

proposed public interest exclusion (PIE) provisions of the NPRM.

DATES AND ADDRESSES: The public meetings will be held on March 20 and 21, 2000, at the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC 20004; on March 28, 2000, at the Hilton Los Angeles Airport, 5711 West Century Boulevard, Los Angeles, CA 90045, telephone number (310) 410-4000, fax (310) 410-6177; and on March 30, 2000, at the Crowne Plaza, Dallas Market Center, 7050 Stemmons Freeway, Dallas, TX 75247, telephone number (214) 630-8500, fax (214) 630-0037.

FOR FURTHER INFORMATION CONTACT: For general meeting information and to register for one of the meetings, contact the DOT contractor, Marti Bludworth, Transportation Safety Institute (TSI), Special Programs Division, DTI-100, 4400 Will Rogers Parkway, Suite 205, Oklahoma City, OK 73108-2057, telephone number (800) 862-4832, extension 323, fax number (405) 946-4268, or e-mail marti_bludworth@tsi.jccbi.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

The purpose of the meetings is to provide all segments of the transportation industry and the general public with an opportunity to make statements, which have not already been made previously, to the docket. These meetings would also give DOT the opportunity to ask questions and ensure that the public comments are clearly understood by the Department. It may also give the Department the opportunity to clarify issues related to comments that had already been submitted to the docket during the early days of the formal comment period. Questions by commenters and other attendees to the DOT will be permitted as time allows. Registration and meeting procedures were specified in the January 18, 2000, notice.

B. Agenda for the Washington, DC, Meeting

The meeting in Washington, DC will be held for a day and a half to provide ample opportunity for attendees to make comments and for DOT to have additional time, if needed, to ask follow up questions. This geographic location will also provide added opportunity for additional DOT staff and industry representatives from the Capital area to attend the meeting.

The following is a tentative agenda that may be modified as needed to accommodate the needs of commenters

and to ensure adequate coverage of the subject matter. We call your attention particularly to the "Roundtable Discussion" on the second day of the meeting concerning the service agent accountability provisions of the proposed rules, known as the public interest exclusion (PIE) proposal. This proposal has generated considerable interest among interested parties, and we believe that it could be useful to schedule an open, interactive discussion among attendees about it. This discussion will be in addition to the opportunity for speakers to address this proposal in their regular statements. As time permits, the Department intends to hold similar discussions as part of the Los Angeles and Dallas meetings as well.

Agenda—DOT Public Meeting, Ronald Reagan and International Trade Center, Atrium Ballroom A

March 20–21, 2000 Washington, DC

Monday, March 20, 2000

- 09:00–09:15 Introduction and Administrative Items
- 09:15–09:55 Overview of the Notice of Proposed Rulemaking
- 10:00–11:10 Collection Issues
- 11:15–11:30 Laboratory Issues
- 11:30–12:00 Q&A and Public Comments
- 01:00–01:50 Labor/Employer/Employee Issues
- 02:00–03:45 Medical Review Officer Issues
- 03:50–04:10 Substance Abuse Professional Issues
- 04:10–05:00 Questions and Answers and Additional Public Comments

Tuesday, March 21, 2000

- 09:00–10:10 Service Agents/Public Interest Exclusion
- 10:30–01:30 Public Interest Exclusion Round Table Discussion

Issued this 7th day of March 2000, at Washington, DC.

Mary Bernstein,

Director, Office of Drug and Alcohol Policy and Compliance, Department of Transportation.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AF95

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Steller's Eider

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Alaska-breeding population of the Steller's eider (*Polysticta stelleri*), a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). Proposed designation of critical habitat for the Steller's eider includes areas on the North Slope of Alaska, the Yukon-Kuskokwim Delta (Y-K Delta), and seven marine areas in southwest and south coastal Alaska. These areas total 65,858 square kilometers (km²) (25,428 square miles (mi²)). The marine units include 14,458 kilometers (km) (8,984 mi) of coastline.

If this proposal is made final, section 7(a)(2) of the Act requires that Federal agencies ensure that actions they fund, permit, or carry out are not likely to result in the "destruction or adverse modification" of critical habitat. "Destruction or adverse modification" of critical habitat is defined as an alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Therefore, designation of critical habitat does not restrict human activity or development unless the impact to habitat is so significant that it impairs the survival or recovery potential of the listed taxon as a whole. Furthermore, the regulatory impact of critical habitat designation does not extend beyond those activities funded, permitted, or conducted by Federal agencies. Exclusively State or private actions are not affected.

Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address comments and other information received during the comment period.

DATES: The public comment period for this proposal closes on May 12, 2000. Requests for public hearings must be

received in writing at the address below by April 27, 2000. We will publish the dates and locations of any public hearings in the **Federal Register** and appropriate local newspapers at least 15 days prior to the first hearing.

ADDRESSES: You may inspect the complete file for this rule at the U.S. Fish and Wildlife Service, Northern Alaska Ecological Services, 101 12th Ave., Rm 110, Fairbanks, AK 99701, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ted Swem, Endangered Species Branch, Northern Alaska Ecological Services, at the above address (telephone 907/456-0203; facsimile 907/456-0208).

SUPPLEMENTARY INFORMATION:

Background

Description

The Steller's eider was first described by Peter Simon Pallas in 1769 (Bent 1925), and given the scientific name *Anas stelleri* Pallas. After seven name changes, it was grouped with other eiders as *Somateria stelleri*. Now it is considered distinct from the other eiders, and is the only species in the genus *Polysticta* (American Ornithologists' Union 1983). This genus is grouped with the other seaducks under the Tribe Mergini (eiders, scoters, mergansers, and allies), the Subfamily Anatinae (ducks), and the Family Anatidae (swans, geese, and ducks).

It is the smallest of four eider species; both sexes are approximately 45 centimeters (17–18 inches) long (Bellrose 1980). The plumage of the breeding adult male is white, black, and chestnut. The head is white with black eye patches and light green tinging on the forehead, lores (space between bill and eye), and below the eye. The chin and throat are black, separated from a broad black collar around the lower neck by a white ring. The shoulders and back are also black and each tertial (inner wing) feather is bicolored longitudinally, with the inner half being white and the outer half being bluish-black, giving the back a striped appearance when the wing is folded. The speculum (patch of colored feathers on the wing) is dark blue and the breast and belly are chestnut shading to black posteriorly. A black spot is present on each side of the breast. The flanks, rump, and under-tail coverts (feathers) are black, and the wedge-shaped tail is dark brown. Males in eclipse plumage (dull plumage assumed prior to molt) during late summer and fall are entirely mottled brown except the wings are like the adult breeding male's and the upper wing-coverts are white. Females and

juveniles year-round are mottled brown, and the female adult has a blue speculum bordered in white.

Geographic Range

Three breeding populations of Steller's eiders are recognized, two in Arctic Russia and one in Alaska. The majority of Steller's eiders breed in Russia and are identified by separate breeding and wintering distributions (Nygard et al. 1995). The Russian Atlantic population nests west of the Khatanga River and winters in the Barents and Baltic seas. The Russian Pacific population nests east from the mouth of the Khatanga River and winters in the southern Bering Sea and northern Pacific Ocean, where it presumably intermixes with the Alaska-breeding population. Neither Russia-breeding population is listed as threatened or endangered; only Steller's eiders that nest in Alaska are listed as threatened under the Act.

This proposal for critical habitat addresses the Alaska-breeding population of Steller's eiders, the only population listed under the Act, but the Alaska-breeding population is visually indistinguishable from the unlisted Russian Pacific population. During the autumn molt, winter, and spring migration staging periods, the listed Alaska-breeding population intermixes with the more numerous and unlisted Russia-breeding population in marine waters of southwest Alaska. During these times, it is unknown whether the Alaska-breeding population concentrates in distinct areas or disperses throughout the species' marine range.

The exact historical breeding range of the Alaska-breeding population of Steller's eiders is not clear. The historical range may have extended discontinuously from the eastern Aleutian Islands to the western and northern Alaska coasts, possibly as far east as the Canadian border. In more recent times, breeding occurred in two general areas, the Arctic Coastal Plain on the North Slope, and western Alaska, primarily on the Y-K Delta. Today, Steller's eiders breed on the western Arctic Coastal Plain in northern Alaska, from approximately Point Lay east to Prudhoe Bay, and in extremely low numbers on the Y-K Delta.

On the North Slope, anecdotal historical records indicate that the species occurred from Wainwright east, nearly to the Alaska-Canada border (Anderson 1913; Brooks 1915). There are few historical records from the eastern North Slope, however, so it is unknown whether the species was abundant there or whether sightings

were uncommon. Today, the species predominantly breeds on the western North Slope, in the northern half of the National Petroleum Reserve—Alaska (NPR-A). The majority of sightings in the last decade have occurred east of the mouth of the Utukok River, west of the Colville River, and within 90 km (56 mi) of the coast. Within this extensive area, Steller's eiders generally breed at very low densities.

