokwim Delta, Alaska and the Chaun, Kolyma, Yana and Indigirka Deltas in Siberia (Kondratev 1992, Dau and Kistchinski 1977).

Dau and Kistchinski (1977) hypothesized that the spectacled eider's primary winter range is in the central and northwestern Bering Sea. Migrant flocks stage offshore from St. Lawrence Island, where they are regularly seen in the spring and fall (Mary Hogan 1992). Only a few spectacled eiders have been documented during the winter in nearshore waters of Alaska and British Columbia (AOU 1983).

Spectacled eiders have been studied only within their breeding grounds. Dau and Kistchinski (1977) suggest that they feed primarily on benthic mollusks and crustaceans in shallow waters (≤30 meters (98.4 feet) deep). Kessel (1989) hypothesized that they also may forage on pelagic amphipods that are concentrated along the sea water-pack ice interface. On their coastal breeding grounds, these eiders feed on aquatic crustaceans, aquatic insects, and plant materials (Dau 1974). Their nests are built on shorelines, islands, and meadows in coastal tundra, predominantly within 15 kilometers of the coast (Dau 1974, Dau and Kistchinski 1977).

**Population Decline**

Dau and Kistchinski (1977) provide the only rangewide estimates for spectacled eider numbers, based principally on study sites on the Yukon-Kuskokwim Delta in Alaska and

Indigirka Delta in Siberia. They estimate that 47,700 pairs nested on the Yukon-Kuskokwim Delta in average years before 1972, increasing to 70,000 pairs in "good years", plus another 3,000 pairs elsewhere in Alaska and 30,000–40,000 pairs in Russia. These figures do not include subadult birds, which may comprise a substantial portion of the population (Dau and Kistchinski 1977). The Service estimates that 1,700–3,000 pairs nested on the Yukon-Kuskokwim Delta in 1990–1992 (Stehn *et al.* 1992b) and as many as a few thousand pairs may nest on Alaska's North Slope (Warnock and Troy 1992).

The estimated 1,700–3,000 pairs nesting on the Yukon-Kuskokwim Delta since 1990 represents a 94–98 percent decline from 47,700–70,000 pairs in the early 1970s. Further evidence that the decline in spectacled eiders on their primary breeding range in the United States is substantial and unabated comes from aerial waterfowl surveys and nest plot studies. Stehn *et al.* (1992b) summarized the following data collected by U.S. Fish and Wildlife Service biologists. Since 1957, the number of all eiders observed on standardized waterfowl breeding pair surveys flown in western Alaska decreased at an average rate of 7 percent per year. Biologists flew intensified aerial surveys over the central Yukon-Kuskokwim coast during 1967–1970 and 1988–1992. Aerial eider observations declined 87 percent between the two time periods, and since 1988 declined at an average rate of 9 percent per year. Aerial observations included Steller's eiders (*Polysticta stelleri*) and common eiders (*S. mollissima*), however, spectacled eiders accounted for most of the eiders observed. Regression analysis of data from random plots sampled on the central Yukon-Kuskokwim coast (2,264 km<sup>2</sup>, 874 mi<sup>2</sup>) from 1986 to 1992 indicate an average rate of decline in spectacled eider nest densities of 14 percent per year. No trend in common eider nest numbers was detected during this time.

Far less data are available on spectacled eiders elsewhere in Alaska. Spectacled eiders were never abundant on the Seward Peninsula, where they are now rare breeders (Kessel 1989). Residents of Gambell, St. Lawrence Island, Alaska, claim migrant spectacled eider flocks have not diminished during the last 10 years (Mary Hogan 1992); however, bird watching guides report seeing far fewer spectacled eiders migrating past Gambell in the 1980's than in the previous two decades (Isleib 1992).

The North Slope of Alaska may have supported 3,000 pairs 20 years ago (Dau and Kistchinski 1977), although this estimate was based on little data (Christian P. Dau, pers. comm., 1991). Spectacled eiders are infrequently detected on the North Slope coastal plain breeding pair surveys due to survey timing. Based on the past surveys from which the population declines of eiders were first detected, a new aerial survey was designed specifically to survey for eiders on the North Slope. This survey was initiated in 1992. Preliminary results indicate that up to a few thousand pairs may nest on the North Slope.

