

Office of Management and Budget (OMB), shall become effective upon approval by OMB, but no sooner than September 12, 1997. A document announcing the information collections approval by OMB will be published in the **Federal Register** at a later date. This document announces the effective date of the amendments to our rules for numbering that contained information collection requirements.

**DATES:** Sections 52.23 and 52.31 and the Appendix to Part 52, published at 62 FR 18280, April 15, 1997, were approved by the Office of Management and Budget (OMB) on August 9, 1997. The OMB approval of the information collection requirements contained in these rules was announced in the **Federal Register** on August 28, 1997. OMB approved the collections on August 9, 1997, however, the rules that contained information collections should not have become effective no sooner than September 12, 1997. Therefore, the rules became effective on September 12, 1997.

**FOR FURTHER INFORMATION CONTACT:** Pam Slipakoff, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418-7400.

**SUPPLEMENTARY INFORMATION:** On March 11, 1997, the Commission released a First Memorandum Opinion and Order on Reconsideration in CC Docket No. 95-116; FCC 97-74 (Order). In that Order the Commission concludes, first, that Query on Release (QOR) is not an acceptable long-term number portability method. Second, the Commission extends the completion deadlines in the implementation schedule for wireline carriers by three months for Phase I and by 45 days for Phase II, clarifies the requirements imposed there under, concludes that LECs need only provide number portability within the 100 largest MSAs in switches for which another carrier has made a specific request for portability, and addresses issues raised by rural LECs and certain other parties. Finally, the Commission affirms and clarifies its implementation schedule for wireless carriers. A summary of the Order was published in the **Federal Register**. See 62 FR 18280, April 15, 1997. In that summary, the Commission stated that the modified rules would become effective May 15, 1997. Information collections, however, which are subject to approval by the Office of Management and Budget (OMB), shall become effective upon approval by OMB, but no sooner than September 12, 1997. A document announcing the information collections approval by OMB will be published in

the **Federal Register** at a later date. On August 9, 1997, OMB approved the information collections. See OMB No. 3060-0742. The rule amendments adopted by the Commission in the Order took effect May 15, 1997. The OMB approval of the information collection requirements was announced in the **Federal Register** on August 28, 1997, however, the effected rules took effect on September 12, 1997.

#### List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 64

[CC Docket No. 94-129; FCC 03-42]

#### Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers.

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** This document announces the effective date of certain sections of the Commission's rules regarding unauthorized changes of consumers' preferred telecommunications service providers. Certain sections of the rules contained information collection requirements that required the approval of the Office of Management and Budget ("OMB") before they could become effective. Those sections have been approved by OMB.

**DATES:** The amendments to 47 CFR sections 64.1120(c)(3)(iii), 64.1130(j), 64.1150(b), 64.1160(g), 64.1170(g), 64.1180, to the requirements concerning local exchange carrier verification of inbound carrier changes, and to certifications to exempt carriers from the drop-off requirement, released by the Commission on March 17, 2003, and a summary of which was published at 68 FR 19152, April 18, 2003, will become effective on July 21, 2003.

**FOR FURTHER INFORMATION CONTACT:** Perlesta Hollingsworth of the Policy Division, Consumer & Governmental

Affairs Bureau at (202) 418-7383, TTY (202) 202 418-7365 (tty).

**SUPPLEMENTARY INFORMATION:** On March 17, 2003, the Commission released the Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking (Order). The Order revised and clarified certain rules to implement section 258 of the Communications Act. The rules and requirements implementing section 258 can be found primarily at 47 CFR Part 64. The modifications and additions adopted in the Order will improve the carrier change process for consumers and carriers, while making it more difficult for unscrupulous carriers to perpetrate slams. The Commission released the Order on March 17, 2003. In addition, a summary of the Order was published in the **Federal Register** at 68 FR 19152, April 18, 2003. On July 1, 2003, the Commission received approval for the information collection requirements, Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, OMB Control Number 3060-0787, contained in the Order pursuant to the "emergency processing" provisions of the Paperwork Reduction Act of 1995 (5 CFR 1320.13). Questions concerning OMB control numbers and expiration dates should be directed to Les Smith, Federal Communications Commission, (202) 418-0217 or via the Internet to [leslie.smith@fcc.gov](mailto:leslie.smith@fcc.gov).

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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### DEPARTMENT OF THE INTERIOR

#### Fish and Wildlife Service

#### 50 CFR Parts 20, 21, and 92

**RIN 1018-A184**

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

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

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or we) is establishing spring/summer migratory bird subsistence harvest regulations in

Alaska for the 2003 subsistence season. This 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 excluded from use. These regulations were developed under a new co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. They are not intended to be a complete, all-inclusive set of regulations, but are intended to provide an initial framework to legalize customary and traditional subsistence uses of migratory birds in Alaska. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual public review. Certain provisions in this rulemaking expire on August 31, 2003, for the spring/summer subsistence harvest of migratory birds in Alaska. In subsequent years, seasons will open after April 1 and will close prior to September 1.

**DATES:** This rule is effective July 21, 2003, except for §§ 92.31 through 92.33, which are effective July 21, 2003 until August 31, 2003.

**ADDRESSES:** The administrative record for this rule may be viewed at the office of the Regional Director, Alaska Region, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503.

**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:**

##### **What Events Led to This Action?**

In 1916, the United States and Great Britain (on behalf of Canada) signed the Convention for the Protection of Migratory Birds in Canada and the United States (Canada Treaty). The treaty prohibited commercial hunting for, and specified a closed season on the taking of, migratory game birds between March 10 and September 1 of each year. In 1936, the United States and Mexico signed the Convention for the Protection of Migratory Birds and Game Mammals (Mexico Treaty). The Mexico treaty prohibited the taking of wild ducks between March 10 and September 1. Neither treaty allowed adequately for the traditional harvest of migratory birds by northern peoples during the spring and summer months. This harvest, which had occurred for centuries, was necessary to the subsistence way of life in the north and thus continued despite the closed season.

The Canada treaty and the Mexico treaty, as well as migratory bird treaties with Japan (1972) and Russia (1976), have been implemented in the United States through the Migratory Bird Treaty Act (MBTA). The courts have ruled that the MBTA prohibits the Federal Government from permitting any harvest of migratory birds that is inconsistent with the terms of any of the migratory bird treaties. The more restrictive terms of the Canada and Mexico treaties thus prevented the Federal Government from permitting the traditional subsistence harvest of migratory birds during spring and summer in Alaska. To remedy this situation, the United States negotiated Protocols amending both the Canada and Mexico treaties to allow for spring/summer subsistence harvest of migratory birds by indigenous inhabitants of identified subsistence harvest areas in Alaska. The U.S. Senate approved the amendments to both treaties in 1997.

##### **What Will the Amended Treaty Accomplish?**

The major goals of the amended treaty with Canada are to allow for traditional subsistence harvest and to improve conservation of migratory birds by allowing effective regulation of this harvest. The amended treaty with Canada allows permanent residents of villages within subsistence harvest areas, regardless of race, to continue harvesting migratory birds between March 10 and September 1 as they have done for thousands of years. The Letter of Submittal of May 20, 1996, from the Department of State to the White House that officially accompanied the treaty protocol explains that lands north and west of the Alaska Range and within the Alaska Peninsula, Kodiak Archipelago, and the Aleutian Islands generally qualify as subsistence harvest areas. Treaty language provides for further refinement of this determination by management bodies.

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

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

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

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

In 1998, we began a public involvement process to determine how to structure management bodies in order to provide the most effective and efficient involvement for subsistence users. We began by publishing a notice in the September 17, 1998, **Federal Register** (63 FR 49707) stating that we intended to establish management bodies to implement the spring and summer subsistence harvest. The Service, the Alaska Department of Fish and Game, and the Native Migratory Bird Working Group held public forums to provide information regarding the amended treaties and to listen to the needs of subsistence users. The Native Migratory Bird Working Group was a consortium of Alaska Natives formed by the Rural Alaska Community Action Program to represent Alaska Native subsistence hunters of migratory birds during the treaty negotiations. We held forums in Nome, Kotzebue, Fort Yukon, Allakaket, Naknek, Bethel, Dillingham, Barrow, and Copper Center. We led additional briefings and discussions at

the annual meeting of the Association of Village Council Presidents in Hooper Bay and for the Central Council of Tlingit & Haida Indian Tribes in Juneau. Staff members from National Wildlife Refuges in Alaska also conducted public meetings in the villages within their refuge areas and discussed the amended treaties at those meetings.

On July 1, 1999, we published in the **Federal Register** (64 FR 35674) a notice of availability of an options document, entitled "Forming management bodies to implement legal spring and summer migratory bird subsistence hunting in Alaska." This document described four possible models for establishing management bodies and was released to the public for review and comment. We mailed copies of the document to approximately 1,350 individuals and organizations, including all tribal councils and municipal governments in Alaska, Native regional corporations and their associated nonprofit organizations, the Alaska Department of Fish and Game, Federal land management agencies, representatives of the four Flyway Councils, conservation and other affected organizations, and interested businesses and individuals. We distributed an additional 600 copies at public meetings held in Alaska to discuss the four models. We also made the document available on the Service web page.

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

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

Based on the wide range of views expressed on the options document, the decision incorporated key aspects of two of the models. The decision established one statewide management body consisting of 1 Federal member, 1 State member, and 7–12 Alaska Native members, with each component serving as equals. Decisions and recommendations of this management

body will be by consensus wherever possible; however, if a vote becomes necessary, each component, Federal, State, and Native, will have one vote. This body will set a framework for annual regulations for spring and summer subsistence harvest of migratory birds.

The Alaska Regional Director of the Service divided Alaska into 12 geographic regions based on common subsistence resource use patterns and the 12 Alaska Native Regional Corporation boundaries under the Alaska Native Claims Settlement Act. Despite using the Alaska Native Regional Corporation boundaries, we are not working directly with the Regional Corporations in this program, and are instead working with the Alaska Native nonprofit groups and local governments in those corresponding regions. Eleven regional bodies have elected to participate in the statewide management body at this time. Out of all of the regions represented in the statewide management body, only eight regions actually represent included areas (50 CFR 92.5). These eight eligible regions submitted proposals to open harvest in 2003.

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

Over the winter of 2001–02, the regional management bodies submitted recommendations for regulating the harvest within their regions. Recommendations were received only from the eight regions with communities included in the 2003 proposed harvest. The other four regions did not send in recommendations. On May 14, 2002, the Co-management Council met to make final recommendations on harvest dates and methods and means of harvest for the 2003 season as necessary to protect the migratory bird resource. The Co-management Council sent recommendations to the four Flyway Councils for comments, and presentations were made at July 2002

meetings of the Pacific and Central Flyway Councils. The Co-management Council's harvest recommendations were initially presented to the Service Regulations Committee (SRC) on August 31, 2002, with final SRC action on October 24, 2002.