The Steller's eider was considered a locally "common" breeder in the intertidal, central Y-K Delta by naturalists early in the 1900s (Murie 1924; Conover 1926; Gillham 1941; Brandt 1943), but the bird was reported to breed in only a few locations. By the 1960s or 70s, the species had become extremely rare on the Y-K Delta, and only six nests have been found in the 1990s (Flint and Herzog 1999). Given the paucity of early recorded observations, only subjective estimates can be made of the Steller's eider's historical abundance or distribution on the Y-K Delta.

A few Steller's eiders were reportedly found nesting in other locations in western Alaska, including the Aleutian Islands in the 1870s and 80s (Gabrielson and Lincoln 1959), Alaska Peninsula in the 1880s or 90s (Murie and Scheffer 1959), Seward Peninsula in the 1870s (Portenko 1989), and on Saint Lawrence Island as recently as the 1950s (Fay and Cade 1959). Nesting Steller's eiders are no longer found at these western Alaska sites.

After breeding, Steller's eiders move to the Alaska Peninsula where they undergo a flightless molt for about 3 weeks. Most birds molt in four areas—Izembek Lagoon (Metzner 1993; Dau 1999a; Laubhan and Metzner 1999), Nelson Lagoon, Herendeen Bay, and Port Moller (Gill et al. 1981; Petersen 1981; Dau 1999a). Additionally, Steller's eiders are known or thought to molt in a number of other locations along the northwestern Alaska coast, around islands in the Bering Sea, and along the coast of Bristol Bay (Swarth 1934; Dick and Dick 1971; Petersen and Sigman 1977; Wilk et al. 1986; Dau 1987; Petersen et al. 1991; Day et al. 1995; Dau 1999a). The breeding derivation of molting Steller's eiders in the Russian Far-East, primarily Kamchatka, is undetermined.

Recoveries of banded Steller's eiders suggest that the Alaska-breeding population of Steller's eiders intermixes with Russian Pacific-breeders in southwest Alaska during molt. Steller's eiders banded during molt at Izembek and Nelson lagoons have been found during the breeding season near Barrow (Jones 1965; Service, U.S. Geological

Survey, and North Slope Borough, unpubl. data) as well as in a number of locations in Russia (Jones 1965). However, it is unknown if Alaska-breeding Steller's eiders molt in locations other than Izembek and Nelson lagoons.

In general, wintering Steller's eiders occupy shallow, near-shore marine waters in much of southwest and south coastal Alaska. They are found around islands and along the coast of the Bering Sea and north Pacific Ocean from the Aleutian Islands, along the Alaska Peninsula and Kodiak Archipelago, east to lower Cook Inlet. Along open coastline, Steller's eiders usually remain within about 400 meters (m) (400 yards (yd)) of shore normally in water less than 10 m (30 feet (ft)) deep (C. Dau, Service, pers. comm. 1999) but can be found well offshore in shallow bays and lagoons or near reefs (C. Dau, pers. comm. 1999; D. Zwiefelhofer, Service, pers. comm. 1999). An unknown number of Steller's eiders winter along the Russian and Japanese coasts. They have been reported from the Anadyr Gulf (Konyukhov 1990), Komandor (Commander) and Kuril islands in Russia (Kistchinski 1973; Palmer 1976), and near Hokkaido Island in northern Japan (Brazil 1991).

Prior to spring migration, thousands to tens of thousands of Steller's eiders stage at a series of locations along the north side of the Alaska Peninsula, including several of the areas used during molt and winter such as Port Heiden, Port Moller, Nelson Lagoon, and Izembek Lagoon (Larned *et al.* 1994; Larned 1998). From there, they cross Bristol Bay, and it is thought that virtually the entire Alaska-wintering adult population spends days or weeks feeding and resting in northern Kuskokwim Bay and in smaller bays along its perimeter (W. Larned, Service, pers. comm. 1999). The number seen there varies among years, presumably because lingering sea ice may slow northward migration in some years. An estimated 42,000 have concentrated in early May in Kuskokwim Bay when ice has delayed northward migration (Larned *et al.* 1994). Steller's eiders also concentrate along the southwest coast of the Y-K Delta and southern coast of Nunivak Island during spring migration (Larned *et al.* 1994; R. King, Service, unpublished data).

Steller's eiders move north through the Bering Strait between mid-May and early June (Bailey 1943; Kessel 1989). Subadults may remain in wintering areas or along the migration route during the summer breeding season, as they have been noted in Nelson Lagoon in July (M. Petersen, U.S. Geological

Survey, pers. comm. 1999), around Nunivak Island from July to October (B. McCaffery, Service, pers. comm. 1999) and offshore and along the lagoons of St. Lawrence Island in summer (Fay 1961). Steller's eiders have been seen in lagoons along the northwest coast of Alaska in late July, and these also may be subadults (Johnson *et al.* 1992; Day *et al.* 1995).

Fall migration is protracted, with Steller's eiders moving south through the Bering Strait from late July through October (Kessel 1989), depending on age and sex of individuals and whether migration takes place before or after wing molt (Jones 1965). Fall migration routes are poorly understood but groups have been seen passing near shore at Nunivak Island (Dau 1987) and Cape Romanzof (McCaffery and Harwood 1997).

Population Status

Determining population trends for Steller's eiders is difficult; however, the Steller's eider's breeding range in Alaska appears to have contracted substantially, with the species disappearing from much of its historical range in western Alaska (Kertell 1991) and possibly a portion of its range on the North Slope. In areas where the species still occurs in Alaska, the frequency of occurrence (the proportion of years in which the species is present) and the frequency of breeding (the proportion of years in which the species attempts to nest) have both apparently declined in recent decades (Quakenbush *et al.* in prep.).

We do not know whether the species' breeding population on the North Slope is currently declining, stable, or improving. Although Steller's eiders are counted there during extensive aerial waterfowl and eider surveys, few are seen in most years because the species occurs at very low density and the surveys sample only a small proportion of the suitable breeding habitat. Based on observations at Barrow, we have found that breeding population size and breeding effort vary considerably among years, therefore, detecting statistically significant population trends or precisely estimating population size is difficult.

Despite the difficulty in detecting statistically significant trends with North Slope aerial survey data, these data can be used to derive an estimate of breeding population size. Several dozen Steller's eiders are usually detected during aerial breeding-pair waterfowl surveys on the North Slope each year (Service unpublished data). These surveys sample 2–3 percent of the suitable waterfowl breeding habitat

annually. When extrapolated to the entire study area, the number of sightings suggests that hundreds or low thousands (point estimates range from 534 to 2,543 in 1989–1998) of Steller's eiders would be detected if the entire region were surveyed each year. Actual population size is probably higher. Based on these observations, it seems reasonable to estimate that hundreds or thousands of Steller's eiders occur on the North Slope. Similar aerial surveys are conducted on the Y-K Delta, but no Steller's eiders were detected using this technique so population size and trends cannot be estimated; however, it is obvious that a drastic reduction in the species' abundance has occurred (Kertell 1991).

Previous Federal Action

In December 1990, James G. King of Juneau, Alaska, petitioned us to list the Steller's eider under the Act. In May 1992, we determined that listing was warranted but precluded by higher listing priorities elsewhere. In 1993, a status review of the species concluded that listing of the Alaska-breeding population as threatened was warranted, although the available information did not support listing the species worldwide (57 FR 19852). A proposed rule to list the Alaska-breeding population of Steller's eiders as threatened was published in the **Federal Register** on July 14, 1994 (59 FR 35896). Appropriate Federal and State agencies; borough, city, and village governments; scientific and environmental organizations; and other interested parties were contacted and encouraged to comment. Shortly thereafter, a new Service policy (59 FR 34270) was implemented requiring that listing proposals be reviewed by at least three independent specialists. The comment period was reopened in June 1995 to seek peer review, and appropriate parties were again contacted and encouraged to comment. A final determination on whether listing was warranted was further delayed by a national moratorium on listing (Public Law 104–6) implemented in April 1995, which prevented final determination on listing actions for the remainder of the fiscal year; that moratorium was later extended until April 1996.

We received comments on listing Steller's eiders from a total of nine parties during the two comment periods. Of the comments, four supported listing, four were neutral, and one, the Alaska Department of Fish and Game, opposed listing. We also received peer review from five recognized experts on eider or seaduck population monitoring, modeling, or management;

all five supported listing the Alaska-breeding population of Steller's eiders as threatened or endangered. Two environmental organizations (The Wilderness Society and Greenpeace) recommended designating critical habitat in current and historical breeding habitat, wintering habitat along the Alaska Peninsula, and other marine areas. The North Slope Borough supported listing but, although not specifically mentioning "critical habitat," recommended against additional special protection near the village of Barrow. Of the five independent experts who provided peer review, four commented on critical habitat designation. One suggested studies of breeding ecology to identify critical habitat requirements, one recommended designating critical habitat near Barrow, one suggested "absolute protection" for Steller's eiders nesting anywhere in Alaska, and one mentioned that protecting "coastal molting and wintering range" was perhaps more important than breeding habitat.