Spectacled eiders have been observed during bird population studies at Prudhoe Bay since 1981. Based on an intensive helicopter survey in 1991, the estimated spectacled eider population in Prudhoe Bay (550 km<sup>2</sup> or 212 mi<sup>2</sup>) was 122 pairs (Warnock and Troy 1992). This number is well below nesting densities on primary breeding sites, but similar to the current average density on all Yukon-Kuskokwim Delta coastal habitats combined (12,600 km<sup>2</sup> or 4,864 mi<sup>2</sup>) (Stehn *et al.* 1992b). The number of spectacled eiders observed on systematic ground surveys in Prudhoe Bay declined 80 percent from 1981 to 1991 (Warnock and Troy 1992)—the same rate of decline as Stehn *et al.* (1992b) observed for nest densities on the coastal Yukon-Kuskokwim Delta.

Spectacled eider populations are not surveyed systematically in Siberia. Dement'ev and Gladkov (1967) reported that numbers were dwindling on the Indigirka Delta, the center of Siberian breeding range (Dau and Kistchinski 1977), but no recent studies have been conducted in that region. Dr. Aleksandr Golovkin of the Institute of Nature Conservation in Moscow estimates that the current Russian population is about 20,000 breeding birds; however, he explains that this estimate is based on old data from few nesting areas and may be inaccurate (Steve Kohl, U.S. Fish and Wildlife Service, Washington, D.C., *in litt.*, 1992). Other Russian biologists indicate that data are insufficient for estimating current population size or trends in Russia (Vladimir Flint 1992, Tomkovich 1991). Spectacled eiders have not been nominated for the Red Data Book of Russia (U.S.S.R Ministry of Agriculture 1978) or regional rare species lists (Tomkovich 1991).

#### Petition Process Background

On December 10, 1990, the Service received a petition from James G. King of Juneau, Alaska, dated December 1, 1990, to list the spectacled eider and Steller's eider as endangered species

and to designate critical habitat for these species on the Yukon Delta National Wildlife Refuge and the National Petroleum Reserve—Alaska. Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*) requires that, to the maximum extent practicable, within 90 days of receipt of a petition to list, delist, or reclassify a species, the Service determine whether or not substantial information has been presented indicating that the requested action may be warranted. The 90-day finding that the petition had presented substantial information indicating that the requested action may be warranted was published in the Federal Register on April 25, 1991 (56 FR 19073).

In accordance with Section 4(b)(3)(B) of the Act, a 12-month finding was signed on February 12, 1992, determining that listing was warranted. For the Steller's eider, the Service determined that listing was warranted, but precluded by listing actions for higher priority species. Steller's eiders were designated a Category 1 candidate species, and comments received from the public will be considered in future status reviews for that species.

On May 8, 1992, the Service published a proposed rule in the Federal Register to list the spectacled eider as a threatened species throughout its range (57 FR 19852–19856). That notice solicited comments on the proposed listing from any interested parties, especially concerning threats to the species, its distribution and range, whether or not critical habitat should be designated, and activities that might impact the species. The proposed rule notice was sent to appropriate State agencies, Alaska Native regional corporations, borough and local governments, Federal agencies, foreign countries, scientific organizations, and other interested parties with a request for information that might contribute to the development of a final rule. Newspaper notices inviting general public comment were published in the Anchorage Daily News, Anchorage Times, Fairbanks Daily News-Miner, Nome Nugget, Kodiak Daily Mirror, and *Tundra Drums* during May 20–28, 1992.

#### Summary of Comments and Recommendations

Comments were received from 25 parties during the 160-day comment period, including the Russian Ministry of Ecology, Alaska Department of Fish and Game, U.S. Air Force, North Slope Borough, seven conservation organizations, three oil industry businesses, and 11 individuals from Russia, Norway, Canada and the United

States. No one requested a public hearing on the proposal. Of the comments, 13 supported and none opposed the proposed listing. Many respondents commented on the status of Steller's eiders, suggested additions or technical corrections for the proposal, or addressed eider management issues. Only comments specific to the proposed listing of spectacled eiders are addressed here. Individual comments are grouped by topic.