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

By the close of the public comment period on May 24, 2002, we had received written responses from 11 entities. Four of the responses were from individuals, five from organizations, one from the Alaska Legislature, and one from the Alaska Department of Fish and Game. On August 16, 2002, we published in the **Federal Register** (67 FR 53511) a final rule at 50 CFR part 92, which established procedures for incorporating subsistence management into the continental migratory bird management program. These procedural regulations establish an annual procedure to develop harvest guidelines for implementation of a spring/summer migratory bird subsistence harvest.

On February 10, 2003, we published a proposed rule in the **Federal Register** (68 FR 6697) to establish annual spring/summer subsistence migratory bird harvest regulations for Alaska, starting with the 2003 season. By the close of the public comment period on March 12, 2003, we had received written responses from 30 entities. Seven of the responses were from individuals, 20 from organizations, 2 from regional Flyway Councils and 1 from the Alaska Department of Fish and Game.

This is the first year that we are prescribing annual frameworks, or outer limits, for dates when subsistence harvest of birds may occur, the list of species that may be taken, methods and means excluded from use, etc. These frameworks are not intended to be a complete, all-inclusive set of regulations, but are intended to provide an initial framework to legalize customary and traditional subsistence uses of migratory birds in Alaska during the spring and summer. This rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are

subject to annual establishment and public review and because the season is closed unless opened. This rule establishes regulations for reorganization of the regional areas, harvest seasons, a list of subsistence species, emergency closure authority, and methods and means related to taking of migratory birds for subsistence uses in Alaska during the spring/summer of 2003. We have also made nonsubstantive changes to 50 CFR parts 20 and 21 that were necessitated by the creation of 50 CFR part 92.

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

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

Although the Protocol with the United Mexican States was amended to allow for the taking of wild ducks by indigenous inhabitants of Alaska, the hunting season limitation specified in Article II Part C was not altered. Therefore, the length of the Alaskan spring/summer subsistence harvest of migratory birds cannot exceed the period specified within the Mexican convention, which is 4 months. Historically, we have interpreted this restriction as 124 days. Therefore, to be consistent with the Mexican Treaty, subsistence harvest between March 11 and September 1 must be limited to 124 days. The above interpretation of season length came late in this initial regulatory process. The Co-management Council had developed season recommendations without being aware of a 124-day season limitation; therefore, the Service has elected to open the season as soon as this rule is published and allow the "Closed Season Policy" (53 FR 16877, May 12, 1988) to remain in effect until this rule takes effect. Under the "Closed Season

Policy," the emphasis is to protect those species for which there is greatest conservation concern. Following publication of this rule, the "Closed Season Policy" will no longer be in effect. Certain provisions in this final rule will govern the spring/summer subsistence harvest from the effective date of this rule through August 31, 2003. The regulations in 50 CFR part 20 will apply to all migratory bird harvests by all people in Alaska from September 1, 2003, to March 11, 2004.

The 1974 Migratory Bird Treaty with Japan provides for "taking of migratory birds by Eskimos, Indians, and Indigenous peoples of the Trust Territory of the Pacific Islands for their own food and clothing." The Japan Treaty further stipulates that "Open seasons for harvesting migratory birds may be decided by each Contracting Party respectively. Such harvesting seasons shall be set so as to avoid their principal nesting seasons and to maintain their populations in optimum numbers." In conformance with this provision, the Service developed a provision that would allow the traditional subsistence harvesting of eggs while also providing protection during the most critical part of the production period. Using ducks and geese as the initial model (with applications later considered for seabirds), a 30-day closed period targets the last 2 weeks of the incubation period and the first 2 weeks of the brood-rearing period. This concept still permits an opportunity for traditional egg harvesting during the early period after egg laying, but protects the later developing eggs and newly hatched young. To determine the best protective closure periods for their harvest regions based on mean nest initiation and egg laying dates, regional management bodies within the Co-management Council worked with the Service's Division of Migratory Bird Management in Anchorage, Alaska. Closures in some regions were geographically subdivided to provide the best protection, while other regions were provided separate closures for waterfowl and seabirds (primarily murres).

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

press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.

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

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

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

Alaska Natives have longstanding conservation ethics and traditions that are passed from generation to generation through the teachings of elders. These

customary and traditional teachings have provided for the perpetuation of migratory birds prior to the ratification of the Canada and Mexico treaty amendments and will continue to do so following the opening of the legal subsistence season. Ultimately it is these components of Native Alaskan culture, rather than regulations, that will provide the more restrictive limits on the harvest of migratory birds.

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

Under the prior “Closed Season Policy” (53 FR 16877, May 12, 1988), it was the position of the Service to emphasize enforcement of restrictions on species of greatest conservation concern. Since its implementation, information on the “Closed Season Policy” has been broadly distributed in Alaska. We believe it is reasonable to assume that most subsistence users were aware of the policy and continued their traditional harvest of non-protected migratory bird species, so few new subsistence users should be attracted by legalizing their customary and traditional harvests. Indications are that subsistence harvests of migratory birds have, in the past, been generally underreported because of fear of prosecution. Legalization of the harvest could make people more comfortable about reporting take. This could lead to more accurate reporting and ultimately help in regulation setting and bird conservation.

Subsistence harvest has been monitored for the past 14 years through the use of annual household surveys in the most heavily used subsistence harvest areas (*e.g.*, Yukon-Kuskokwim Delta).

Continuation of this monitoring would enable tracking of any significant changes or trends in levels of harvest

and user participation after legalization of the harvest. The harvest survey forms that we used to collect information previously were not approved by the Office of Management and Budget (OMB). In the March 3, 2003, **Federal Register** (68 FR 10024), we published a notice of intent to submit the Alaska Subsistence Household Survey information collection forms to OMB for approval under the Paperwork Reduction Act, with a subsequent 60-day public comment period. We will not conduct or sponsor these surveys until we obtain OMB approval of this information collection. If OMB approves the forms, we intend to begin a Statewide program to gather information that would provide a more comprehensive view of the overall subsistence harvest and more species-specific harvest data, especially on shorebirds.

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

The Co-Management Council in general adopted the existing methods and means prohibitions that occur in the Federal (50 CFR part 20) and Alaska (5AAC92.100) migratory bird hunting regulations. Some exceptions were made to allow the continuation of customary and traditional spring harvest methods. For example, an exception was made to allow use of live birds as decoys for the harvest of auklets on Diomedede Island.

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

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

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

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

The Service believed that it was necessary to develop a list of bird species that would be open to subsistence harvest during the spring/summer season. The original list was compiled from subsistence harvest data, with several species added based on their presence in Alaska without written records of subsistence take. The original intent was for the list to be reviewed by the regional management bodies as a check list. The list was adopted by the Co-management Council as part of the guidelines for the 2003 season. Most of the regions adopted the list as written; however, two regions created their own lists. One regional representative explained that it would take much more time than was available for his region to reduce the list and that, once a bird was removed, returning it to the list would be more difficult later. Going with the original list was viewed as protecting hunters from prosecution for the rare take of an unlisted bird. To understand this rationale, one must be aware that subsistence hunting is generally opportunistic and does not usually target individual species. Native language names for birds often group closely related species, with no separate names for species within these groups.

Also, preferences for individual species differ greatly between villages and individual hunters. As a result, regions are hesitant to remove birds from the list until they are certain the species are not taken for subsistence use. The list therefore contains some species that are taken infrequently and opportunistically, but this is still part of the subsistence tradition. The Co-Management Council initially decided to call this list “potentially harvested birds” versus “traditionally harvested birds” because a detailed written documentation of the customary and traditional use patterns for the species listed had not yet been conducted. However, this terminology was leading to some confusion, so the Service renamed the list “subsistence birds” to cover the birds open to harvest in 2003.

The “customary and traditional use” of a wildlife species has been defined in Federal regulations (50 CFR 100.4) as a long-established, consistent pattern of use, incorporating beliefs and customs that have been transmitted from generation to generation. Much of the customary and traditional use information has not been documented in written form, but exists in the form of oral histories from elders, traditional stories, harvest methods taught to children, and traditional knowledge of the birds’ natural history shared within a village or region. The only available empirical evidence of customary and traditional use of the harvested bird species comes from Alaska subsistence migratory bird harvest surveys, conducted by Service personnel and contractors and transferred to a computerized database. Because of difficulties in bird species identification, shorebird harvest information has been lumped into “large shorebird” and “small shorebird” categories. In reality, Alaska subsistence harvests are also conducted in this manner, generally with no targeting or even recognition of individual shorebird species in most cases. In addition, red-faced cormorants, trumpeter swans, Aleutian terns, whiskered auklets, short-eared owls, and others have not been targeted in subsistence harvest questionnaires, so little or no numerical harvest data exists. Available summaries of subsistence harvest data include Page and Wolf 1997; Trost and Drut 2001, 2002; Wentworth 1998; Wentworth and Wong 2001; and Wong and Wentworth 2001.

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

*Birds of Conservation Concern (BCC)* 2002 (FWS 2002) is the latest document

in a continuing effort by the Service to assess and prioritize bird species for conservation purposes (FWS 1982, 1987, 1995; and U.S. Department of the Interior 1990) and was published in the February 6, 2003, **Federal Register** (68 FR 6179). It identifies bird species at risk because of inherently small populations or restricted ranges, severe population declines, or imminent threats, and thus in need of increased conservation attention to maintain or stabilize populations. The legal authority for this effort is the Fish and Wildlife Conservation Act (FWCA) of 1980, as amended. The 1988 amendment (Public Law 100–653, Title VIII) to the FWCA requires the Secretary of the Interior (16 U.S.C. 2901–2912), through the Service, to “identify species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing under the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531–1543).”

In actuality, and fortunately, few of the species on the BCC lists are in such a precarious state that they will have to be considered for listing as endangered or threatened in the near future. Our goal is to implement preventive management measures that will serve to keep these species off the endangered species list. Proactive conservation clearly is more cost-effective than the extensive recovery efforts required once a species is federally listed under the ESA. The BCC lists are intended to stimulate coordinated and collaborative proactive conservation actions (including research, monitoring, and management) among Federal, State, and private partners. By focusing attention on these highest priority species, the Service hopes to promote greater study and protection of the habitats and ecological communities upon which these species depend, thereby ensuring the future of healthy avian populations and communities (for more detailed information on the exact criteria used to select species for consideration and inclusion on the BCC lists, see FWS 2002).

Of the 108 species for which the Service proposes to establish regulations allowing subsistence hunting in Alaska, 22 are on BCC lists at one or more scales (e.g., National, FWS Regions, or Bird Conservation Regions-Alaska). The Service considers one additional species (Trumpeter Swan) to be “sensitive” because of its small population size and limited breeding distribution in Alaska. Of the 22 species on BCC lists, 14 are technically considered “gamebirds” (as defined by bilateral migratory bird

conventions with Canada and Mexico), although frameworks allowing sport hunting seasons have never been established for any of them in the 85-year history of the Migratory Bird Treaty Act.