On June 11, 1997, we listed the Alaska breeding population of Steller's eiders (62 FR 31748) as threatened. That decision included a determination that designation of critical habitat was not prudent at that time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent if designation would not be beneficial to the species. Section 7(a)(2) of the Act requires Federal agencies to ensure, in consultation with the Service, that activities they fund, authorize, or carry out are not likely to jeopardize the continued existence of listed species. At the time of our determination, we stated that critical habitat designation would provide no additional benefit to Steller's eiders because protection of the species' habitat would be ensured through section 7 consultations, the recovery process, and, as appropriate, through the section 10 habitat conservation planning process.

On March 10, 1999, the Southwest Center for Biological Diversity, Center for Biological Diversity, and Christians Caring for Creation filed a lawsuit in Federal District Court in the Northern District of California against the Secretary of the Department of the Interior for failure to designate critical habitat for five species in California and two in Alaska. These species include the Alameda whipsnake (*Masticophis lateralis euryxanthus*), the zayante band-winged grasshopper (*Trimerotropis infantilis*), the Morro shoulderband snail (*Helminthoglypta walkeriana*), the Arroyo southwestern toad (*Bufo microscaphus californicus*),

the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), the spectacled eider (*Somateria fischeri*), and the Steller's eider. Subsequently, the Federal Government entered into a settlement agreement with the plaintiffs, by which the Service agreed to readress the prudence of designating critical habitat for Steller's eiders by March 1, 2000, and propose critical habitat if prudent. If, upon consideration of all available information and comments, we determine that designating critical habitat is prudent, we have agreed to send a final rule to the **Federal Register** by January 5, 2001. If we determine that designation of critical habitat is not prudent, we have agreed to send a notice of this finding to the **Federal Register** by August 1, 2000.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (e.g., *Natural Resources Defense Council v. U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii v. Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions and the availability of some new information concerning the species' habitat needs, we recognized the value in reexamining the question of whether critical habitat for Steller's eider would be prudent. This proposal is the product of this reexamination and reflects our best interpretation of the recent judicial opinions on critical habitat designation. If additional information becomes available on the biology and distribution of the species, we may reevaluate our critical habitat designation, including proposing additional critical habitat or proposing deletion or boundary refinement of existing critical habitat.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as (i) the specific areas within the geographic area occupied by the species on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" is defined in section 3(3) of the Act as the use of all methods and procedures necessary to bring endangered or threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude any area from critical habitat designation if the benefits of such exclusion outweigh the benefits of including such area as part of the critical habitat, provided the exclusion will not result in the extinction of the species (section 4(b)(2) of the Act). Critical habitat is not to be designated in foreign countries or outside the jurisdiction of the United States (50 CFR 424.12(h)).

The designation of critical habitat does not, in and of itself, restrict human activities or development, nor does it mandate specific management or recovery actions. Critical habitat designation contributes to species conservation primarily by identifying important habitat for the species and by describing the habitat features that are thought to be essential for the species. This action can alert public and private entities to the area's importance and result in cooperative strategies for conserving the habitat and its primary constituent elements. The only regulatory impact of critical habitat designation is through the provisions of section 7 of the Act, and these provisions apply only to actions with a Federal "nexus" (i.e., actions authorized, funded, or conducted by any Federal agency) and do not affect exclusively State or private activities on non-Federal land.

Section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or conduct do not jeopardize the continued existence of listed species. Activities that jeopardize listed species are defined as actions that "directly or indirectly, reduce appreciably the likelihood of both the survival and recovery of a listed species" (50 CFR 402.02). Thus, Federal agencies cannot jeopardize listed species through their actions, regardless of whether critical habitat has been designated for the species. Where critical habitat is designated, section 7 also requires Federal agencies to ensure that activities they authorize, fund, or conduct do not result in the destruction or adverse modification of designated critical habitat. Activities that destroy or adversely modify critical habitat are defined as those actions that "appreciably diminish the value of critical habitat for both the survival and recovery of the species" (50 CFR 402.02). Common to the definitions of both "jeopardy" and "destruction or

adverse modification of critical habitat'' is the concept that the likelihood of both survival and recovery of the species are appreciably reduced by the action. Because of this common threshold, actions that are likely to destroy or adversely modify critical habitat are also likely to jeopardize the species. Therefore, the protection provided by critical habitat designation generally duplicates that provided under the section 7 jeopardy provision.

Clearly identifying the areas and habitat features important to listed species assists Federal agencies and potential permit applicants in identifying where and under what circumstances section 7 consultations are required. More importantly, drawing attention to the species' plight and habitat requirements may increase the consideration given to the species during project planning and land management decisions.

Prudence Finding

In the absence of a finding that critical habitat would increase threats to a species, if critical habitat designation would provide any benefits to the species, then a prudent finding is warranted. In the case of this species, designation of critical habitat may provide some benefits. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. An example could include occupied habitat that may become unoccupied in the future. Raising the profile of the lands and waters within our proposed critical habitat boundary may also be beneficial to the species because it may increase the degree to which Federal agencies fulfill their responsibilities under section 7(a)(1) of the Act (to use their authorities to carry out programs for the conservation of listed species). Designating critical habitat may also provide some educational or informational benefits.

We do not have specific evidence of taking, vandalism, collection, or trade in this species that might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this

species of taking or other human activity. Therefore, we propose that designating critical habitat is prudent for the Steller's eider.

After reviewing the best scientific and commercial data available, we propose to withdraw the previous finding that designation of critical habitat for the Steller's eider is not prudent, and we propose to designate critical habitat on the North Slope of Alaska, the Y-K Delta, and seven marine areas in southwest and southcoastal Alaska.

Methods

Critical habitat is defined as (1) the specific areas within the geographical area currently occupied by the species on which are found those physical and biological features that are essential for the conservation of the species and that may require special management considerations or protection, and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon determination by the Secretary that such areas are essential for the conservation of the species (50 CFR 424.02(d)). All the geographic areas we propose to designate as critical habitat are within what we believe to be the current range of the species based on available information. To determine which of the occupied areas meet this definition, we reviewed all available information on the distribution, diet, and habitat associations of, and threats to, Steller's eiders. Information reviewed included published and unpublished accounts from early historical investigations and more recent aerial, boat, and ground-based surveys and studies.

Two factors complicate evaluating which areas and habitat features are essential for the conservation of the Alaska-breeding population of the Steller's eider. First, information is inadequate on the distribution of the listed, Alaska-breeding population during the nonbreeding season. The Alaska-breeding population, which likely numbers in the hundreds or low thousands, is thought to molt and winter in the same broad region as the much more numerous Russian Pacific population. If the Alaska-breeding population is distributed proportionately across the species' extensive nonbreeding range, the listed population is greatly diluted in any given location by members of the nonlisted breeding population. In contrast, if the Alaska-breeding population concentrates in specific portions of the species' molting and wintering ranges, the habitat within those geographic areas would be more disproportionately essential for recovery

of the listed population. Currently, information to determine which scenario most closely applies is insufficient.

The second factor complicating critical habitat designation for the Steller's eider is that recovery, which is the objective of endangered species conservation, has yet to be defined for Alaska-breeding Steller's eiders. The Steller's Eider Recovery Team is currently working to develop a recovery plan for the species, but has not yet set numerical criteria for recovery, either in terms of population size or distribution. In the absence of clearly defined recovery objectives or criteria, determining which physical and biological features are essential for recovery is difficult. After considering these complicating factors, we believe it is essential to the recovery of the species to maintain the existing population on the North Slope and allow for recovery of the greatly depressed population on the Y-K Delta. Therefore, we believe that the following three components are essential for the conservation of the Alaska-breeding population of Steller's eiders:

(1) The North Slope breeding subpopulation and its habitat must be maintained sufficiently to sustain healthy reproduction and allow for potential population growth;

(2) The Y-K Delta subpopulation must be increased in abundance to decrease the Alaska-breeding population's vulnerability to extirpation; and

(3) Molting, wintering, and spring staging habitat in the marine environment must be maintained to ensure adequate survival during the nonbreeding season.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining what areas to propose as critical habitat, we consider those physical and biological habitat features that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to, the following:

Space for individual and population growth, and for normal behavior;

Food, water, air, light, minerals, or other nutritional or physiological requirements;

Cover or shelter;

Sites for breeding, reproduction, or rearing offspring; and, generally

Habitats that are protected from disturbance or are representative of the

historical geographical and ecological distributions of the species.

The primary constituent elements for Steller's eiders vary by season, depending on the habitat occupied. As a result, the primary constituent elements for Steller's eiders are different in proposed terrestrial and marine units; elaboration is provided in the Proposed Critical Habitat section, below.

Proposed Critical Habitat

After reviewing the best scientific and commercial data available, we propose

to designate critical habitat for the Alaska-breeding population of the Steller's eider, including breeding habitat on the North Slope and Y-K Delta, and seven marine units in southwest and southern coastal Alaska where the birds molt, winter, or stage during spring migration. The approximate area of proposed critical habitat by land ownership is shown in Table 1. Lands proposed as critical habitat are under private, State, Native, and Federal ownership. Estimates

reflect the total area within critical habitat unit boundaries, without regard to the presence of primary constituent elements. The area actually proposed as critical habitat is therefore less than that indicated in Table 1. Given the large area being proposed, estimates made for the proposal could differ significantly from estimates in any final designation due to changes in the information available and improved calculation methods.