**Comment:** Four respondents commented that data available to the Service support listing the spectacled eider as endangered rather than threatened because the well documented, precipitous rate of decline on a substantial portion of the species' range will lead imminently to extinction.

**Service response:** When the 12-month finding on the eider petition was signed in February, 1992, the Service determined that the best scientific and commercial information available supported listing the spectacled eider as a threatened species throughout its worldwide range. As defined in the Act, the term "threatened species" means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, while an "endangered species" is "in danger of extinction." The information currently available to the Service does not indicate that the spectacled eider is in danger of extinction. However, the Service will continue to actively collect and evaluate status information on spectacled eiders and may propose reclassification at any time, should this become warranted. The draft recovery plan, which the Service expects to complete by one year from publication of this rule, will set out quantitative criteria for reclassification as well as recovery and delisting.

**Comment:** Two respondents requested that the Service list three separate spectacled eider populations—Yukon-Kuskokwim Delta, North Slope, and Siberia—to assure that each of these segments is fully protected.

**Service response:** Under the Act, vertebrate species may be listed worldwide or by subspecies or population. Since the Service determined that spectacled eiders warrant listing throughout their worldwide range, listing was proposed for the species as a whole. The Service has not determined whether populations of this wide ranging species are separate and distinct. The spectacled eider recovery team will be asked to evaluate separate breeding segments or populations and determine how each

segment contributes to rangewide population viability. As a result, the recovery plan could establish separate recovery goals for distinct population segments, as appropriate for conservation of the species.

*Comment:* Four respondents commented that the Service's decision not to designate critical habitat is unjustified. More specifically, they maintained that the proposed rule did not provide a comprehensive review of the chronic and cumulative impacts to terrestrial and marine habitats, or describe what areas are essential to the conservation of spectacled eiders. At a minimum, these respondents recommended that critical habitat be designated on high density breeding habitat on the Yukon Delta. One respondent supported the "not prudent" determination on critical habitat because evidence indicates the cause of decline does not involve breeding habitat.

*Service response:* The Service finds that designating critical habitat would provide no net benefit to spectacled eiders at this time, because the species is widely dispersed in remote habitats that remain predominantly unaltered and uninhabited. Prohibitions against adverse modification of critical habitat only apply to federally-funded, permitted or operated activities. Current Federal activities are affecting a limited portion of the species' suspected marine and terrestrial habitats (see detailed discussion under Critical Habitat).

*Comment:* Two respondents commented that the proposed rule understated the potential effects of oil and gas activities on spectacled eiders, and industrial development should be considered a past and future threat to the species. In contrast, another respondent said statements about the potential effects of oil and gas activities were unfounded and that new regulations restricting oil and gas exploration and development should be limited unless the Service provided data demonstrating that these activities were harmful.

*Service response:* Based on data collected in the Prudhoe Bay oil field since 1981, preliminary indications are that spectacled eiders continue to nest and raise broods in active oil fields in numbers typical of low density nesting habitat (Anderson *et al.* 1992, Warnock and Troy 1992, North 1990). Further, the rate of population decline in Prudhoe Bay parallels the rate of decline in southwestern Alaska, suggesting that the principal cause for the widespread decrease in breeding bird numbers will be found on migration or wintering grounds shared by both breeding

segments (Warnock and Troy 1992). Oil and gas development is not anticipated on primary breeding grounds in southwestern Alaska. The Service recognizes, however, that industrial development may affect birds locally on the North Slope and that future development could affect the species (see discussion below). The Federal Government controls oil and gas leasing in outer continental shelf waters and is typically involved in State-controlled nearshore and onshore development in Alaska through permitting requirements for alteration of wetlands and navigable waters. Hence, oil and gas development within the spectacled eider's United States range will be subject to the consultation requirements of section 7 of the Act. Measures can be incorporated into development plans to avoid disturbance and promote recovery of spectacled eiders.

*Comment:* Two respondents felt additional information should be provided on the threat posed by subsistence hunting. Another respondent expressed concern that listing spectacled eiders would stimulate the Service to enforce Migratory Bird Treaty Act prohibitions on traditional spring and summer harvest of other waterfowl, especially common eiders and king eiders (*Somateria spectabilis*). This respondent also expressed concern that such enforcement would jeopardize ongoing discussions between the United States and Canada to amend the 1916 Migratory Bird Treaty to permit regulated spring subsistence harvest of waterfowl in Alaska and Canada.