The following 23 species are birds of conservation concern or are considered sensitive for other reasons.

#### Family Gaviidae

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

#### Family Phalacrocoracidae

Red-faced Cormorant (*Phalacrocorax urile*).

#### Family Anatidae

Trumpeter Swan (*Cygnus buccinator*).

#### Family Charadriidae

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

#### Family Haematopodidae

Black Oystercatcher (*Haematopus bachmani*).

#### Family Scolopacidae

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

#### Family Laridae

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

#### Family Alcidae

Whiskered Auklet (*Aethia pygmaea*).

#### Family Strigidae

Short-eared Owl (*Asio flammeus*).

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### Summary of Public Involvement

On February 10, 2003, we published in the **Federal Register** (68 FR 6697) a proposed rule to establish spring/summer migratory bird subsistence harvest regulations in Alaska for the 2003 subsistence season. The proposed rule provided for a public comment period of 30 days. We mailed copies of the proposed rule to more than 60 individuals and organizations that were determined to be direct stakeholders in this process. We established an internet homepage posting the proposed rule and related historical documents. We issued a press release and radio public service announcement expressing the

request for public comments and the pertinent deadlines for such comments, which was faxed to 26 members of the statewide media. We presented the proposed rule and related materials at public meetings conducted by Federal Subsistence Regional Advisory Councils in Kotzebue, Barrow, Kodiak, Dillingham, Unalakleet, Chevak, and Nenana, Alaska, requesting further written public comments. By the close of the public comment period on March 12, 2003, we had received written responses from 30 entities. Seven of the responses were from individuals, 20 from organizations, 2 from regional Flyway Councils, and 1 from the Alaska Department of Fish and Game.

### Response to Public Comments

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

#### General Comments

Two respondents requested that groups other than government agencies and Native groups be represented on the Co-management Council, specifically mentioning Audubon and Ducks Unlimited.

*Service Response:* An extensive public process took place July 1999 through March 2000, during which the composition of the statewide management body, the Co-management Council, was decided. The Co-management Council's composition has been established by regulation (67 FR 53511) and is not being reconsidered in this rule. All Co-management Council meetings are public, and any interested parties can participate and testify.

Two respondents requested that the regulations in the proposed rule be cross-referenced with Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) subsistence regulations, such as by adding the guidance “\* \* \* consistent with sound management principles, and the conservation of healthy populations of fish and wildlife \* \* \*,” adding emergency closure authority, and adding the words “non-wasteful subsistence.”

*Service Response:* Development of the spring/summer subsistence migratory bird harvest regulations is guided solely by amendments to the international migratory bird treaties, and not by ANILCA legislation. Cross-referencing guiding principles and management objectives would only serve to further confuse the two very separate programs. However, in the final rule, we have

added an emergency closure authority to ensure prompt corrective actions on conservation concerns, similar to that used in both part 20 and part 100.

One individual referenced the Administrative Procedure Act and how it is stated within the proposed rule “The Department of the Interior's policy is, whenever practicable, to afford the public opportunity to participate in the rulemaking process” and how this sounds like the Department is doing the public some kind of favor, when by law it is required. The individual further cites mandates within the Administrative Procedure Act and how it spells out public notice procedures.

*Service Response:* This language does not appear in the final rule, but we will take this into consideration when drafting other **Federal Register** documents. See the Public Involvement Section under Supplementary Information for a summary of the Service's efforts to seek public involvement under the Administrative Procedure Act.

One respondent stated that more funds are needed to adequately monitor spring and summer subsistence harvest of migratory birds as well as to promote the effective and meaningful role for Alaska's indigenous inhabitants in the conservation of migratory birds through the participation in the Co-management Council and its related meetings.

*Service Response:* Funding levels to support the efforts of the Co-management Council, which include harvest monitoring and Native participation, are provided by Congress annually and are not dictated by Federal regulations.

One respondent brought up the issue of the Migratory Bird Hunting and Conservation Stamp Act and how it would require subsistence hunters to purchase a Federal Migratory Bird Hunting and Conservation Stamp. One of the major goals of the amended migratory bird treaty with Canada was to allow for traditional subsistence harvests, and acquiring a hunting license or duck stamp is not customary and traditional. This respondent expressed the need to modify the Duck Stamp Act to exempt subsistence hunters from the requirement.

*Service Response:* The only way to change the requirement to possess a Federal Migratory Bird Hunting and Conservation Stamp is if the Migratory Bird Hunting and Conservation Stamp Act is modified by Congress.

One individual requested that the introductory information be corrected to reflect that there is evidence that the needs of northern peoples to harvest migratory birds in the spring and summer were considered at the time of the original treaty with Canada. The individual noted the participation of E.W. Nelson, who helped establish the original Yukon Delta Reservation in 1909 and was the principal negotiator for the 1916 treaty.

*Service Response:* We have changed the introductory language to read: "Neither treaty allowed adequately for the traditional harvest of migratory birds by northern peoples. . ."

Two commenters suggested that subsistence area migratory bird management plans should be required for each subsistence harvest region, complete with sustainable population and habitat protection goals, and a reporting requirement. The person further suggested using the Yukon-Kuskokwim Delta Goose Management Plan as a model.

*Service Response:* The Co-Management Council is tasked to develop management plans as needed and requested. No immediate plans exist to write management plans for each region. The Co-management Council has directed a working group to review and update, if necessary, the Emperor Goose Management Plan.

Two commenters suggested that the cooperation of Native subsistence hunting groups should be sought in establishing sanctuaries for migrating or nesting birds when concentrated or particularly vulnerable to disturbance or over-harvest.

*Service Response:* These subsistence harvest regulations do not dictate Federal or State land management practices such as designating sanctuaries; however, any concerning individual or party can petition to close a specific area to the spring/summer subsistence migratory bird harvest.

One individual stated that the proposed regulations are a ridiculous extension of the initial concept of legalizing a small traditional harvest for sustenance, primarily by Native people.

*Service Response:* The Federal Government is obligated to implement the amendments to the international migratory bird treaties. The executive branch does not have the authority to change the treaties; that responsibility lies with Congress and the treaty participants.

Two commenters suggested that the Service should be required to publish jointly with the Co-management Council an annual harvest report complete with details of what is working and not

working and what corrective actions need to be taken.

*Service Response:* Subsistence harvest survey data is collected with reports published annually summarizing the data on a regional basis. This Alaska subsistence harvest data is also available in the annual Service's Pacific Flyway Data Book.

One individual complained that the statement "Alaska Natives have longstanding conservation ethics" is not substantiated or explained in the rule document. The individual stated that the complete elimination of the rich deltas' goose populations surrounding Kotzebue and Norton sounds and the historical lack of interest in restoration of nesting geese there does not suggest any form of good management either now or in the past.

*Service Response:* Although there have been declines in the populations of nesting geese in the populations of nesting geese in the deltas surrounding Kotzebue and Norton Sounds and subsistence is one source of goose mortality in these regions, it has not been identified as a major cause of the population declines. The Native communities of these regions are now actively participating in the Co-Management Council and recovery efforts. Development of this new subsistence harvest program has involved active participation by 11 regional Native organizations.

One individual commented that the statement of subsistence take constituting 2–3% of the national migratory bird take is misleading, and for some species groups such as seabirds and shorebirds, the subsistence take may equal 90–100% of the national harvest.

*Service Response:* We believe the 2–3% quoted is valid when the entire migratory bird harvest is considered, and did not see the need to break this down per species group, since it is well documented that harvests for some species groups do not exist outside Alaska.

Two commenters specifically supported the 30-day harvest closure for breeding birds.

*Service Response:* None needed.

Two commenters suggested that the Co-management Council should organize "Migratory Bird Conservation Committees" in each subsistence area that would include subsistence harvesters, government representatives, and the local conservation organizations. One of the functions of these committees would be to organize subsistence hunters in migratory bird population surveys and censuses in close cooperation with the Service.

*Service Response:* We would like to clarify that local migratory bird conservation committees already exist in the form of regional management bodies or partners, with 11 actively contributing to the Co-management Council.

Two commenters requested increased public education efforts and enforcement of harvest regulations, especially in communities shared by nonconsumptive users such as birdwatchers. One commenter cited a June 2002 incident in Barrow, in which a group that was watching pectoral sandpipers saw a truck with two individuals pull up and begin shooting at a bird with a high-powered rifle. The individuals from the truck had no means to retrieve the bird (no boots for wading). The group also watched the same individuals shooting at birds between the shore and pack ice.

*Service Response:* Once this initial phase of regulation development is completed, we plan to launch an extensive education and outreach campaign targeting the communities within the subsistence harvest areas. Outreach efforts will focus on educating all residents of the new regulations and emphasize regulatory protection of those migratory bird species of the greatest conservation concern.

Three respondents supported the proposed regulations for subsistence harvest in Alaska as permitted under the revised Migratory Bird Treaty. They commended the Service's efforts to improve frameworks for regulation of these harvests and for improving information on subsistence use of these resources.

*Service Response:* None needed.

One commenter complained that the 30-day public comment period was not sufficient time to collect harvest information for the 23 bird species on the Birds of Conservation Concern list. The commenter argued that rushing the process will further erode the existing credibility of the meaningful role indigenous inhabitants have in development of these regulations. The commenter requested that the Secretary of the Interior grant a 90-day extension on the public comment period for the proposed rule.

*Service Response:* We were not able to grant this requested extension, because we need to publish final regulations as close as possible to the requested April 2 start date of the 2003 harvest season. The future plan is to merge into the "late season" waterfowl regulatory cycle for Service Regulation Committee meetings and subsequent publication in the **Federal Register**. Under this cycle, we would publish the next Proposed

Rule late this coming fall, which should allow for a 60-day comment period.

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

Three commenters questioned the assumption that no increase in subsistence harvest is anticipated following adoption of the spring-summer season regulations, since all rural residents, not just Alaska Natives, will be included in the harvests. The cumulative effect of adding these hunters who did not traditionally participate in the subsistence harvest has been underestimated. While another individual was concerned that, since harvest reporting will not be conducted this first year, no scientific evaluation of whether the harvest has increased or is having a detrimental effect, is possible. Also, the harvest reporting done on the Yukon-Kuskokwim Delta missed many other rural communities in interior Alaska.

*Service Response:* Upon OMB approval of the survey forms, we are planning to expand the harvest monitoring to a Statewide effort with a statistical model for stratifying the survey area. We hope that this effort will provide a means to monitor and report any significant increases in harvest activity. The regulations were intended to be a foundation for the spring/summer subsistence harvest of migratory birds in Alaska. If conservation concerns arise such that future harvest restrictions have to be imposed, the Co-management Council will act accordingly.