TABLE 1.—ESTIMATED HECTARES OF LAND AND MARINE WATERS PROPOSED AS CRITICAL HABITAT, WHICH ARE OCCUPIED BY THE STELLER'S EIDER, SUMMARIZED BY PRIVATE, STATE, FEDERAL AND NATIVE GOVERNMENT OWNERSHIP

Location	Federal		State		Native		Other Private		Total
	Hectares	%	Hectares	%	Hectares	%	Hectares	%	
North Slope (land)	3,652,400	89	132,300	3	303,700	7	.....	.....	4,088,400
Y-K Delta (land)	202,500	65	.....	.....	108,600	35	300	<1	311,400
Nunivak Island (marine)	20,500	100	.....	.....	.....	.....	.....	.....	20,500
Kuskokwim Bay (marine) .....	.....	.....	1,285,200	100	.....	.....	.....	.....	1,285,200
N. Side Alaska Peninsula (marine) ..	.....	.....	200,700	100	.....	.....	.....	.....	200,700
Eastern Aleutians (marine)	4,500	5	84,600	95	.....	.....	.....	.....	89,100
S. Side Alaska Peninsula (marine) ..	4,800	1	337,100	99	.....	.....	.....	.....	341,900
Kachemak Bay/Ninilchik (marine) ....	.....	.....	114,200	100	.....	.....	.....	.....	114,200
Kodiak (marine)	27,900	21	106,500	79	.....	.....	.....	.....	134,400
Total	3,912,600	59	2,260,600	34	412,300	6	300	<1	6,585,800

Unit 1: North Slope Nesting Unit

The historical distribution of Steller's eiders on Alaska's North Slope encompasses a broad area, from the Chukchi Sea coast to the Canadian border. The North Slope comprises two major ecological regions—the Arctic Coastal Plain, along the northern edge of the North Slope, and the Arctic Foothills, which form the transition between the coastal plain and the mountains of the Brooks Range to the south. The coastal plain is poorly drained and treeless, and underlain by thick permafrost. Lakes and ponds cover 20–50 percent of the land surface. Another 20 percent is classified as wet or flooded tundra, categories in which water cover varies from 10–50 percent (Ducks Unlimited 1998). These abundant shallow water habitats and their associated aquatic invertebrate fauna are important features of Steller's eider nesting habitat. Aquatic emergent vegetation (*Carex aquatilis* or *Arctophila fulva*) is of particular importance for feeding and escape cover, and comprises approximately 5 percent of the Arctic Coastal Plain (Ducks Unlimited 1998). Relative to the coastal plain, the Arctic Foothills zone is characterized by rolling hills and plateaus, better defined drainage patterns, and fewer lakes and ponds (Gallant *et al.* 1995). Steller's eiders are

rare or absent from the foothills as a breeding species. Comparison of recent and historical data (late 1800s on) suggests that this species may be withdrawing from the eastern portion of the Arctic Coastal Plain, although it may always have been more common to the west (Quakenbush *et al.* in prep.).

In the North Slope nesting unit the primary constituent elements for Steller's eiders are those habitat components that are essential for the primary biological needs of foraging, nesting, rearing of young, roosting, sheltering, and dispersal. The primary constituent elements include: small ponds and shallow water habitats (particularly those with emergent vegetation), moist tundra within 100 m (326 ft) of permanent surface waters including lakes, ponds, and pools, the associated aquatic invertebrate fauna, and adjacent nesting habitats. During the nesting season, small ponds with emergent vegetation provide for foraging and brood-rearing, the aquatic invertebrate prey upon which Steller's eiders depend, and adjacent moist tundra for nest sites. On the breeding grounds in northern Alaska, Steller's eiders feed primarily by dabbling in shallow ponds (Quakenbush *et al.* 1995). Both adult and juvenile Steller's eiders on the breeding grounds forage mostly on aquatic insect larvae and

freshwater crustaceans, including (but probably not limited to) the following taxa: Midges (Chironomidae), craneflies (Tipulidae), caddisflies (Trichoptera), water fleas (Amphipoda), isopods (Isopoda), fairy shrimp (Anostraca), and tadpole shrimp (Notostraca) (Dement'ev and Gladkov 1967; Portenko 1989; Quakenbush *et al.* 1995; M. Myres, *in litt.* 1999).

Steller's eiders generally nest on slightly elevated areas near ponds (Murie 1924; Brandt 1943; Bee 1958; Cramp *et al.* 1977). In the Barrow area, most nests occur on the rims of low-centered polygons, mostly within partially drained lake-basins that contain a mosaic of shallow ponds with emergent water sedges (*C. aquatilis*) and pendant grasses (*A. fulva*) (Service, unpublished data). Most are within 100 m (326 ft) of permanent water (Service, unpublished data). Steller's eiders rear broods in the same habitats used for nesting (Solovieva 1997; Service, unpublished data), usually within 650 m (2,100 ft) of their nest sites. Near Barrow, monitored broods were found using waterbodies with emergent *A. fulva* 80 percent of the time, ponds with emergent *C. aquatilis* 15 percent of the time, and dry tundra between ponds the remaining 5 percent of the time (Service, unpublished data). Broods used *A. fulva* as escape cover from

predators and other disturbances. Broods move to lakes or marine habitats in early September, after the smaller tundra ponds freeze (Service, unpublished data; R.S. Suydam, unpublished data).

The best unbiased representation of Steller's eider's breeding distribution across the North Slope is provided by observations obtained from two broad-scale aerial surveys conducted annually by the Service. One survey is designed to determine numbers and distribution of waterfowl in general and has been conducted in late June/early July each year since 1989. The other survey specifically targets numbers and distribution of spectacled eiders and has been conducted in mid-June each year since 1992. The two surveys differ in area sampled but, in combination, include the best waterfowl breeding habitat over 63,210 km² (24,400 mi²), from the Chukchi Sea coast to the U.S. and Canada border. Only 136 records of Steller's eiders have been obtained over the 11-year survey record (excluding observations of lone females, which are generally not included in aerial waterfowl survey data, and observations made off systematic transects). The low number of records reflects—(1) the scarcity of the species; (2) the low intensity of the surveys, neither of which cover more than 4 percent of the area in any given year; and (3) the presumably large (but unknown) fraction of the birds actually present at the time of the survey but not detected from the air. The aerial survey results show that Steller's eiders currently occur across the western Arctic Coastal Plain, with the vast majority occurring in the northern NPR-A. Within the surveyed area, there is little evidence that density is related to distance from the coast. Aerial survey observations show, however, that a notable concentration occurs within 10 mi of the village of Barrow. Ground surveys conducted in June 1999 over 180 km² (69.5 mi²) surrounding Barrow located approximately 250 Steller's eiders representing 125 to 134 pairs (some Steller's eiders spotted were not in pairs). Although intensive ground surveys have been conducted in a few other areas on the North Slope, the concentrations seen near Barrow have not been found elsewhere.

The proposed North Slope unit extends across the North Slope of Alaska, from the mouth of the Utukok River on the Chukchi Sea coast, to the Colville River delta on the Beaufort Sea coast, encompassing approximately 96 percent of the aerial survey observations (both in terms of locations and numbers of individuals). The boundaries of the

proposed unit were based on the distribution of aerial survey observations, but also the distribution of suitable wetland habitat. All townships containing aerial survey observations were included in the proposed unit, with the exception of observations considered outliers, which are explained below. Intervening townships were also included, even if there were no associated aerial survey observations, provided that they contained a similar density of lakes and wetlands, as indicated on USGS 1:250,000 scale maps. For some of those townships, Steller's eider observations exist from other data sources (*e.g.*, Service, unpublished data; Quakenbush *et al.* in prep.). In any case, the resolution of the data is not sufficient to rule out the existence of undetected locations of concentrated use by nesting eiders, which in aggregate could represent a significant portion of the population. Consistent with the distribution of wetlands noted above, the proposed unit is contained almost entirely within the Arctic Coastal Plain ecoregion or the transition zone between the Arctic Coastal Plain and Arctic Foothills ecoregions, extending into the Foothills zone only at locations where there were actual observations (Gallant *et al.* 1995).

Two records south of Point Lay near the Chukchi Sea coast and three records east of the Colville River were considered outliers because they were disjunct from the other observations. Although Steller's eiders historically occurred east of the Colville River (Quakenbush *et al.* in prep.) and still may be observed occasionally in this region (D. Troy, Troy Ecological Research Associates, *in litt.* 1999), this area currently is peripheral for nesting. There is only one breeding record for Steller's eiders in the Prudhoe Bay area since 1970, despite the most intense ornithological scrutiny of any portion of northern Alaska (D. Troy, pers. comm. 1999; Hohenberger *et al.* 1994; Quakenbush *et al.* in prep.). The decision to exclude likely areas of former occupation east of the Colville River is based on our understanding of current distribution and the assumption that the current breeding range is adequate to support recovery.