*Service response:* Current information indicates that an average of about five percent of the Yukon-Kuskokwim Delta breeding birds were harvested on the delta each year since 1987. This level of harvest is probably not the sole cause of the observed decline in this region (Stehn *et al.* 1992b). Yet, since the population is greatly reduced, any harvest now poses a threat to the species. The Service will be addressing this concern through an active outreach program to coastal villages. The Service's policy on harvest of migratory birds in Alaska during the closed season states that priorities for enforcement will be based on the status of populations and will involve consultation with affected interests (53 FR 16881). The Service will include spectacled eiders in a specific enforcement policy in 1993 to reduce any illegal harvest. The Service continues to support amendment of the Migratory Bird Treaty to allow for regulated, traditional subsistence harvest of waterfowl during the spring.

### Summary of Factors Affecting the Species

After a thorough review and consideration of all information presently available, the Service has determined that the spectacled eider should be classified as a threatened species. Procedures found at section 4(a)(1) of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the spectacled eider are as follows:

#### A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The destruction of habitat is not known to be a factor in the decline of the spectacled eider. Breeding habitat encompasses vast expanses of coastal tundra and ponds that remain predominantly unaltered and uninhabited. No development or other substantial threats to the species' principal breeding habitat on the Yukon Delta National Wildlife Refuge are foreseen.

Nesting habitat on the central coast of Alaska's North Slope, a small portion of the species' breeding range, has been altered by oil and gas development. Potential threats from this development include contamination from accidental spills, off road vehicle use, wetland filling, and indirect effects of human presence. While the extent of spectacled eider nesting habitat impacted by oil and gas development is presently small, industrial development could expand in the future. Changes in predator populations that may be affecting spectacled eiders are discussed under Disease or Predation.

Marine habitat requirements of spectacled eiders are poorly understood (Dau and Kistchinski 1977). Past and present threats to suspected marine habitats could include (1) toxic contaminants transported from Russian or North American sites, (2) indirect impacts of shifting populations of species with overlapping food habits, and (3) secondary effects of commercial fish and invertebrate harvests in the Bering Sea (Stehn *et al.* 1992b). The Service has not found evidence that these generalized threats have actually occurred, although minimal information is available on long-term changes in the Bering Sea ecosystem.

Future offshore oil and gas development could also pose a threat to

spectacled eiders. In outer continental shelf waters, proposed lease sales could result in active exploration and development within spectacled eider wintering, migration and molting habitat. State-controlled, nearshore marine waters may also be leased and developed. Planned satellite telemetry research will help the Service delineate more precisely the marine habitats used by spectacled eiders and permit a thorough assessment of these possible threats.

#### B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Eiders have traditionally been harvested during migration, and birds and eggs have been taken on some nesting grounds for subsistence use by Alaskan and Siberian Natives. Historically, eider skins and feathers were used for clothing and bones were used for household purposes (Klein 1966, Johnson 1971). Feathers have been applied to ceremonial fans and masks that are sold to tourists (Klein 1966). Spring harvest of eiders has provided an important traditional source of meat to coastal communities, however, spectacled eiders constitute a small portion of the total eiders and total birds taken (Wentworth 1991, Braund *et al.* 1989a, 1989b, Johnson 1971). Spectacled eiders do not molt on their breeding grounds (Dau 1974); hence, they would not have been vulnerable to capture during historic drives of flightless birds.

In recent years, spectacled eiders have apparently been taken in low numbers for subsistence and minimally for sport use, but rangewide and local effects of this harvest are not documented. Sport harvest of spectacled eiders in the United States was limited primarily to a few taken annually by collectors on St. Lawrence Island until the U.S. sport hunting season was closed in 1991 (Robin West, U.S. Fish and Wildlife Service, Anchorage, Alaska, pers. comm., 1991). Some illegal harvest for the taxidermy trade has also been reported from Gambell, St. Lawrence Island, but the magnitude of take is unknown (Stephen A. Tuttle, U.S. Fish and Wildlife Service, Anchorage, Alaska, pers. comm., 1991). Eiders are harvested by Native Siberians on the Chukotsk Peninsula and farther west, however, no data are available on take of spectacled eiders in Russia (Steve Kohl, *in litt.*, 1992).