Four respondents expressed concern about the lack of harvest limits presented in these regulations. One individual recognized the difficulty in applying bag or harvest limits to traditional subsistence harvests, but stated that limits will be necessary to ensure that Statewide cumulative harvests of species are not excessive. The respondents also recognized that if bag limits are not incorporated in the 2003 regulations, the Co-management Council will need to move in this direction in the future. In addition, if species on the Birds of Conservation Concern list and/or Audubon Watchlist are included in the 2003 harvest, then small bag limits should be set immediately. Two commenters specifically mentioned sea ducks as an area of special concern with regard to lack of bag limits. Another commenter suggested using proxy hunting as administered by the State of Alaska as an example of formatting harvest limits to allow for sharing among communities.

*Service Response:* These initial 2003 harvest regulations are designed to provide an initial framework and the first steps taken to limit the subsistence harvest. These steps will include establishing a closed species list and a 30-day closed period during the breeding season. In the future, concepts such as community harvest limits, proxy hunting, and/or designated hunters will likely be considered to accommodate customary and traditional subsistence harvest methods, if further species-specific harvest limits are needed.

One commenter was supportive of there being no harvest limits, because they do not fit with customary and traditional practices. Frequently a person goes hunting and returns with food for extended families, so harvest or bag limits would not be suitable or appropriate for the North Slope region.

*Service Response:* The Co-management Council agrees with this assessment of the situation and is not recommending harvest limits to be set for this initial 2003 season, but may consider them when specifically requested or needed for a localized area or species of conservation concern.

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

One respondent suggested that some Native language names for birds, group closely related species, and there may or may not be separate names for species within these groups. In a 1958 UAF paper titled "On the Naming of Birds by Eskimos," Lawrence Irving documents different Inupiaq names for all the locally-occurring species of loons, scoters, shorebirds, and even the two species of scaup. Thus, in this region, this degree of differentiation was reflected in the language.

*Service Response:* In developing the subsistence harvest survey collection forms, we have found that some confusion does exist concerning local Native names for specific bird species, just as it does when common names are used for international species. In some cases, neighboring local regions use different Native names for the same species. When at all possible, we have given all known extant Native names for a species in our education materials.

One commenter suggested that the existing wording referencing availability of empirical evidence is inaccurate. As stated, "the only available empirical evidence of customary and traditional use of the harvested bird species comes from Alaska subsistence migratory bird surveys, conducted by Service personnel and contractors and transferred to a computerized database."

The commenter noted that, to the contrary, there is ample information in the ethnographic literature documenting bird harvest and use practices from most regions of the State. There is a considerable amount of archaeological literature describing pre-contact harvest patterns, including species of birds harvested as well as implements used for bird harvest. Also, a large body of contemporary and traditional knowledge exists among subsistence users themselves.

*Service Response:* We agree that additional information is available from both contemporary and archaeological sources, yet we disagree that this available information is able to provide numerical summaries of bird harvest down to the species level.

One commenter expressed concern over the apparent absence of any internal review process by the Service's migratory bird specialists and urged that an intra-agency review process be involved in developing the Final Rule.

*Service Response:* The Co-management Council can only make recommendations to the Service as far as regulations development, with all final decisions made by the Service Regulations Committee. Prior to the Service Regulations Committee finalizing any new regulations, there is an extensive, two-part internal review process in which the Service's migratory bird management division and its biologists are extensively involved.

*Section 20.22 Closed Seasons*

One commenter stated that this amendment implies that subsistence hunting under part 92 occurs during closed seasons, when, in fact, part 92 establishes open seasons. The commenter suggested that the section should read: "\* \* \* during the closed season established in this part except as provided in \* \* \*"

*Service Response:* We concur and have made the recommended wording change.

*Section 92.30 General Overview of Regulations*

One respondent recommended revising text to read: "The Co-management Council will review and, as necessary, recommend modifications to these regulations \* \* \* working within the schedule of the Federal late season migratory game bird hunting regulations."

*Service Response:* We concur and have made the recommended wording change.

### Section 20.132 Subsistence Use in Alaska

One commenter suggested that removal of this section eliminates authorized fall and winter harvests of snowy owls and cormorants for food or clothing that have been in place for many years. The commenter did not believe there had been adequate public notice of this proposed action; it has not been substantively considered by the Co-management Council and was not part of the widely distributed package of recommended subsistence regulations. The commenter recommended that the Service retain § 20.132(b) until such time as fall and winter subsistence needs can be assessed and there is adequate involvement of the Alaska public and Co-management Council.

*Service Response:* The commenter has identified an oversight potentially restricting the winter subsistence harvest of snowy owls and cormorants in Alaska with this action. We modified the section to retain subsection (b) while making it effective only from September 1 through April 1 in the final rule.

### Section 92.5 Who Is Eligible To Participate?

Five respondents, all representing separate Kodiak area organizations, expressed an urgent need to close the Kodiak road system starting in the 2003 season. The primary and most common concern expressed was the likelihood of overharvesting, primarily by user groups that do not demonstrate customary and traditional uses of migratory birds and will have easy access to this resource. Other concerns brought up were the potential conflicts between consumptive and nonconsumptive users that could negatively affect the local tourism industry, and subsistence harvesting posing a public safety concern in regard to hunting within a populated area.

*Service Response:* On the basis of public testimony and written comments received, we are closing to harvest a buffer zone around the Kodiak Island road system under § 92.33(e). The conservation concern is the nontraditional access posed by the road system in a region where the migratory bird hunting is traditionally done by boat in marine waters. Acts of civil disobedience with respect to other hunting regulations and road access have been documented. Closing the road system to the spring and summer subsistence migratory bird harvest will help ensure no local increases in harvest occur in implementation of the new regulations. Offshore islands and waters will remain open to harvest.

One commenter requested that all road systems, such as Kodiak and Nome, should be closed to subsistence harvests, with the primary concern being the conflicts between consumptive and nonconsumptive users along roads frequented by tourists, birdwatchers, and others. The issue of the Nome road system was only brought up by one commenter, and has not been supported by the regional management body, nor mentioned in any other public comments.

*Service Response:* We are taking no action on restricting harvest along the Nome road system for the 2003 regulations; however, the issue may be revisited by petition for a rule change in the future, should the need arise.

One respondent requested exclusion of the community of Tok, most of whose residents have no customary and traditional history of bird harvesting in the spring/summer. The respondent explained that legalizing the harvest will significantly increase the level of take of waterfowl and owls in the Upper Tanana Valley, especially if no harvest limits are imposed.

*Service Response:* There is a petition process to exclude a community from subsistence bird harvesting. Petitions are accepted annually and acted upon by the Co-management Council and subsequently by the Service Regulations Committee for the upcoming season. In addition, we added an emergency closure provision in § 92.21, so that if a significant increase is documented for waterfowl and owls in this or any other region, an emergency closure can be requested and implemented.

Five respondents questioned the definition of "indigenous inhabitant" used in the regulations. One of the commenters stated that the current definition is erroneous, immoral, and unjust and could result in an increased harvest of birds during the spring and summer. The second commenter stated that the regulations should only apply to residents of the proposed area whose families have a tradition of harvesting migratory birds in the area. The third commenter charged that this loophole, which includes populations of recent rural immigrants and their invited relatives, will cast suspicion on the whole program, and that the Native community should define the term "indigenous." The commenter added that the Service should consider the impact of immigrants into the included villages when stating that it is not the intent of these regulations to increase the harvest. Also, the Native community itself is increasing, adding many new hunters to increase the take. Another individual commented that the phrase

"permanent inhabitants" is not defined, thus allowing participation by anyone with a rural ZIP Code, regardless of cultural heritage, local tenure, annual income, or subsistence need. Still another commenter added that if hunting pressure needs to be limited, the harvest should be returned to its original intent.

*Service Response:* The term "indigenous inhabitant" was defined in Congress' ratification of the Treaty amendments, which are binding on the Service. Defining the term as the commenters requests would misconstrue Congress' explicit intent in ratifying the Treaty amendments.

One respondent expressed strong concern that the Secretary of the Interior lacks the legal authority to open the spring/summer hunt to non-Native village residents, despite Alaska's former U.S. Senator's desire for this to be accomplished through amendments to the Canada and Mexico Migratory Bird Treaties.

*Service Response:* Same as above.

### Section 92.20 Methods and Means

Two commenters requested that subsistence hunters age 16 and younger should be required to be accompanied by an adult both in the interest of safety and to avoid abuse of the subsistence privilege. In addition, they suggested that young hunters should be encouraged to obtain a firearms safety certificate before being allowed to hunt.

*Service Response:* We intend to encourage participation in the State's hunter safety program by subsistence hunters of all ages through our program's long-term education and outreach efforts.

Two individuals expressed concern because rifles, especially .22 caliber, are not a currently prohibited method. One of the commenters explained that allowing these types of weapons creates a situation in which male youths with .22 caliber rifles can have an open season on all birds with little regard for salvage of edible meat. The commenter added that people lacking identification skills will likely shoot anything that flies, and that lack of identification and marksman skills could cause wounding losses from rifle use to be substantial.

*Service Response:* The issue of use of small caliber rifles was discussed by the Co-management Council, and it was recommended that we do not prohibit their use. It was also stated that small caliber rifles are traditional tools for subsistence use and that they are most commonly used to dispatch wounded or crippled birds. Outreach and educational efforts of the Co-management Council will be focusing

on improving the hunter identification of individual bird species at both long and short distances.

One respondent requested that we prohibit the use of air boats and personal watercraft (e.g. jet skis) for spring/summer migratory bird hunting on the Tetlin Refuge, at least in the Scotty/Desper drainage and other sensitive areas in the region. The respondent explained that use of air boats and jet skis is already established in the area, and that use during the fall sport season on lakes accessible from the Alaska Highway has been an increasing issue. The use of air boats or personal watercraft is extremely disturbing to nesting and brood rearing waterfowl and other species, and has the potential to alter and damage critical habitat. Abuses will occur and law enforcement will be extremely difficult. In addition, use of air boat or personal water craft is not customary and traditional for harvesting migratory birds in the spring and summer.

*Service Response:* We concur and have added a regional prohibition on the use of air boats and jet skis under § 92.20.

One commenter brought up the concern that it has not been made clear what licenses or permits are going to be required, and that education and outreach have not been allocated to inform the subsistence users about the new regulations. The commenter requested that the Secretary of the Interior initiate a discretionary enforcement policy to continue for 2 years after the Final Rule is published and provide adequate funding to the regions to coordinate outreach and education efforts.

*Service Response:* We concur that we did not make general hunter requirements explicit and have clarified that by modifying the Final Rule to make § 20.2 (a), (b), (c), and (d) applicable to persons hunting under part 92. Under separate Federal regulations (16 U.S.C. 718a), Federal migratory bird stamps are required for hunters 16 years of age and older for taking migratory bird waterfowl. We also concur that additional education and outreach are needed.