The proposed North Slope nesting unit encompasses approximately 40,884 km² (15,785 mi²), 89 percent of which lies within the NPR-A, managed by the Bureau of Land Management. Other major landowners include Native Village and Regional Corporations and the State of Alaska. Excluding NPR-A, minor portions of the area are managed by Federal agencies (including U.S. Department of Defense, Service, and the

Bureau of Land Management).

Excluding Native Corporations, very little land is owned privately.

Nearly the entire listed population currently nests within the proposed boundaries of the proposed North Slope Nesting Unit, thus the survival and recovery of the species is dependent on the habitat within this area. We do not have sufficient information to identify any subset of this area as sufficient to support recovery of the species to the point where it may be removed from the endangered species list. We therefore consider this area to contain the physical and biological features essential to the conservation of the species.

It is difficult to identify obstacles to recovery, because the importance of current threats and the causes of decline are largely unknown. Although it is unclear whether changes in the suitability of breeding habitat contributed to the decline, we can identify factors that would potentially reduce the capacity of the breeding habitat to support recovery. Almost the entire proposed North Slope Nesting Unit (91 percent) is contained within the NPR-A, managed by the Bureau of Land Management. The NPR-A is managed under the authority of the Naval Petroleum Reserves Production Act of 1976, as amended, which encourages oil and gas leasing, while requiring protection of important surface resources and uses (U.S. Department of the Interior 1998). An oil and gas lease sale was conducted in 1999 for the NPR-A's northeast planning area, which overlaps the eastern 40 percent of this proposed unit. Depending on the outcome of exploration and the potential ensuing development, leasing on other portions of the proposed unit may occur. Other existing or potential uses of NPR-A lands include mineral development, subsistence hunting and fishing, and a variety of recreational uses.

Unit 2: Yukon-Kuskokwim Delta Nesting Unit

The Y-K Delta sites at which Steller's eiders were considered common in the mid-1900s were located within 30 km (18 mi) of the coast, between Kokechik Bay and Nelson Island. Published accounts provide little information regarding habitat requirements on the Y-K Delta breeding grounds. Brandt (1943; p. 267) described Steller's eiders near Kokechik Bay "feeding along the margins of the shallow pools, tipping up like Mallards." Nest sites were found near ponds, and females flushed from nests were reported to use ponds as escape cover (Murie 1924, Brandt 1943).

Steller's eider nest sites have been located in habitat similar to that which is used by spectacled eiders on the Y-K Delta (Conover 1924, Flint and Herzog 1999). This zone of high-density nesting by eiders and other waterfowl is identified as the "vegetated intertidal zone" (King and Dau 1981, Kertell 1991) and is described as the area between the outer edge of vascular plant cover and the line of driftwood cast up by high tides, generally within 40 km (25 mi) of the coast. The drift line results from occasional spring and fall storm surges, which inundate the tundra well beyond the normal high tide line. Vegetation in this zone is predominately sedge/grass marsh.

Primary constituent elements for the Y-K Delta nesting unit are assumed to be similar to those described for the North Slope: small ponds and shallow water habitats (particularly those with emergent vegetation), moist tundra within 100 m (326 ft) of permanent surface waters including lakes, ponds, and pools, the associated aquatic invertebrate fauna, and adjacent nesting habitats.

The proposed Y-K Delta Nesting Unit covers approximately 3,114 km² (1,202 mi²) on the outer coastal zone of the central Y-K Delta. The proposed unit is located within 30 km (19 mi) of the coast, bounded by Kokechik Bay and the Askinuk Mountains to the north, and extending south to include Kigigak Island and the north end of Nelson Island. This area represents what we believe likely to be the current range of Steller's eider on the Y-K Delta. It encompasses the core concentration of historical (pre-1970s) occupancy in western Alaska (Kertell 1991; Quakenbush *et al.* in prep.), as well as nests located from 1991–1998 (Flint and Herzog 1999). Although Kertell (1991) suggested that Steller's eiders were extirpated as a breeding species from the Y-K Delta, recent breeding records suggest continued occupancy, at a density below that which is reliably detectable given the level of survey effort (ground or air) of the last 2 decades (Flint and Herzog 1999). We used the locations of historical nesting sites as a partial basis for determining boundaries of the proposed unit, including all central Y-K Delta townships that contained breeding sites recorded in the 1900s. We expanded beyond these townships because it is likely that recent nest sites have gone undetected, given the rarity of the species and the difficulty of detection. Therefore, we also included nearby townships that contain comparable wetland habitat and a high density of spectacled eiders, which are known to

utilize the same habitat for nesting on the Y-K Delta (Conover 1924; Kertell 1991; Flint and Herzog 1999). In summary, the proposed unit contains sites where historical and current breeding records exist, and other areas of suitable habitat in which we believe that Steller's eiders persist.

We excluded St. Lawrence Island and most of Nelson Island because breeding status is in doubt in these locations. Breeding has been recorded on Saint Lawrence Island in 1881 and in 1954, and Steller's eiders have been seen there in summer in recent years (Fay and Cade 1959, S. Stephensen, Service, pers. comm., in Quakenbush *et al.* in prep.), but documented historical use is not comparable to the Y-K Delta, and there are no recent breeding records. On the basis of reports provided by local Natives in 1924, Murie and Scheffer (1959) stated that Steller's eiders bred at Nelson Island, but no specific locations were provided. There is likely suitable habitat on both the north and south end of Nelson Island (the central region is upland); however, the northern portion is more contiguous with other historically used habitat, and pairs have been seen on neighboring Kigigak Island in most recent years (Quakenbush *et al.* in prep.). Therefore, we consider the northern end to be part of the present range of the species and propose to designate it as critical habitat. We also exclude areas not known to have been in use for over a century, including the Alaska Peninsula, Nunivak Island, inland Y-K Delta, Saint Michael (northern Y-K Delta), and Point Clarence on the western Seward Peninsula (Quakenbush *et al.* in prep.). We may propose revisions to these boundaries in the future if we obtain new information on the suitability of habitat or the presence of Steller's eiders.

Definitive population trend information was lacking at the time this species was listed (62 FR 31748), but population decline was inferred from an apparent contraction of range, particularly in western Alaska. The recovery plan, including recovery goals, is still in preparation. It is reasonable, however, to predict that re-establishment of a viable breeding population on the Y-K Delta will be an element of the plan, given that the decision to list the species was based, to a large extent, on its near-disappearance from the Y-K Delta. Therefore, we consider the habitat contained within this unit essential to the conservation of the species.

Approximately 65 percent of the proposed Y-K Delta Nesting Unit is located within the Yukon Delta National

Wildlife Refuge, although a portion (up to 10 percent) is subject to selection by Native Village or Regional Corporations, under the terms of the Alaska Native Claims Settlement Act of 1971. The remainder of the proposed unit (approximately 35 percent) has been conveyed to Native Village or Regional Corporations. Waterfowl management is a high priority for the Yukon Delta National Wildlife Refuge, and outreach efforts highlight the conservation issues for this species to the Native community.

Marine Units

Steller's eiders occur in marine habitats except during the breeding season. In fall, they congregate primarily in lagoons, bays, and estuaries on the north side of the Alaska Peninsula to molt. Densities can be extremely high; tens of thousands may concentrate in a few square miles in Izembek and Nelson lagoons during the peak of molt in August and September, although use of these areas can vary considerably among years (Petersen 1981). After molt, many disperse to the Aleutian Islands, the south side of the Alaska Peninsula, Kodiak Island, and as far east as Kachemak Bay, although thousands may remain in the lagoons in which they molt unless freezing conditions force them to move to warmer or more protected areas (Metzner 1993). In March or April, Steller's eiders begin to gradually move northward, again congregating on the north side of the Alaska Peninsula and in Bristol and Kuskokwim bays. Nearly 140,000 have been counted in this region during spring migration (Larned *et al.* 1994).

Important molting areas such as Izembek and Nelson lagoons have been repeatedly surveyed for waterfowl in recent decades, but waterfowl surveys in other nearshore marine areas in southwest and southcoastal Alaska have been much more sporadic. Some areas have rarely been surveyed, while others, such as portions of the Kodiak Archipelago's northwest side, have never been surveyed specifically for seaducks. Furthermore, the indication that winter distribution varies considerably in response to changing weather and sea ice conditions suggests that an area must be surveyed several times in different years before its importance to Steller's eiders is determined. Failure to detect Steller's eiders during one or a few surveys is not sufficient to rule out use at other times. Thus, we assume that sites that share similar habitat to that of sites with documented use by Steller's eiders, and for which we cannot rule out based on other current information, are within

the current range of Steller's eiders. Our proposal includes these areas as we believe molting, wintering, and spring staging habitat in marine environments must be maintained to ensure adequate survival during the nonbreeding season.