The estimated, annual subsistence harvest on the Yukon-Kuskokwim Delta from 1985 to 1992 averaged 334 spectacled eiders, equivalent to about five percent of the average, local nesting

population during those years (Stehn *et al.* 1992b). Another 66 were reported taken at Wainwright and Barrow in 1988 (Braund *et al.* 1989a, 1989b) and spectacled eiders could account for some of the unidentified eiders taken by residents of these villages. In addition, residents of other villages near eider migration routes and nesting range may harvest spectacled eiders.

While historic harvest data are unavailable, traditional subsistence harvest likely did not have a significant effect on formerly large populations. The petition to list spectacled eiders suggested that harvest may have increased in the 1980s in compensation for voluntary restrictions on subsistence harvest of four goose species protected by the Cooperative Yukon-Kuskokwim Delta Goose Management Plan. The average annual take of 3,800 eiders (all species) on the Yukon-Kuskokwim Delta from 1985-1991 (Wentworth 1991) is close to a 1964 estimate of 3,300 eiders taken (Klein 1966), indicating that total eider harvest has not changed substantially in 25 years.

In combination with reduced reproductive success or increased mortality due to other factors, even low harvest levels may be contributing to the further population decline. Overharvest may have eliminated local breeding birds from suitable habitat near villages in western Alaska (Stehn *et al.*, 1992b). Due to delayed maturity and low recruitment of young birds to breeding age, even low hunting mortality can affect sea duck populations (Goudie 1992).

#### C. Disease or Predation

Eider eggs, young, and occasionally adults are preyed upon by mammalian and avian predators, particularly arctic fox (*Alopex lagopus*), glaucous gulls (*Larus hyperboreus*), and parasitic jaegers (*Stercorarius parasiticus*). Rangewide or long-term effects of predation on spectacled eider populations have not been documented.

Historically, eiders nested in association with black brant (*Branta bernicla*) and cackling Canada geese (*B. canadensis minima*), possibly as a strategy to reduce predation losses (Kertell 1991). When brant, cacklers and other geese declined sharply during the past few decades in Alaska, fox predation on eider eggs may have increased (Kertell 1991). However, average spectacled eider nest and brood survival have apparently been high on at least some parts of the Yukon-Kuskokwim Delta (Harwood *et al.* 1992, Stehn *et al.* 1992a, Harwood and Moran 1991). Populations of large gulls (primarily glaucous-winged gulls (*L.*

*glaucescens*) but also glaucous gulls) may have increased markedly in southwestern Alaska due to increased food availability, particularly fish processing wastes (Robert Gill, U.S. Fish and Wildlife Service, Anchorage, Alaska, pers. comm., 1991). Hence, gull predation on eider eggs and hatchlings may have risen with increased gull densities, although spectacled eider nest and brood survival were high near gull colonies on the delta (Harwood *et al.* 1992). Similarly, spectacled eider nest and brood survival appear to be relatively high in Prudhoe Bay (Warnock and Troy 1992), despite possible increases in fox and common raven (*Corvus corax*) populations around oil fields (Eberhardt *et al.* 1982).

#### D. The Inadequacy of Existing Regulatory Mechanisms

Harvest of eiders is regulated under authority of the Migratory Bird Treaty Act (16 U.S.C. 703-711). The U.S. sport hunting season on spectacled eiders has been closed since 1991. Subsistence harvest continues with an estimate of at least 500 birds harvested per year. Spectacled eiders were harvested historically in Russia (Portenko 1972, Dement'ev and Gladkov 1967). The current Russian harvest may be high (Germogenov 1992 in Stehn *et al.* 1992b), but no recent estimates are available (Steve Kohl, *in litt.*, 1992).

Spring and summer subsistence hunting of eiders in Alaska is in violation of the Migratory Bird Treaty Act, which prohibits hunting for most migratory birds between March 10 and September 1. The Service recognizes, however, that residents of certain rural areas in Alaska depend on waterfowl as a customary and traditional source of food. Due to this long established dependence, the Service has exercised discretion in not strictly enforcing the closed season on taking some birds, provided that the birds were taken in a non-wasteful manner and used for food. Spectacled eiders will be included in the Service's enforcement policy in 1993 to try to eliminate any illegal harvest. The Service has initiated an information and education program to gain public support for spectacled eider protection.