One commenter from the Yukon-Kuskokwim Delta explained that village residents should be allowed to take waterfowl from a boat under power, especially for waterfowl frequenting the river. Village residents should also be allowed to use a boat under power to hunt bay ducks like scaup and scoters, which are easier to take from a moving boat. The same commenter added that they assumed if something was not listed specifically as prohibited under

this section, then it is allowed, such as traditional methods like use of bird nets or bolos.

*Service Response:* The current regulations do not prohibit hunting from a boat under power, but do prohibit using a boat to drive or concentrate birds. In addition, the use of bird nets or bolos are not prohibited harvest methods at this time.

One respondent requested that regulations be added to prohibit subsistence hunters from commercially guiding other subsistence hunters, especially in regard to sea ducks.

*Service Response:* Commercial guiding is governed by State regulations, so no action is being taken under these Federal regulations.

One commenter requested that it be made clear that the sale or trade of migratory birds and their parts taken under this Part is prohibited.

*Service Response:* We concur. This is already addressed under § 92.6 of the Procedural Regulations.

#### *Section 92.32 Subsistence Migratory Bird Species*

Because of the wide-ranging views and comments we received on this subject, we have responded to the concerns of the public at the end of this summary of public comments (§ 92.32).

Two commenters requested that any species appearing on the BCC list be removed from those open to subsistence harvest in 2003, because they may be threatened. One of these commenters further suggested that the harvest should be limited to bird species for which population levels and harvest levels are known and can be monitored, and that birds with little population information should be protected from harvest. The other commenter suggested allowing an incidental/accidental harvest (less than 1% of the population) of birds taken resulting from hunter misidentification. They also stated that if these BCC birds are allowed to be harvested, then a massive educational campaign should be launched to promote conservation of these species by redirecting harvest efforts to the more viable species.

Two commenters deferred to the expertise of the Service and the Co-management Council on evaluating the effects of the subsistence harvest on the 23 species in question.

One individual was alarmed and concerned over the number of nongame species included in this hunt, especially without written records of past subsistence harvest. They recommended that the following taxonomic families be removed from the harvest list: Gaviidae (loons), Podicipedidae (grebes),

Charadriidae (plovers), Haematopodidae (oystercatchers), and Scolopacidae (sandpipers), as well as the following species: all terns, red-legged kittiwakes, ivory gulls, whiskered auklets, and all owls except snowy owls. The commenter further questioned why the Service would bother identifying species of conservation concern only to foster the hunting of the same species.

One commenter requested that 13 of the 23 species be deleted from the subsistence harvest list because of their presence on the Alaska Audubon Watchlist. These species include: red-throated and yellow-billed loons, red-faced cormorants, Pacific golden plovers, black oystercatchers, bristle-thighed curlews, Hudsonian and marbled godwits, black turnstones, buff-breasted sandpipers, red-legged kittiwakes, Aleutian terns, and whiskered auklets. The recommendation was for the Service to take a precautionary approach and protect these species from harvest until it can be demonstrated that a subsistence harvest would not jeopardize existing population levels.

Two individuals requested that all 23 species of conservation concern should be removed from harvest because all races of residents are allowed to hunt. One commenter added that allowing these species to be taken would be a breach of faith with generations of conservationists that have struggled to make a place for large edible birds in our world. The second commenter explained that any additional harvest for some populations that have undergone a decline over recent years, such as mid-continental white-fronted geese in northwest Alaska, should not be taken lightly. And that with virtually no constraints in place under the proposed regulations, both Natives and non-Natives will take full advantage of birds that congregate at open water during spring migration, regardless of actual need for sustenance.

One respondent expressed concern that a long list of migratory birds is being institutionalized into regulations in the absence of past population or harvest information. They also stated that no species of conservation concern should be allowed for harvest except under strict controls in special cases. Also, the Service should be required to publish such a list annually and seek Native involvement in recovery efforts.

One commenter from the Yukon-Kuskokwim Delta was against removing birds from the harvest list because the idea of limiting species hunted to what is considered game birds is contrary to the treaty that says the hunt will be customary and traditional. There have

been times that all hunters in a village died from influenza, diphtheria, small pox, and tuberculosis. During these times, it was necessary for women and children to take nongame birds. This led to a continued use as a way to remember the past. There is no large take of these birds. Only a few elders may take them these days and this will likely not expand to any level of concern. In most cases the birds listed are taken more often by gulls than by humans. The Native people of western Alaska have always hunted birds in the spring. "When the ice is rotten and you can't go after sea mammals or fish, God has provided birds that fly to us."

One respondent from the Seward Peninsula/Norton Sound area stated that they traditionally harvest 16 of the 23 species of concern; and that, they would not support removing any of these species from the harvest list until ample time is given to document evidence of traditional and current harvest.

Two commenters requested that all 22 species on the BCC list, as well as an additional 5 species (Aleutian Canada geese, common and king eiders, long-tailed ducks, and black scoters) should be removed from the subsistence harvest. These additional five species are on the Alaska Audubon Watchlist.

Two commenters requested that the lists of birds open to harvest should be smaller and more area specific, with a clear distinction between those species that can be hunted and those whose eggs may be gathered. The commenter recognized the importance of subsistence harvest traditions, and felt that those who have traditionally harvested are in the best position to identify the most important species and incorporate this information on a regional or local basis into the harvest species list.

One commenter mentioned that legalizing the take of birds on the BCC and overlapping Audubon Alaska Watchlist sets back years of conservation efforts. At least 19 of the BCC birds overlap with the Watchlist because they are undergoing population declines, have small breeding populations, and/or have a very limited breeding distribution. Special consideration should be given to these species, especially since subsistence-caused declines may lead to costly management actions, litigation, or other undesirable results.

One commenter from the Kotzebue region supports removal of the seabird species listed as birds of conservation concern. People don't hunt seabirds in this area, and the other species in question are only taken when there is no other food source, or if an elder asks for

it. The BCC seabird species are not considered everyday food, but from time to time an elder craves certain foods, often associated with a particular season. The commenter expressed that the declines noted in these particular birds are more caused by natural predators such as jaegers ("wolves of the sky"), bears, and foxes. The commenter suggests that predator control would allow these species to increase.

One respondent was frustrated because the Service has belatedly introduced concerns for 23 of the species proposed for spring and summer hunting. Despite repeated requests over the past 2 years, the Service is only now explicitly identifying which species are of concern in this regulatory process. The Co-management Council was not accorded an opportunity to thoughtfully review these species and reasons for concern because the full list was not declared and no substantive briefing material was provided for most species. This precluded effective dialogue with subsistence users and regional co-management committees, and recommendations from the Co-management Council. An even more important problem, considering the current national review of these regulations, is the incomplete and inadequate information in the **Federal Register** or other documents on the basis for concerns about these 23 species. The Service especially solicits public opinions on whether they should be hunted. Presumably, the most valuable comments will come from agencies, public interest groups, and individuals that evaluate the status of bird populations in relation to current and future harvests. However, readers do not have access to available source documents that will provide information necessary to form sound opinions, raising concern that commenters will simply "vote" yes or no based on subjective assumptions or their dispositions on subsistence or hunting in general.

The same commenter further adds that in the Supplemental Information, it states that 22 of these species are on regional or national lists of Birds of Conservation Concern (BCC). The Service published the long-awaited "Birds of Conservation Concern 2002" in December. Essentially, this document only contains BCC lists by national and regional categories, a description of criteria that were used for listing, and references to some of the source documents on which listings were based. In some cases, there are no formal source documents—the listings were based on consultations with experts and regional staff. In other cases,

the reader has to find and consult a wide array of documents, ranging from field survey reports and regional summaries to continental conservation plans by the major bird initiatives (Partners in Flight, U.S. Shorebird Conservation Plan, North American Waterbird Conservation Plan) and regional step-down plans. This referencing approach does not provide reasonable public access to salient information on the status of populations from which the public can assess potential effects of subsistence hunting. Given the disparate level of available information, data, and details associated with these species of concern, together with the insufficient compilation and synthesis of materials, the commenter strongly recommended that the Service develop a summary that includes an objective analysis of these species, along with the strengths and weaknesses of available supporting data. In the development of these comments, the respondent not only encountered difficulty finding status information on the 23 highlighted species, but also found that the quality of information was often poor and subjective. The Supplemental Information says that the 22 BCC species proposed for hunting were listed because they are "at risk due to inherently small populations or restricted ranges, severe population declines, or imminent threats," yet the respondent found no estimates of population size or speculations on orders of magnitude; little or no reliable information on population trends; and poor information on size and changes in seasonal ranges. The descriptions of perceived threats to populations were particularly vague, subjective, and in some cases prejudicial (e.g., degradation of winter habitat, exposure to contaminants, and seasonal occurrence in foreign countries). In most cases, there was little evidence that threats were imminent or substantial for the species. The respondent rarely found specific information from which to determine whether the population, range, or threat criteria for BCC species were met. While the respondent recognized that inadequate information could be reason enough for pursuing conservation actions, they preferred to have more definitive information with which to make this assessment. To this end, the respondent recommended that the Service develop strategies and timelines for obtaining information with which to make responsible decisions concerning subsistence harvests of species of concern.

**Loons**—Two commenters requested that all loon species be removed from

the subsistence harvest because of identification problems between red-throated and yellow-billed loons and common, Pacific, and arctic loons.

One commenter requested that all loons be removed from the harvest list because, even if there may not be a biological reason to do so now, in 20 years there will be, and by then the users will say "we have done this for a long time" so it is better for us to stop it now. The commenter added that most places are trying to save loons while the Service is allowing a certain few to harvest them.

**Red-throated Loons**—One commenter stated that a few people in the Aleutian/Pribilof Islands gather these eggs, but likely have little or no effect on the population of these species, and recommended that an accurate account of the harvest be made to support the stance that it is minor relative to the overall population.

One commenter supported red-throated loons' being left on the harvest list, citing that subsistence harvests on the North Slope are never large and loons figure prominently in several of their dances and legends. Aerial breeding pair surveys on the North Slope show that the red-throated loon population is increasing.

One commenter requested that red-throated loons be removed from harvest until their population is stabilized, citing a more than 50% decline in the last 20 years, according to the Audubon Alaska Watchlist.

**Yellow-billed Loons**—One commenter stated that a few people in the Aleutian/Pribilof Islands gather these eggs, but likely have little or no effect on the population of these species, and recommended that an accurate account of the harvest be made to support the stance that it is minor relative to the overall population.

One commenter supported yellow-billed loons' being left on the harvest list, citing that subsistence harvests on the North Slope are never large and loons figure prominently in several Native dances and legends. Aerial breeding pair surveys on the North Slope show that the yellow-billed loon population is currently stable.