Most of what is known of the marine ecology of Steller's eider is derived from studies in the shallow bays and lagoons along the Alaska Peninsula. In Izembek and Kinzarof Lagoons, Steller's eiders feed on fauna associated with the extensive eelgrass (*Zostera marina*) beds, eating a variety of crustaceans, bivalves, gastropods, and polychaete worms (Metzner 1993). In Nelson Lagoon, Steller's eiders feed by diving and head dipping in waters less than 6 m (20 ft) deep for invertebrates, with blue mussels (*Mytilus edulis*) and amphipods (*Anisogammarus pugettensis*) being particularly important (Petersen 1980, 1981). The importance of these shallow bays and lagoons to Steller's eiders cannot be overemphasized. They are used by tens of thousands or more during molt, winter, and spring staging, and over a thousand subadults may remain in Nelson Lagoon through the summer in some years (Petersen 1980, 1981; Metzner 1993). These areas must be highly productive to support the huge flocks of Steller's eiders. Petersen (1981) estimated that Steller's eiders may consume 7.3 metric tons (8 tons) of blue mussels per day during molt in Nelson Lagoon.

In addition to these important shallow bays and lagoons, Steller's eiders also winter in several deeper bays and along a massive expanse of open coastline. Much less is known of their ecology in these habitats. Metzner (1993) found that the number of Steller's eiders in Cold Bay on the south side of the Alaska Peninsula increased as waters in Izembek Lagoon froze and the number wintering there decreased. In the deeper waters of Cold Bay, where food-rich eelgrass beds were absent, Steller's eiders foraged by diving close to shore for sessile invertebrates on and in the seafloor and more mobile invertebrates in the water column (Metzner 1993). The propensity for Steller's eiders to use shallow waters and stay nearshore in deeper areas is supported by C. Dau (pers. comm. 1999), who notes that Steller's eiders generally stay within "a quarter of a mile" of shore and in waters less than 10 m (30 ft) deep. Results from aerial survey transects arrayed parallel to, and at various distances from, the north shore of the Alaska Peninsula are consistent with Dau's (1999) observation. Of the four transect lines surveyed throughout the winter, Steller's eiders were seen only on the

transect within 400 m (¼ mi) of shore (Troy and Johnson 1987). Beyond these few observations, the habitat requirements of Steller's eiders over much of their vast winter range are unknown.

Based on this information, we identify the primary constituent elements for Steller's eiders in marine habitat as marine waters up to 10 m (30 ft) deep and the underlying substrate, the associated invertebrate fauna in the water column and in and on the underlying substrate, and, where present, eelgrass beds and associated flora and fauna.

We do not propose critical habitat for several marine areas in which Steller's eiders occur. We excluded wintering areas for which recent replicated surveys indicated that Steller's eiders are of rare and/or irregular occurrence, including the Pribilof Islands (A. Sows, Service, pers. comm. 1999), south side of the Kenai Peninsula (U.S. Fish and Wildlife Service 1998; R. Day, ABR Inc., *in litt.* 1999), and Prince William Sound (Service 1998; Lance *et al.* 1999; R. Day *in litt.* 1999). We also excluded the central and western Aleutian islands, wintering areas for which a consistent historical record indicates scarcity and/or irregular use (Dau 1999b).

In proposing Kuskokwim Bay, and other Bristol Bay areas known to be used for spring staging, we intend to include portions of the migration corridors known to receive sustained use by large numbers of Steller's eiders. Other than spring staging areas, migration routes are ill-defined, and migration may be dispersed over large sections of the Bering and Chukchi Seas, with little sustained use of any given section. Therefore, we do not propose units for general migration corridors.

We do not propose critical habitat at sites that are used exclusively in the summer by nonbreeding birds. For example, subadults and nonbreeding males have been observed on St. Lawrence Island in summer (Fay and Cade 1959, Fay 1961), however, information on this life-history stage is too limited to place observations such as these into a general context that would permit description of features essential to the conservation of Steller's eiders.

We propose marine waters within the following areas as critical habitat. See the accompanying maps for further clarification of proposed unit boundaries.

Unit 3: Nunivak Island

The nearshore areas around this island are used by scattered flocks of hundreds of Steller's eiders during molt (Dau 1999a) and by thousands for

staging prior to spring migration (Larned *et al.* 1994; Larned 1998). Large numbers have also been noted passing Cape Etolin on the northeast side of the island during early August (Swarth 1934; Dau 1999a). It is also possible that Steller's eiders may mix with large flocks of common and king eiders (*Somateria mollissima* and *Somateria spectabilis*, respectively) in openings in sea ice along the south side of the island during winter (Dau 1999b). This unit includes the marine waters around Nunivak to a distance of 400 m (¼ mi) offshore, which includes an area of approximately 205 km² (79 mi²) and approximately 600 km (380 mi) of coastline.

Unit 4: Kuskokwim Bay

Aerial surveys during spring migration indicate that virtually all Steller's eiders that winter in Alaska move from the Alaska Peninsula, cross Bristol Bay, and stage in Kuskokwim Bay for days or weeks before resuming their northward migration to their breeding grounds (Petersen and Sigman 1977; Larned *et al.* 1994; Larned 1998; W. Larned, pers. comm. 1999). During this time, flocks of hundreds or thousands are seen along the southeast coast of Kuskokwim Bay from Cape Peirce to Jacksmith Bay and west of the mouth of the Kuskokwim River from Kwigillingok to Kinak Bay (Larned *et al.* 1994; Larned 1998; W. Larned, pers. comm. 1999). Steller's eiders also concentrate in protected bays along the coast including Nanvak, Chagvan, and Goodnews Bays (W. Larned, pers. comm. 1999). Hundreds to thousands have also been observed in the region from Cape Avinof and Pingurbek Island south to Cape Peirce during molt and autumn migration (Dau 1987; Dick and Dick 1971; Petersen and Sigman 1977; Petersen *et al.* 1991), but it is the huge concentrations in spring migration that identify the importance of Kuskokwim Bay to Steller's eiders.

We propose to designate marine waters on the north side of Kuskokwim Bay (from the mouth of the Kolavinarak River to the village of Kwigillingok), to a distance of 40 km (25 mi) offshore. We also propose marine waters on the south side of Kuskokwim Bay (from the mouth of the Kanektok River to Cape Peirce), to a distance of 40 km (25 mi) offshore. In addition, marine waters from Cape Peirce to Tongue Point are proposed, to a distance of 0.8 km (½ mile). The proposed unit includes an area of approximately 12,852 km² (4,962 mi²), and approximately 700 km (450 mi) of shoreline.

Unit 5: North Side of the Alaska Peninsula

A number of bays, lagoons, and nearshore areas between Egegik Bay and Bechevin Bay on the north side of the Alaska Peninsula are used by large numbers of Steller's eiders during molt, winter, or spring staging. Observers surveying this region have recorded hundreds to over a hundred thousand birds (Arneson 1980; Boden 1994; Larned *et al.* 1994; Larned 1998; Dau 1999). Some areas, such as Izembek Lagoon and the Nelson Lagoon/Herendeen Bay/Port Moller complex, are particularly important, and may harbor tens of thousands during molt and winter (Jones 1965; Petersen 1981; Metzner 1993; Laubhan and Metzner 1999). Port Heiden is used by thousands during autumn molt (Arneson 1980) and again during spring staging (Larned *et al.* 1994), and may support Steller's eiders in winter until the shallow waters freeze (Dau 1999b). Besides those previously mentioned, other areas on the north side of the Alaska Peninsula have been identified as supporting significant numbers of Steller's eiders during spring staging, such as Egegik and Ugashik Bays, Cinder River estuary, Port Heiden, Seal Islands, Cape Seniavin, and Bechevin Bay where hundreds to thousands have been observed in March (Boden 1994) and April and May (Arneson 1980; Larned *et al.* 1994; Larned 1998). The Cinder River estuary has been reported to be used by hundreds to low thousands of Steller's eiders during molt (Wilk *et al.* 1986), as has Port Heiden (Arneson 1980), Seal Islands (Arneson 1980; Dau 1999a), and Bechevin Bay (Arneson 1980). Based on aerial surveys and other available data, the following bays, lagoons, and shoal areas have been identified as important habitat for Steller's eiders and are proposed for designation as critical habitat, in their entirety—Egegik Bay, Ugashik Bay, Cinder River Estuary, Port Heiden, Seal Islands, Cape Seniavin, Nelson Lagoon, Herendeen Bay, Port Moller, Izembek Lagoon, and Bechevin Bay. This proposed unit includes an area of approximately 2,007 km² (775 mi²) and 1,050 km (650 mi) of coastline.

Unit 6: Eastern Aleutians

This is probably a major concentration area for wintering Steller's eiders, particularly when bays and lagoons on the Alaska Peninsula freeze (Metzner 1993; Dau 1999b; Laubhan and Metzner 1999). Although survey coverage has been sporadic and is incomplete, thousands have been seen around Unimak Island in late

winter (Arneson 1980; Larned *et al.* 1994); hundreds are seen around Unalaska Island during the National Audubon Society's annual Christmas Bird Counts (summarized in Service 1998); and waterbird surveys in Dutch Harbor recorded Steller's eiders as the most abundant species observed in 1995 (Fairchild and Heer 1997). Over 1,400 Steller's eiders were recorded on winter (February-March) boat surveys of the Krenitzin Islands (Herter 1991). In an aerial survey of the eastern Aleutians from Unimak Island through Samalga Island conducted only in mid-winter, up to low hundreds of Steller's eiders were observed at each of five locations throughout the study area, with greatest densities around Samalga Island (Arneson 1980). We propose to designate all marine waters within 400 m (¼ mi) of mean high water from Unimak Island, west to Samalga Pass, to include Samalga, Umnak, Unalaska and Unimak Islands, and all other associated islands, islets, offshore rocks, reefs, and spires. The proposed unit includes an area of approximately 891 km² (344 mi²), and 2,400 km (1,500 mi) of coastline.