Regulations requiring the use of non-toxic shot for hunting waterfowl, cranes and snipe in Alaska were implemented for the 1991-1992 migratory bird hunting season (50 CFR part 20.134). Conversion from lead shot to steel shot would reduce the threat of lead poisoning from ingested or imbedded shot. The Service and the Alaska Department of Fish and Game are promoting the use of steel shot through

educational seminars in coastal villages, yet compliance is not assured. Lead shot is still available for upland game hunting in eider nesting range.

#### *E. Other Natural or Manmade Factors Affecting Its Continued Existence*

The petition to list the spectacled eider as an endangered species cited oil spills, pollution resulting from offshore oil development and fishery vessels, the effects of large scale fishery fleets on marine ecology, and direct mortality in fishing nets as potential factors affecting the spectacled eider. At present, no evidence is available demonstrating that these factors have had a direct effect on spectacled eiders in the North Pacific or Arctic Oceans, but investigations of spectacled eider marine habitats are just beginning. Direct mortality in fishing nets or from oil spills has not been documented by the Service. Food supplies or other critical elements of the marine ecosystem may have been diminished by fishing activity, contamination, competition with other species, or disruption of the benthic environment.

The Service recently received reports of birds, including unidentified eiders, accidentally striking commercial fishing vessels operating near the pack ice in the northern Bering Sea (Tuttle 1992). Since these crab fishing boats are operating in potential spectacled eider wintering range (Dau and Kistchinski 1977), accidental collisions may be a threat to the species.

Hazardous materials are spilled regularly into the Bering Sea from shipwrecks and bilge discharges and some of these materials may enter benthic or pelagic food chains (Everett Robinson-Wilson, U.S. Fish and Wildlife Service, Anchorage, Alaska, pers. comm., 1991). Proposed oil and gas leasing and potential development in State and outer continental shelf waters could impact eiders due to disturbance and oil spills. Production of oil in the outer continental shelf of the Bering and Chukchi Seas would substantially increase the probability of oil spills from platforms, pipelines, and tankers (Minerals Management Service 1992), with potential effects on spectacled eiders. The anticipated increase in shipping activity in pack ice lead systems if offshore oil fields are developed could put eiders at risk of oil spill damages during critical migration, wintering, and molting periods, when they are highly concentrated or in flightless flocks. Similar impacts could occur with State leases in near shore marine waters.

In 1992, one spectacled eider was collected on the Yukon Delta National

Wildlife Refuge that had died from lead poisoning, possibly due to the ingestion of lead shot (Jean Cochrane, U.S. Fish and Wildlife Service, Anchorage, Alaska, *in litt.*, 1992). Lead shot is commonly used by coastal residents of Alaska for hunting birds, although non-toxic shot is now required for waterfowl hunting. Potentially, residual lead shot could remain on the tundra or in shallow ponds for years, posing a prolonged risk to eiders. Spectacled eiders may also be exposed to environmental pollutants including heavy metals and organochlorines in the marine environment, with potential effects on survival and reproduction.

Severe weather is also a threat to arctic sea ducks, and major eider die-offs have been recorded after late spring storms on the Arctic Ocean (Myres 1958, Barry 1968). While historically large populations would not be seriously affected by periodic die-offs or by nesting failures due to coastal flood surges (Dau 1974), remnant or isolated populations are susceptible to devastation from these periodic events.

In summary, the Service estimates that approximately 1,700–3,000 pairs of spectacled eiders nested on their historically important breeding range on the Yukon-Kuskokwim Delta during 1990–92, where an estimated 47,740–70,000 pairs nested twenty years ago. This 94–98 percent decline is corroborated by the seven percent per year decline in the number of all eiders seen on breeding pair surveys in southwestern Alaska since 1957 and the 14 percent per year decline in spectacled eider nest densities on the Yukon Delta National Wildlife Refuge since 1986. The geographically separate breeding segment in Prudhoe Bay, Alaska, has declined at a similar annual rate, equivalent to 80 percent from 1981 to 1991.