**Trumpeter Swans**—One commenter provided a detailed statement justifying why Trumpeter Swans should be removed from the list of birds open to harvest in 2003. Cited was the ongoing 70-year effort to restore the population in North America and how the population had only grown to 18,000 by the end of the 20th century. Concern was expressed that trumpeters could be subject to population reductions if taken or regularly disturbed during the nesting

and brood rearing period, because of certain breeding behavior characteristics, such as the way they pair, select, and defend nesting territories, and their inability to re-nest successfully at high latitudes. Trumpeters have shown their best population growth in Alaska, but the people in this area are increasing rapidly and do not have a long-established, consistent pattern of use of these birds. In addition, threats on the wintering grounds in the lower 48 states such as urban sprawl, agricultural development, and lead poisoning threaten the overall security of the population, warranting protection of these birds from subsistence harvest in Alaska.

One respondent recognized trumpeter swans as a subsistence resource, but did not support a spring and summer open season at this time. The principal concerns expressed were: (1) Insufficient information on the extent of recent subsistence harvest; (2) the current lack of regulations limiting harvest quantity by qualified hunters; and (3) the potential for overharvest of this small population with low productivity.

One individual requested that trumpeter swans be protected from harvest with the justification that it has already been proved that it is not the grace of God but the grace of man that has allowed a tiny population to increase and repopulate the nesting territories where spring hunting will be allowed.

**Aleutian Canada Geese**—One respondent expressed that if the prohibition on taking Aleutian Canada Geese is ever extended to the Yukon-Kuskokwim Delta, it would be very difficult for hunters to distinguish this species from other subspecies.

**King eiders**—One individual requested that king eiders be restricted in the harvest, stating that North American numbers have been in a steady decline for the past several years. There is so much concern that Senator Ted Stevens just appropriated \$100,000 to study the decline of king eiders on the North Slope. To help protect the remaining numbers, there needs to be a restricted take on the North Slope, particularly in the Barrow region.

**Canvasbacks**—One individual requested that a one bird or no bird limit be placed on canvasbacks in the subsistence hunt, stating that all people should share in the conservation of this great bird.

**Shorebirds**—One respondent from the Yukon-Kuskokwim Delta explained that young boys have traditionally hunted many of the smaller birds on the

subsistence harvest list, especially shorebirds such as sandpipers, plovers, curlews, and godwits. It is known that these boys bring their catch to their grandmothers to cook and eat, which has been done for generations. Elders in the villages in the past harvested many of these shorebird species for subsistence foods, especially when these birds are migrating along the shoreline in flocks.

**Black Oystercatchers**—One commenter stated that a few people in the Aleutian/Pribilof Islands gather these eggs, but likely have little or no effect on the population of this species, and recommended that an accurate account of the harvest be made to support the stance that it is minor relative to the overall population. In addition, 10 subsistence hunter testimonials were received from the Aleutian/Pribilof region stating that some people do gather black oystercatcher eggs, but that the limited take likely has little to no effect on the population. On the other hand, one commenter expressed special local concern for this species because of its small population (2,500), limited range, and vulnerability to disturbance at coastal breeding sites and from oil spills. The Kodiak Archipelago is home to the largest concentration of black oystercatchers and should be afforded special protection from both hunting and egg gathering. Further cited was the oystercatcher's low reproductive rate, inability to re-nest, and vulnerability to egg gathering.

**Red-legged Kittiwakes**—Sixteen hunter testimonials were received stating that this species is customarily and traditionally harvested in the Pribilof Islands (primarily St. George Island), with minimum impacts to the population. This harvest is done with no waste and there is no reason to close or restrict the harvest. These hunters recommended an accurate count of the birds and eggs taken be maintained to support the stance that the take is very minor in relation to the overall species population. One St. George hunter specified that he takes less than 60 kittiwakes per season, consisting of a mix of black-legged and red-legged kittiwakes, and shares these birds with another household. Interviews of 11 kittiwake hunters indicated that they take an average of 37 red-legged kittiwakes each per season. To demonstrate the customary and traditional nature of these hunts, one commenter from St. George explained, "I've been involved with red-legged kittiwake hunts since I was 6 years old. I was a gatherer for my grandfather; he shot the birds on the wing and I

gathered them up from where they had fallen. I did this for him until I was 10 years old and the following year I started hunting by myself and have done so ever since. I hunt the same areas as my grandfather did and spend no more time in the hunts than we did 44 years ago, which indicates to me that the abundance has not changed very much or not at all."

**Arctic and Aleutian Terns**—One commenter requested that both species be protected from the subsistence harvest and that they be treated together since they nest commonly in mixed colonies, and eggs from the two species are not readily distinguishable. Decreases in the arctic tern population are widely reported but poorly documented in arctic regions; however, large declines have occurred in Greenland where a traditional harvest is unregulated. In Alaska, recent declines have been reported from the Gulf of Alaska and coastal sites along the Beaufort Sea, while waterfowl surveys of the North Slope and Yukon-Kuskokwim Delta have shown increases. Perennial harvesting of adults could have serious impacts on local populations. The 30-day closures may provide some protection for the eggs, but they are probably set too late to provide adequate protection in the Aleutians and Kodiak.

**Owls**—One commenter expressed concern that the residents of Tok may dramatically affect local owl populations with the subsistence harvest. The commenter cites a Service management plan for Alaska's raptors that states, "with few exceptions, we are woefully ignorant and lack sufficient information to make management decisions or assess population status of raptors based on scientific data." The commenter requested that all owl species be removed from harvest except in areas where their customary and traditional use has been documented and shown not to impact Statewide population levels.

One commenter requested that all owls be removed from the harvest list because, even if there may not be a biological reason to do so now, in 20 years there will be, and by then the users will say "we have done this for a long time," so it is best to stop it now. The commenter added that most places are trying to save owls while the Service is allowing a certain few to harvest them.

#### 1. What Measurable Impacts Do You Think a Limited Subsistence Harvest Would Have on Populations of These Species?

Two respondents answered that for any species with very small populations, any harvest added to normal mortality could be significant. The Service would be ill-advised to authorize harvest of species with populations this small, particularly given that birds harvested in the spring/summer have survived the prior winter and in many cases are likely breeders. Specifically in regard to shorebirds, the commenter responded that biology has not been studied with respect to the ability of populations to sustain harvests.

One individual responded that the Service lacks the ability to determine the impact of hunting on these species.

In regard to arctic terns, one commenter responded that the killing of adults could have serious impacts on local populations.

#### 2. Which Bird Species Are More Important in Terms of Food Value and/or Customary and Traditional Uses?

One commenter claimed not to have found evidence that harvesting arctic terns has particular cultural significance, nor did the commenter find evidence that harvesting occurs in ways that minimize impacts.

One individual stated that these birds are not important species in the hunt for food, but if hunting them were legal, that would encourage a try at taking them.

#### 3. Apart From Their Designation as "Birds of Conservation Concern," Are There Particular Reasons Why Subsistence Harvest Should Be Restricted or Closed for Any of These Species?

Two respondents answered that there is the potential for adverse public reaction if it becomes widely known that species that are rare, vulnerable, or declining are being harvested, particularly if such hunts are sanctioned by management authorities. In addition, some of these species are charismatic such as puffins, loons, terns, and owls, which only increases the sensitivity of such decisions. Populations of species that are open for harvest must be sufficiently large to justify any harvest.

One individual responded that these are all species trying to find a place in a world dominated by man and whose population levels are substantially lower than when they were first described.

#### 4. In the Event that Subsistence Hunting were Allowed for Some or All of These Species, Do You Believe that Certain Conditions Should be Imposed to Ensure that the Population Statuses of these Species are Maintained or Improved? If so, What Would you Recommend?

One commenter expressed that this would be like putting the cart before the horse, because as subsistence hunters, nothing is wasted and there is no overhunting even if an abundance of birds present themselves during the hunt.

One individual responded that with the exception of Trumpeter swans, the Service lacks the ability to determine if the population of any of these birds is being maintained or improved.

One respondent suggested that subsistence users should participate in a registration system to provide a means to follow up with harvest surveys and more accurately determine the composition and levels of subsistence harvests.

One respondent suggested that harvest quotas and bag limits should be required in each subsistence harvest area to avoid overharvests.

**Service Response:** Subsistence hunting of migratory birds was authorized by recent amendments to the migratory bird treaties with Canada and Mexico. A proposed rule was developed after extensive consultation with the interested parties in Alaska through the newly formed Co-management Council and other interested constituencies. Comments have been received and reviewed regarding this proposal. The main issue to emerge during development was the number and species of migratory birds to be included in the list of birds open to subsistence harvest for the coming year. The Service highlighted 23 species of birds in the proposed rule for public comment, including 22 species that also occur on the Service's list of Birds of Conservation Concern (BCC), and the Trumpeter Swan.

Based on the comments received and internal Service analysis, we have decided to remove the following species from the list of species open to subsistence take for the reasons stated:

**Yellow-billed Loon:** Yellow-billed Loons have a limited distribution in Alaska and are found primarily along the Arctic Coastal Plain. The highest density of breeding Yellow-billed Loons are found within the National Petroleum Reserve. Yellow-billed Loons have a low relative abundance, and the Alaska population is estimated to be about 2,500 birds. Threats to Yellow-billed

Loons include oil and gas development, oil pollution, contaminants, gill-net fisheries, and overharvest. The Service is in the process of completing a Status Assessment for this species.

**Trumpeter Swan:** This species was significantly reduced and extirpated from much of its range during the 19th Century. The current world population is between 20,000 and 25,000, approximately 90% of which summer and nest in Alaska. The population is increasing and active efforts are underway to restore breeding populations to parts of the former range. However, in recent years, significant losses caused by lead poisoning have been documented in that portion of the winter range associated with Alaskan breeding Trumpeter Swans.

**Pacific Golden-plover:** The Pacific Golden-plover is of primary importance within the Alaska Region because of its small population size, 16,000 birds, and because its North American breeding range is restricted to Alaska (Johnson and Connors 1996). This species occurs only in western Alaska. Like the American Golden-plover, the species is especially susceptible to hunting because of its high visibility and tendency to remain near humans when they enter its territory.

**American Golden-plover:** The American Golden-plover is listed as a species of moderate concern in the Alaska Shorebird Plan (ASWG 2000) and of high concern within the U.S. Shorebird Conservation Plan (Brown *et al.* 2001). This ranking reflects a population decline and high threats to the species on nonbreeding areas. We believe its removal from the list is appropriate due to possible misidentification problems with the Pacific Golden-plover mentioned above.