Unit 7: South Side of the Alaska Peninsula

Information on Steller's eiders on the south side of the Alaska Peninsula is limited compared to that on the north side. There are no reports of molting Steller's eiders anywhere along the south side of the Alaska Peninsula between False Pass and lower Cook Inlet, although wintering birds have been observed in scattered locations throughout this huge area. Thousands of wintering Steller's eiders have been reported during aerial surveys in the Sanak Islands (Dau and Chase 1995) and between Cold Bay and Puale Bay (Boden 1994). After completion of molt, Steller's eiders increased in Cold Bay and Kinzarof Lagoon concurrent with a decline in numbers in Izembek Lagoon (Laubhan and Metzner 1999; Metzner 1993). When the birds are excluded from protected waters on the north side of the Alaska Peninsula by encroaching ice, they may be exposed to harsher weather conditions, forcing them into less preferred feeding areas on the south side of the Alaska Peninsula and up to lower Cook Inlet. Aerial and boat surveys of marine birds and mammals conducted in lower Cook Inlet in winter reported hundreds of Steller's eiders in nearshore areas of Kamishak Bay up to the Iniskin Peninsula (Arneson 1980; Agler *et al.* 1995).

We propose to designate all marine waters within 400 m (¼ mi) of mean high water from Isanotski Strait (at False

Pass) east to the lower end of west Cook Inlet, as far north as Kamishak Bay. This applies to the Shumagin and Semidi Islands, Chirikof Island, and all other associated islands, islets, offshore rocks, reefs, and spires. We also include waters within 8 km (5 mi) of the south side, and 1.6 km (1 mi) of the north side, of the Sanak Islands and within 1.6 km (1 mi) of the mainland shore of Kamishak Bay. We include the following areas in their entirety, including waters beyond 400 m (¼ mi) offshore—Morzhovoi Bay (northern portion only), Cold Bay, Ivanof Bay, Chignik Lagoon, and Wide Bay. This unit includes an area of approximately 3,419 km² (1,320 mi²), and 5,300 km (3,300 mi) of coastline.

Unit 8: Kachemak Bay/Ninilchik

Available information indicates that Steller's eiders consistently occur in Kachemak Bay in winter. Tens or hundreds frequently occur near Homer and Homer Spit (Christmas Bird Count in Service 1998; Russ Oates, Service, *in litt.* 1997; Agler *et al.* 1998), and flocks of tens were found along transects that sampled offshore waters east of Homer (Rosenberg and Petrula 1998). Hundreds have been observed on the south side of the Bay, particularly along shore between China Poot Bay and Point Bede (Agler *et al.* 1995). Hundreds also apparently winter along the shore south of Ninilchik, where 650 were observed in January 1997 (Russ Oates, *in litt.* 1997).

We propose to designate all marine waters of Kachemak Bay east of a line extending from Point Bede (west of English Bay and Port Graham) north to Anchor Point. In addition, we propose to designate all marine waters within 1.6 km (1 mi) of the mean high water line, from Anchor Point north to the mouth of Deep Creek (near Ninilchik). This unit includes an area of approximately 1,142 km² (441 mi²), and 450 km (300 mi) of coastline.

Unit 9: Kodiak

Steller's eiders are considered a common winter resident in the Kodiak Archipelago. Aerial surveys in nearshore areas of eastern and southern Kodiak Island and in the Trinity Islands located 2,892 Steller's eiders in 1992, 4,032 in 1993, and 5,349 in 1994 (Larned and Zwiefelhofer 1995). Flocks of hundreds were seen, particularly in lagoons and eelgrass beds. In surveys around Sitkalidak, Kodiak, and southern Afognak Islands, Steller's eiders were reported to be present in estimates of low thousands (Forsell and Gould 1980). Steller's eiders are also regularly recorded during annual winter boat surveys in the archipelago (D.

Zwiefelhofer, *in litt.* 1999), and hundreds to low thousands are counted during the Christmas Bird Count in Kodiak (Service 1998). Because of the consistent and extensive use of the areas that have been surveyed in the Kodiak area, we propose to designate all marine waters within 400 m (¼ mi) of Kodiak and Afognak Islands, and all other associated islands, islets, offshore rocks, reefs, and spires. This parcel includes an area of approximately 1,344 km² (519 mi²) and 3,900 km (2,450 mi) of coastline.

Although this proposal is based on the best available information, we recognize that the information on Steller's eiders is incomplete. In particular, better information on Steller's eider distribution and the threats facing the species would improve our ability to identify those areas essential for its conservation. Our ability to identify essential areas is also likely to improve as recovery objectives and criteria are established. As new information becomes available and the recovery planning process develops, we may reevaluate critical habitat designations and propose to add, delete, or modify existing critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing promotes conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act and regulations at 50 CFR 402.10 require Federal agencies to confer with the Service on any action that is likely to result in destruction or adverse modification of proposed critical

habitat. These conferences, which consist of informal discussions, are intended to assist responsible agencies and the applicant in identifying and resolving potential conflicts.

If this proposal culminates in the designation of critical habitat, section 7(a)(2) of the Act will require Federal agencies to enter into consultation with us on actions that may affect listed species or destroy or adversely modify critical habitat. Thus, activities on Federal lands that may affect the Steller's eider or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, or a section 402 permit from the Environmental Protection Agency, will also be subject to the section 7 consultation process. Federal actions not affecting the species or its critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of the species is appreciably diminished. We note that such activities are also almost certain to jeopardize the species (see discussion in Critical Habitat section, above). Activities that have the potential to destroy or adversely modify critical habitat for Steller's eiders include, but are not limited to:

- (1) Draining, filling, or contaminating wetlands and associated surface waters;
- (2) Filling, dredging, or pipeline construction in marine waters;
- (3) Commercial fisheries that harvest or damage the benthic or planktonic flora or fauna in marine waters;
- (4) Spilling or discharging petroleum or other hazardous substances; or
- (5) Discharge of sediment or toxic substances into freshwater systems that drain into adjacent nearshore marine waters.

Previous Consultations

Since Steller's eiders were listed in 1997, we have consulted with several

Federal agencies on a variety of actions to evaluate impacts to the species. In most cases, our consultations with other Federal agencies have determined that the proposed activities would not adversely affect Steller's eiders. One or both of the following reasons precipitated these findings—(1) the proposed activity would occur during seasons when Steller's eiders are absent and would have no permanent impact to habitat (e.g., winter seismic work); and (2) the proposed activity affected a minimal amount of habitat in an area where Steller's eiders occur at extremely low density. In three exceptions, the proposed action would occur in an area where Steller's eiders concentrate or would have affected a considerable amount of habitat. In each of these cases, we determined that the proposed action may adversely affect the species, which triggered a more involved, formal consultation. A brief summary of these consultations follows:

(1) NPR—A Northeast Planning Area Integrated Activity Plan. A management plan for this 4.6 million-acre area was developed that allowed for oil and gas leasing but also addressed recreational activities, aircraft use, hazardous- and solid-material removal and remediation, and seismic activities. Steller's eiders nest in this region and may be affected by disturbance or habitat alteration.

(2) Community expansion in Barrow. The North Slope Borough proposed to expand an existing housing subdivision into an area historically used by nesting Steller's eiders.

(3) Northstar Development project. This consultation addressed the possible effects of an offshore oil development project in the Beaufort Sea and adjacent terrestrial area. Steller's eiders occur at extremely low density in the project area, so direct, local effects were thought to be unlikely. The primary concern arose from possible marine oil spills from a subsea pipeline that could be transported by wind and currents westward to areas where Steller's eiders are more likely to occur.

In each of these three consultations, we determined that the project was not likely to jeopardize the continued existence of Steller's eiders. Following that determination, our biological opinions provided mandatory reasonable and prudent measures designed to minimize the effects of the proposed projects on the species. In each case, our evaluations addressed effects of habitat alteration on Steller's eiders.

TABLE 2. ACTIVITIES POTENTIALLY AFFECTED BY STELLER'S EIDER LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities involving a federal action potentially affected by species listing only ¹	Additional activities involving a federal action potentially affected by critical habitat designation ²
Federal Activities Potentially Affected ³	Activities that the Federal Government carries out, such as scientific research, land surveys, law enforcement, oil spill response, resource management, and construction/expansion of physical facilities.	None.
Private Activities Potentially Affected ⁴	Activities that also require a Federal action (permit, authorization, or funding), such as scientific research, commercial fishing, sport and subsistence hunting, shipping and transport of fuel oil and gasoline to villages, and village maintenance, construction and expansion.	None.

¹ This column represents impacts of the final rule listing the Steller's eider (June 11, 1997) (62 FR 31748) under the Endangered Species Act.