Although the factors that caused these declines are unknown, a number of potential contributory factors have been identified. These, or other still unidentified threats have increased mortality above the rate of reproductive replacements. If the downward trend in nest densities continues unabated, the Yukon-Kuskokwim Delta breeding segment will be reduced to 50 percent of current size every 4.0 years (Stehn *et al.* 1992a). Based on data from Prudhoe Bay and the Yukon-Kuskokwim Delta, spectacled eiders are declining at about the same rate throughout their Alaskan breeding range. No data are available to show whether similar trends have affected the breeding population in Russia where as many as 40,000 pairs traditionally nested.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species for the purposes of this final rule. Based on this evaluation, the preferred action is to list the spectacled eider as a threatened species throughout its worldwide range (i.e., a species that is likely to become endangered throughout all or a significant portion of its range in the foreseeable future).

#### **Critical Habitat**

Section 4(a)(3) of the Act requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Although the Service received several comments advocating the designation of critical habitat, no demonstrable overall benefit to the spectacled eider can be identified from designating critical habitat. The species is widely dispersed in remote habitats that remain predominantly unaltered and uninhabited. Current and planned Federal activities are affecting a limited portion of the species' suspected marine and terrestrial habitats. Hence, the Service has determined that critical habitat designation is not prudent at this time (50 CFR 424.12).

The spectacled eider's principal nesting grounds encompass 12,600 km<sup>2</sup> (4,864 mi<sup>2</sup>) of coastal tundra on the Yukon Delta National Wildlife Refuge. Coastal habitats in the refuge have not been subject to seismic exploration or industrial development. Human use is limited essentially to subsistence activities and refuge operations (U.S. Fish and Wildlife Service 1988). No Federal activities are foreseen that threaten the spectacled eider's coastal tundra habitat on this refuge (U.S. Fish and Wildlife Service 1988).

At least 13,400 km<sup>2</sup> (5,172 mi<sup>2</sup>) of the coastal plain on Alaska's North Slope may be spectacled eider nesting habitat, of which less than 2,000 km<sup>2</sup> have been developed as oil production fields (Philip Martin, U.S. Fish and Wildlife Service, Fairbanks, Alaska, *in litt.*, 1992). No more than five percent of the tundra wetlands within the 2,000 km<sup>2</sup> (772 mi<sup>2</sup>) oil fields has been destroyed (Philip Martin, *in litt.*, 1992), representing a small fraction of the total available tundra breeding habitat on the North Slope.

Spectacled eiders nest in low numbers in active oil fields (Warnock and Troy 1992, Anderson *et al.* 1992). Alteration of wetlands, direct human disturbance, and indirect impacts such as increased fox populations near oil fields (Truett and Kertell 1992,

Eberhardt *et al.* 1982) may cumulatively affect local nesting numbers. The most common habitat conversion within the oil fields is creation of water impoundments (Truett and Kertell 1992), which are frequented by spectacled eider pairs and broods (Warnock and Troy 1992). Breeding pair densities in Prudhoe Bay are comparable to study sites in undeveloped regions of the North Slope (Warnock and Troy 1992, North 1990).

Past seismic activities in the National Petroleum Reserve-Alaska also have altered some undeveloped tundra lands. Surface disturbance of the tundra caused by industrial activities on the North Slope typically increases surface moisture and primary plant productivity, however, the food chain effects of these widely dispersed tundra landscape disturbances are not known (Truett and Kertell 1992).

Marine spectacled eider habitat in U.S. territory may include some or all of the southern Chukchi and Northern Bering Seas. Of four outer continental shelf oil and gas lease sales proposed for 1992-97 in the Chukchi and Bering Seas, only the Hope Basin sale is still planned (John Shindler, Minerals Management Service, Anchorage, Alaska, pers. comm., 1992). Industry has not expressed any interest in the other Chukchi sales or in the St. George Basin south of the Pribilof Islands (*ibid.*). Most current leases in potential spectacled eider marine range, other than the Beaufort Sea, have expired or are inactive and will expire soon. Spectacled eiders may use coastal waters of the Beaufort Sea for brief periods, but Myres (1958) presented evidence that their principal migration routes between the Chukchi Sea and North Slope breeding grounds are over land.