**Bristle-thighed Curlew:** This species is of interest because it nests only in Alaska in 2 relatively small, disjunct regions, the Andreafsky Wilderness near the north Yukon Delta and the central Seward Peninsula. The total breeding population is among the smallest of all shorebirds and estimated at 3,200 pairs (Handel *et al.* 1990). Numerous lines of evidence suggest the population is being affected by anthropogenic factors on areas outside the nesting grounds (Marks and Redmond 1994, Gill 1998). The Bristle-thighed Curlew is listed as a species of high concern within the U.S. and Alaska Shorebird Conservation Plans. This ranking reflects a very low population size and restricted breeding range.

**Hudsonian Godwit:** Alaska is important to this species because as much as 30% of the population may breed in the region (McCaffery 1996;

McCaffery and Harwood in press). Recent findings suggest Alaska birds may warrant subspecies status (Haig *et al.* 1997). The Hudsonian Godwit is listed as a species of high concern within the U.S. and Alaska Shorebird Conservation Plans. This ranking reflects a low population size, threats on nonbreeding areas, and restricted breeding and non-breeding distributions.

**Marbled Godwit:** Alaska hosts a small (probably <3,000 birds), highly disjunct breeding population of sufficiently different morphology to warrant subspecies (*Limosa fedoa beringiae*) designation (Gibson and Kessel 1989). The Marbled Godwit is listed as a species of high concern within the U.S. and Alaska Shorebird Conservation Plans. This ranking reflects a declining population and threats on breeding and nonbreeding areas.

**Buff-breasted Sandpiper:** The regional importance of this species is based on the high proportion of breeding birds in the State and the marked decline in the population, which is now thought to number less than 15,000 birds (Lanctot and Laredo 1994, R. Lanctot, pers. comm.). The Buff-breasted Sandpiper is listed as a species of high concern within the U.S. and Alaska Shorebird Conservation Plans. This ranking reflects a declining and extremely low population size, threats on nonbreeding areas, and a restricted nonbreeding range.

**Whimbrel:** The Whimbrel is of primary importance in the Alaska Region because the majority of a subspecies (*Numenius phaeopus rufiventris*) breeds in Alaska (Gibson and Kessel 1997; Engelman and Roselaar 1998). The species population is estimated at about 60,000 birds, of which as many as 40,000 occur in Alaska. The Whimbrel is listed as a species of high concern within the U.S. and Alaska Shorebird Conservation Plans. This ranking reflects a declining and low population size. The Service's determination is based primarily on the fact that this species overlaps the distribution of the Bristle-thighed Curlew and we believe it will be difficult, if not impossible, for subsistence hunters to distinguish between the 2 species.

Harvest of these 9 species will not be authorized in 2003. Harvest will be allowed on the other 15 species of birds listed in the proposed rule as being of conservation concern, as well as 2 species recommended by the State of Alaska, the Northern Hawk-owl and Wandering Tattler. However, these species will be given additional consideration by Co-management

Council for over the coming year. We intend the Co-management Council to focus its attention on determining the importance of the harvest of these species for subsistence purposes, as well as any information on status that would be useful in future deliberations. In the case of the Bar-tailed Godwit, which we understand is an important species in the subsistence harvest, we are concerned about incidental take of 2 similar species-Hudsonian and Marbled Godwits-for which no harvest will be authorized. The Co-management Council should address actions that have, or can be, taken to minimize incidental take of the Hudsonian and Marbled godwits in the event that the Bar-tailed Godwit remains on the list submitted to the Service for consideration of subsistence harvest in future years.

#### Section 92.33 Region-specific regulations

One commenter from the North Slope requested that the season for the Northern Unit should be amended to include a specific season for king and common eiders: open April 2–June 6, and July 7–August 31, and closed June 7–July 6. This change will allow for customary and traditional eider harvest practices.

**Service Response:** We concur with this request and have added this season under § 92.33 (g)(2) in the Final Rule.

One respondent recommended the following changes in the regulations: Aleutian/Pribilofs Region, Section (2): clarify that Unalaska is included in the Central Unit (e.g., “\* \* \* to and including Unalaska”). Section (3): clarify that Attu is in the Western Unit.

**Service Response:** We have not made the requested changes regarding geographical boundaries. These regulations do not have distinct geographic boundaries for harvest areas, but instead define included community subsistence harvest areas. For example, the village of Nuiqsut could hunt on both sides of the Colville River; however if its members hunt as far east as the Arctic National Wildlife Refuge, it would have to follow the Eastern Unit season dates.

One commenter representing a Yukon-Kuskokwim village suggested that the nesting closure period for the Yukon-Kuskokwim region be simplified to parallel the Bristol Bay region: June 15–July 15.

**Service Response:** The Co-management Council struggled to set up a flexible system to adjust the dates of the 30-day harvest closure around annual seasonal variations, to be determined by the Alaska Regional

Director or his designee, after consultation with local subsistence users and the region's Waterfowl Conservation Committee. Simplifying the closure dates to those requested would eliminate the flexibility and local consultation benefits of the current regulations.

#### Statutory Authority

We derive our authority to issue these regulations from the four migratory bird treaties with Canada, Mexico, Japan, and Russia, and from the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703 *et seq.*), which implements these treaties. Specifically, these regulations are issued pursuant to 16 U.S.C. 712 (1), which authorizes the Secretary of the Interior, in accordance with these four treaties, to "issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds."

#### Effective Date

Under the Administrative Procedure Act, our normal practice is to publish rules with a 30-day delay in effective date. But in this case, we are using the "good cause" exemption under 5 U.S.C. 553 (d)(3) to make this rule effective immediately upon publication in order to ensure conservation of the resource for the upcoming spring/summer subsistence harvest. The rule needs to be made effective immediately for the following reason. The Service Regulations Committee approved the April 2, 2003, harvest start date at a phone conference on March 31, 2003, and publication of this rule well after April 2 has delayed the actual commencement of the legal harvest season. We need to open the harvest as close as possible to the original agreed-upon date. The expediency of the publication of this first set of annual regulations will ensure prompt follow-through on the process to start the first legally recognized spring/summer subsistence migratory bird harvest season in Alaska.

#### Executive Order 12866

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

a. This rule will not have an annual economic effect of \$100 million or

adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. This rule is administrative, technical, and procedural in nature, establishing the procedures for implementing spring and summer subsistence harvest of migratory birds as provided for in the amended Canada and Mexican Treaties. 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, a maximum economic value of \$6 million is determined. This is the estimated economic benefit of the consumptive part of this rule for participants in subsistence hunting. The cultural benefits of maintaining a subsistence economy and way of life can be of considerable value to the participants, and these benefits are not included in this figure.

b. This rule will not create inconsistencies with other agencies' actions. We are the Federal agency responsible for the management of migratory birds, coordinating with the State of Alaska's Department of Fish and Game on management programs within Alaska. The State of Alaska is a member of the Alaska Migratory Bird Co-management Council.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The rule does not affect entitlement programs.

d. This rule will not raise novel legal or policy issues. The subsistence harvest regulations will go through the same National regulatory process as the

existing migratory bird hunting regulations in 50 CFR part 20.

#### Regulatory Flexibility Act

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

#### Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, as discussed in the Executive Order 12866 section above.

a. This rule does not have an annual effect on the economy of \$100 million or more. It will legalize and regulate a traditional subsistence activity. It will not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns.

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

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

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

### Unfunded Mandates Reform Act

We have determined and certify pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, State, or tribal governments or private entities. A statement containing the information required by this Act is therefore not necessary.

Participation on regional management bodies and the Co-management Council will require travel expenses for some Alaska Native organizations and local governments. In addition they will assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than \$300,000 per year. In the Notice of Decision, 65 FR 16405, March 28, 2000, we identified 12 partner organizations to be responsible for administering the regional programs. When possible, we will make annual grant agreements available to the partner organizations to help offset their expenses. The Alaska Department of Fish and Game will incur expenses for travel to the Co-management Council meetings and to meetings of the regional management bodies. In addition, the State of Alaska will be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed \$100,000 per year, but should not exceed \$150,000 per year.

### Paperwork Reduction Act

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements. We are, however, beginning the process to request OMB approval of associated voluntary annual household surveys used to determine levels of subsistence take. In the March 3, 2003, **Federal Register**, we published a notice of intent to submit the Alaska Subsistence Harvest Survey Information Collection Forms to OMB for approval (68 FR 10024) under the Paperwork Reduction Act, with a 60-day public comment period. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

### Federalism Effects

As discussed in the Executive Order 12866 and Unfunded Mandates Reform Act sections above, this rule does not have sufficient federalism implications

to warrant the preparation of a Federalism Assessment under Executive Order 13132. We worked with the State of Alaska on development of these regulations.

### Civil Justice Reform—Executive Order 12988

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

### Takings Implication Assessment

This rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. Therefore, in accordance with Executive Order 12630, this rule does not have significant takings implications.

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

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), and Executive Order 13175, 65 FR 67249 (November 6, 2000), concerning consultation and coordination with Indian Tribal Governments, we have consulted with Alaska tribes, evaluated the rule for possible effects on tribes or trust resources and have determined that there are no significant effects. This rule establishes procedures by which the individual tribes in Alaska will be able to become significantly involved in the annual regulatory process for spring and summer subsistence harvesting of migratory birds and their eggs. The rule will legalize the subsistence harvest for tribal members, as well as for other indigenous inhabitants.

### Endangered Species Act Consideration

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 conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened

species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion that concluded that the regulations are not likely to adversely affect any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final rule reflects such modifications. Our biological opinions resulting from the section 7 consultation are public documents available for public inspection at the address indicated under the caption **ADDRESSES**.

### National Environmental Policy Act Consideration

The annual regulations and options were considered in the Environmental Assessment, "Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the First Legal Spring/Summer Harvest in 2003" issued August 7, 2002, modified, with a Finding of No Significant Impact issued May 7, 2003. Copies are available from the address indicated under the caption **ADDRESSES**.

### Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only allows for traditional subsistence harvest and improves conservation of migratory birds by allowing effective regulation of this harvest, it is not a significant regulatory action under Executive Order 12866. Consequently it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not significant energy action under Executive Order 13211 and no Statement of Energy Effects is required.

### List of Subjects

#### 50 CFR Part 20

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

#### 50 CFR Part 21

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

#### 50 CFR Part 92

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

■ For the reasons set out in the preamble, we are amending title 50, chapter I, subchapters B and F, of the Code of Federal Regulations as follows:

#### **PART 20—[AMENDED]**

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

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

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

#### **§ 20.2 Relation to other provisions.**

\* \* \* \* \*

(e) *Migratory bird subsistence harvest in Alaska.* The provisions of this part, except for paragraphs (a) through (d) of this section, are not applicable to the regulations governing the migratory bird subsistence harvest in Alaska (part 92 of this subchapter) unless specifically referenced in part 92 of subchapter G of this chapter.

■ 3. Revise § 20.22 to read as follows:

#### **§ 20.22 Closed seasons.**

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

■ 4. Revise § 20.132 to read as follows:

#### **§ 20.132 Subsistence use in Alaska.**

In Alaska, any person may, for subsistence purposes, take, possess, and transport, in any manner, from September 1 through April 1, snowy owls and cormorants for food and their skins for clothing, but birds and their parts may not be sold or offered for sale.

#### **PART 21—[AMENDED]**

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

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

■ 6. Revise § 21.11 to read as follows:

#### **§ 21.11 General permit requirements.**

No person may take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts, nests, or eggs of such bird except as may be permitted under the terms of a valid permit issued pursuant to the provisions of this part and part 13 of this chapter, or as permitted by regulations in this part, or part 20 of this subchapter (the hunting regulations), or part 92 of subchapter G of this chapter (the Alaska subsistence harvest regulations). Birds taken or possessed under this part in “included areas” of Alaska as defined in § 92.5(a) are subject to this part and not

to part 92 of subchapter G of this chapter.

#### **PART 92—[AMENDED]**

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

**Authority:** 16 U.S.C. 703–712.

#### **Subpart A—General Provisions**

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

#### **§ 92.4 Definitions.**

\* \* \* \* \*

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

\* \* \* \* \*

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

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

\* \* \* \* \*

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

\* \* \* \* \*

(d) *Participation by permanent residents of excluded areas.* Immediate family members who are permanent residents of excluded areas may participate in the customary spring and summer subsistence harvest in a village’s subsistence harvest area with the permission of the village council, where it is appropriate to assist indigenous inhabitants in meeting their nutritional and other essential needs or for the teaching of cultural knowledge to

or by their immediate family members. Eligibility for participation will be developed and recommended by the Co-management Council and adopted or amended by regulations published in subpart D of this part.

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

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

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

#### **Subpart B—Program Structure**

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

#### **§ 92.10 Alaska Migratory Bird Co-management Council.**

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

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

#### **§ 92.11 Regional management areas.**

(a) *Regions identified.* To allow for maximum participation by residents of subsistence eligible areas, the Alaska Regional Director of the Service established 12 geographic regions based on common subsistence resource use patterns and the 12 Alaska Native regional corporation boundaries established under the Alaska Native Claims Settlement Act. Despite using the Alaska Native regional corporation boundaries, we are not working directly

with the regional corporations in this program and are instead working with the Alaska Native nonprofit groups and local governments in those corresponding regions. You may obtain records and maps delineating the boundaries of the 12 regions from the U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, 222 West 7th Ave., No. 13, Anchorage, AK 99513. The regions are identified as follows:

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

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

\* \* \* \* \*

### Subpart C—General Regulations Governing Subsistence Harvest

■ 13. In subpart C, add §§ 92.20 and 92.21 to read as follows:

#### § 92.20 Methods and means.

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

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

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

(c) Hunting from any type of aircraft;

(d) Taking waterfowl and other species using live birds as decoys, except for auklets on Diomed Island (Use of live birds as decoys is a customary and traditional means of harvesting auklets on Diomed Island.);

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

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

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

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

(g) Using an air boat or jet ski for hunting or transporting hunters (Interior Region only).

#### § 92.21 Emergency closures.

(a) The Regional Director, after consultation with the Co-management Council, may close or temporarily suspend any regulation established under subparts C or D of this part:

(1) Upon finding that a continuation of the regulation would pose an imminent threat to the conservation of any endangered or threatened species or other migratory bird population; and

(2) Upon issuance of local public notice by such means as publication in local newspapers of general circulation, posting of the areas affected, notifying the State wildlife conservation agency, and announcement on the internet and local radio and television.

(b) The Service will also announce any such closure or temporary suspension by publication of a notice in the **Federal Register** simultaneously with the local public notice referred to in paragraph (a)(2) of this section. However, in the event that publishing a **Federal Register** notice simultaneously with the local public notice is impractical, we will publish in the **Federal Register** as soon as possible after the steps outlined in paragraph (a) of this section are taken.

(c) Any closure or temporary suspension under this section will be effective on the date of publication of the **Federal Register** notice; or if such notice is not published simultaneously with the notification methods described in paragraph (a) of this section, then on the date and at the time specified in the local notification to the public given under paragraph (a)(2) of this section. Every notice of closure or temporary suspension will include the date and time of the closing, the area or areas affected, and the species affected. In the case of a temporary suspension, the date and time when the harvest may be resumed will also be provided by local notification to the public and by publication in the **Federal Register** as provided for in paragraphs (a) and (b) of this section.

### Subpart D—Annual Regulations Governing Subsistence Harvest

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

#### § 92.30 General overview of the regulations.

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

\* \* \* \* \*

■ 15. In Subpart D, add §§ 92.31 through 92.33 to read as follows:

#### § 92.31 Migratory bird species not authorized for subsistence harvest.

(a) You may not harvest birds or gather eggs from the following species:

- (1) Spectacled Eider, *Somateria fischeri*.
- (2) Steller's Eider, *Polysticta stelleri*.
- (3) Emperor Goose, *Chen canagica*.
- (4) Aleutian Canada Goose, *Branta canadensis leucopareia*—Semidi Islands only.

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

- (1) Cackling Canada Goose, *Branta canadensis minima*.
- (2) Black Brant, *Branta bernicla nigricans*—in the Yukon/Kuskokwim Delta and North Slope regions only.

#### § 92.32 Subsistence migratory bird species.

You may harvest birds or gather eggs from the following species, listed in taxonomic order, within all included regions. When birds are listed only to the species level, all subspecies existing in Alaska are open to harvest.

##### (a) Family Gaviidae.

- (1) Red-throated Loon (*Gavia stellata*).
- (2) Arctic Loon (*Gavia arctica*).
- (3) Pacific Loon (*Gavia pacifica*).
- (4) Common Loon (*Gavia immer*).

##### (b) Family Podicipedidae.

- (1) Horned Grebe (*Podiceps auritus*).
- (2) Red-necked Grebe (*Podiceps grisegena*).

##### (c) Family Procellariidae.

- (1) Northern Fulmar (*Fulmarus glacialis*).
- (2) [Reserved].

##### (d) Family Phalacrocoracidae.

- (1) Double-crested Cormorant (*Phalacrocorax auritus*).
- (2) Red-faced Cormorant (*Phalacrocorax urile*).

(3) Pelagic Cormorant (*Phalacrocorax pelagicus*).

**(e) Family Anatidae.**

(1) Greater White-fronted Goose (*Anser albifrons*).

(2) Snow Goose (*Chen caerulescens*).

(3) Lesser Canada Goose (*Branta canadensis parvipes*).

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

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

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

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

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

(9) Gadwall (*Anas strepera*).

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

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

(12) Mallard (*Anas platyrhynchos*).

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

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

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

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

(17) Canvasback (*Aythya valisineria*).

(18) Redhead (*Aythya americana*).

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

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

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

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

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

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

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

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

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

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

(29) Bufflehead (*Bucephala albeola*).

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

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

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

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

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

**(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) Solitary Sandpiper (*Tringa solitaria*).

(4) Wandering Tattler (*Heteroscelus incanus*).

(5) Spotted Sandpiper (*Actitis macularia*).

(6) Upland Sandpiper (*Bartramia longicauda*).

(7) Bar-tailed Godwit (*Limosa lapponica*).

(8) Ruddy Turnstone (*Arenaria interpres*).

(9) Black Turnstone (*Arenaria melanocephala*).

(10) Red Knot (*Calidris canutus*).

(11) Semipalmated Sandpiper (*Calidris pusilla*).

(12) Western Sandpiper (*Calidris mauri*).

(13) Least Sandpiper (*Calidris minutilla*).

(14) Baird's Sandpiper (*Calidris bairdii*).

(15) Sharp-tailed Sandpiper (*Calidris acuminata*).

(16) Dunlin (*Calidris alpina*).

(17) Long-billed Dowitcher (*Limnodromus scolopaceus*).

(18) Common Snipe (*Gallinago gallinago*).

(19) Red-necked phalarope (*Phalaropus lobatus*).

(20) 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 (*Cephus grylle*).

(4) Pigeon Guillemot (*Cephus 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*).

(3) Northern Hawk Owl (*Surnia ulula*).

(4) Short-eared Owl (*Asio flammeus*).

**§ 92.33 Region-specific regulations.**

The season dates for the 2003 season for eight subsistence regions are as follows:

(a) Aleutian/Pribilof Islands Region.

(1) Northern Unit (Pribilof Islands):

(i) Season: April 2–June 30.

(ii) Closure: July 1–August 31.

(2) Central Unit (Aleut Region's eastern boundary on the Alaska Peninsula westwards to and including Unalaska Island):

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

(ii) Closure: June 16–July 15.

(3) Western Unit (Umnak Island west to and including Attu Island):

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

(ii) Closure: July 16–August 15.

(b) Yukon/Kuskokwim Delta Region.

(1) Season: April 2–August 31.

(2) Closure: 30-day closure dates to be announced by the Alaska Regional Director or his designee, after consultation with local subsistence users and the region's Waterfowl Conservation Committee. This 30-day period will occur between June 1 and August 15 of each year. A press release announcing the actual closure dates will be forwarded to regional newspapers

and radio and television stations and posted in village post offices and stores.

(c) Bristol Bay Region.

(1) Season: April 2–June 14 and July 16–August 31.

(2) Closure: June 15–July 15.

(d) Bering Strait/Norton Sound Region.

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

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

(ii) Closure: June 15–July 15.

(2) Remainder of the region:

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

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

(e) Kodiak Archipelago Region, except the Kodiak Island roaded area is closed to the harvesting of migratory birds and their eggs. The closed area is depicted on a map and consists of all lands and water 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. Offshore islands and waters adjacent to the closed area will remain open to harvest.

(1) Season: April 2–June 20 and July 22–August 31, egg gathering: May 1–June 20.

(2) Closure: June 21–July 21.

(f) Northwest Arctic Region.

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

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

(g) North Slope Region.

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

(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 (Barrow to Nuiqsut):

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

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

(3) Eastern Unit (Communities east of Nuiqsut):

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

(ii) Closure: June 20–July 19.

(h) Interior Region.

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

(2) Closure: June 15–July 15.

Dated: June 16, 2003.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 03–18097 Filed 7–18–03; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 021212307 3037–02; I.D. 071503C]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Aleutian District of the Bering Sea and Aleutian Islands

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of Pacific ocean perch in this area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 16, 2003, through 2400 hrs, A.l.t., December 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP

appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 TAC of Pacific ocean perch for the Western Aleutian District was established as 5,411 metric tons (mt) by the final 2003 harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 TAC for Pacific ocean perch in the Western Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,111 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District of the BSAI.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 TAC for Pacific ocean perch in the Western Aleutian District, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 15, 2003.

**Virginia M. Fay,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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