In summary, Federal activities are affecting a small portion of low density spectacled eider breeding habitat on the North Slope. Supposed molting and wintering habitats within United States waters, including known range near St. Lawrence Island, are not presently being explored or developed by oil and gas companies. Critical habitat cannot be designated outside of U.S. territory, including the suspected wintering range in Russian waters (Dau and Kistchinski 1977).

The Service recognizes that ongoing research may reveal future threats to spectacled eider habitat from Federal activities, which could be addressed through critical habitat designation. For example, satellite telemetry tracking of spectacled eiders is planned for 1993 to more precisely delineate migration and wintering range. By monitoring Federal

activities that may affect spectacled eider tundra and marine habitats, the Service will be able to promptly propose critical habitat if subsequent information indicates such action has become warranted.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and local governments and private agencies, groups and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Regulations implementing the Migratory Bird Treaty Act make it illegal to take, possess, sell, deliver, carry, transport, or ship spectacled eiders or their parts, eggs, nests, and young (50 CFR 20.71). However, the Migratory Bird Treaty Act affords no protection to their habitat. Section 7(a) of the Endangered Species Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its designated critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Studies to determine spectacled eider staging, molting, or wintering areas are presently underway. Consultation between the Minerals Management Service and the Service will be initiated for proposed outer continental shelf oil and gas lease sales. The Service has already initiated informal conference with the U.S. Army Corps of Engineers and the U.S. Department of Transportation and recommended measures to avoid impacts to spectacled eiders from wetland fill permitting

activities on the North Slope and airport expansion projects in southwestern Alaska. Consultation is expected with the National Marine Fisheries Service over commercial fishing operations in the northern Bering Sea, to identify potential effects on spectacled eiders. Reasonable and prudent alternatives may be implemented for Federally-funded or permitted projects to avoid causing jeopardy to the spectacled eider.

The Service will convene a recovery team and develop a recovery plan for the spectacled eider promptly upon listing. An information and education program to gain public support for the protection of spectacled eiders has already been initiated and will be carried out cooperatively with affected communities. The recovery plan will outline viable population levels, quantify recovery goals and set recovery task priorities.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Section 10(e) of the Act exempts any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska, or any non-native permanent resident of an Alaskan Native village, from the aforementioned prohibitions on taking any endangered or threatened species, if such taking is primarily for subsistence purposes. Non-edible by-products of species taken pursuant to section 10(e) may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that provisions of this subsection shall not apply to any non-native resident of an Alaskan Native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

Regulations limiting subsistence harvest by any Indian, Aleut, Eskimo, or non-native Alaskan resident of an Alaskan Native village may be established pursuant to section 10(e)(4)

of the Act if the Secretary determines that such taking materially and negatively affects the threatened or endangered species and holds hearings on the proposed harvest regulations in the affected judicial districts of Alaska. Subsistence harvest regulations promulgated pursuant to the Endangered Species Act would have to be in accordance with the Migratory Bird Treaty Act. The Service is not currently promulgating special regulations for spectacled eiders under section 10(e)(4) of the Act, but maintains full authority for enforcing harvest regulations pursuant to the Migratory Bird Treaty Act. Current regulations implementing the Migratory Bird Treaty Act prohibit all harvest of spectacled eiders (50 CFR 20.32).

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purposes

of the Act. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. Such permit applications are not expected, however, since the spectacled eider is not presently in commercial trade. For the same reason, the Service does not anticipate requesting that the spectacled eider be included under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

**National Environmental Policy Act**

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 CFR 49244).

**References Cited**

A complete list of all references cited herein, as well as others, is available upon request from the Anchorage Field Office (see ADDRESSES above).

**Author**

The primary author of this proposed rule is Jean Fitts Cochrane, Anchorage Field Office (see ADDRESSES above).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

**Proposed Regulation Promulgation**

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Birds							
Eider, spectacled (= Fisher's).	<i>Somateria</i> (= <i>Fuligula</i> , = <i>Lampronetta</i> = <i>Arctonetta</i> ) <i>fischeri</i> .	U.S.A. (AK); Russia .	Entire .....	T	503	NA	NA

Dated: April 29, 1993.  
 Richard N. Smith,  
 Deputy Director, U.S. Fish and Wildlife Service.  
 [FR Doc. 93-10951 Filed 5-7-93; 8:45 am]  
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