² This column represents the impacts of the critical habitat designation above and beyond those impacts resulting from listing the species.

³ Activities initiated by a Federal agency.

⁴ Activities initiated by a private entity that may need Federal authorization or funding.

Regulations at 50 CFR 402.16 require Federal agencies to reinstitute consultation on previously reviewed actions in instances where critical habitat is designated subsequent to consultation. Consequently, some Federal agencies may request conferencing with us on actions for which formal consultation has been completed, in anticipation of the need to reinstitute consultation if this proposal becomes finalized.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, have inquiries about prohibitions and permits, or would like copies of the regulations on listed wildlife, contact the Endangered Species Branch, Northern Alaska Ecological Services (see **ADDRESSES** section) (telephone 907/456-0203, facsimile 907/456-0208).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. Although we could not identify any incremental effects of this proposed critical habitat designation above those impacts of listing, we will conduct an economic analysis to further evaluate this finding. We will conduct the economic analysis for this proposal prior to a final determination. When the draft economic

analysis is completed, we will announce its availability with a notice in the **Federal Register**, and we will reopen the comment period for 30 days at that time to accept comments on the economic analysis or further comment on the proposed rule.

Public Comments Solicited

We intend that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any area should or should not be determined to be critical habitat as provided by section 4 of the Act;

(2) Specific information on the abundance and distribution of Steller's eiders and their habitat;

(3) What areas are essential for the conservation of Steller's eiders and may require special management protection or consideration;

(4) Current or planned activities in proposed critical habitat units and their possible impacts on proposed critical habitat; and

(5) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat.

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with

the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the "Supplementary Information" section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In certain circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. The peer reviewers will be invited to comment during the public comment period on the proposal and our interpretation of the available information in regard to critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. We intend to schedule three public hearings on this proposal. We will announce the dates, times, and places of those hearings in local newspapers at least 15 days prior to the first hearing.

Required Determinations

1. Regulatory Planning and Review

This document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866.

a. This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The Steller's eider was listed as a threatened species in 1997. Between the Fiscal Years 1997–2000, we have conducted 141 section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the Steller's eider. The areas proposed for critical habitat are currently occupied by the Steller's eider. Under the Endangered Species Act, critical habitat may not be adversely modified by a Federal agency action; the Act does not impose any restrictions on non-Federal entities unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency. Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" under Act. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning "take" of the species).

b. This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Steller's eider since the listing in 1997. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist because all proposed critical habitat is occupied. Because of the potential for impacts on other Federal agency actions, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above, we do not anticipate that the adverse modification prohibition (from critical habitat designations) will have any incremental effects because all proposed critical habitat is occupied.

d. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

2. Regulatory Flexibility Act

In the economic analysis, we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed in section 1 above, this rule is not expected to result in any restrictions in addition to those currently in existence. As indicated in Table 1 above (see Proposed Critical Habitat section), we have proposed land and marine waters that are occupied by the Steller's eider. Within these areas, activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the Steller's eider is appreciably reduced. We note that such activities are also likely to jeopardize the continued existence of the species. Such activities that have the potential to destroy or adversely modify critical habitat for Steller's eiders include, but are not limited to: (1) Draining, filling, or contaminating wetlands and associated surface waters; (2) Filling, dredging, or pipeline construction in marine waters; (3) Commercial fisheries that harvest or damage the benthic or planktonic flora or fauna in marine waters; (4) Spilling or discharging petroleum or other hazardous

substances; or (5) Discharge of sediment or toxic substances into freshwater systems that drain into adjacent nearshore marine waters. Many of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed in section 1 above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities. For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule has no additional restrictions (see Table 2 in the Previous Consultations section above).

3. Small Business Regulatory Enforcement Fairness Act

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of \$100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises

4. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs using Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed in section 1, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated.

b. This rule will not produce a Federal mandate of \$100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

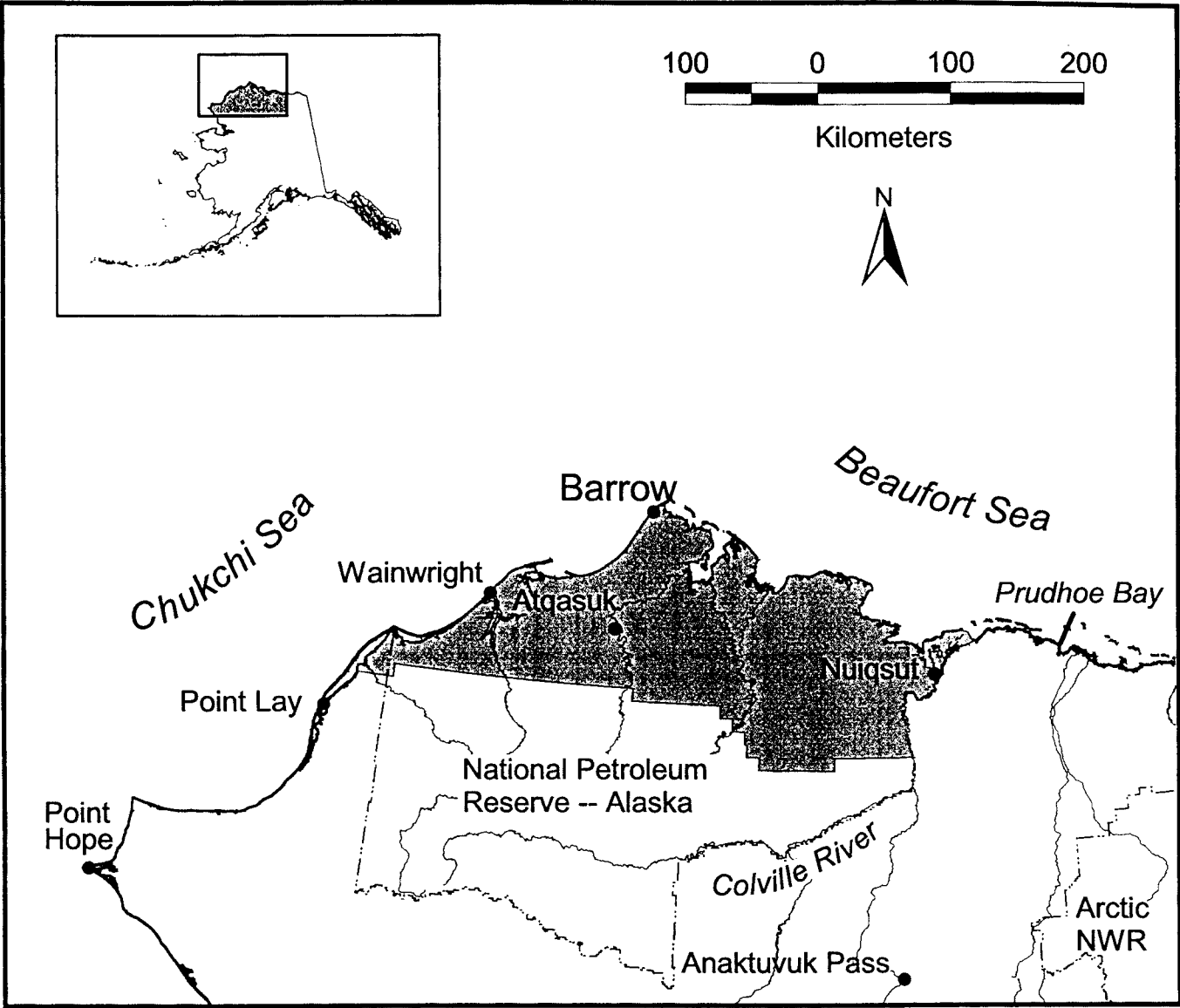
Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
BIRDS							

Species		Historic range	Vertebrate popu- lation where endan- gered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Eider, Steller's	<i>Polysticta stelleri</i>	USA (AK); Russia, winters to Scandinavia.	U.S.A. (AK breeding population only).	T	616	17.95 (b) ..	NA
*	*	*	*	*	*		*

3. In § 17.95 add critical habitat for the Steller's eider (*Polysticta stelleri*) under paragraph (b) in the same alphabetical order as this species occurs in § 17.11 (h) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.
* * * * *
(b) *Birds.*
* * * * *

STELLER'S EIDER (*Polysticta stelleri*)
1. Critical habitat units are depicted for the North Slope, Yukon-Kuskokwim Delta, and southwest and southcoastal Alaska, on the maps below. The maps are for reference only; the areas in critical habitat are legally described below.
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2. Within these areas, the primary constituent elements are those habitat components that are essential for the primary biological needs of feeding, nesting, brood rearing, roosting, molting, and wintering. In terrestrial critical habitat (North Slope and

Yukon-Kuskokwim Delta Units), the primary constituent elements are small ponds and shallow water habitats (particularly those with emergent vegetation), moist tundra within 100 meters (326 ft) of permanent surface waters including lakes, ponds, and pools, the associated aquatic invertebrate fauna, and adjacent nesting habitats. In marine critical habitat (all other units), the primary constituent elements include the marine waters up to 10 m (30 ft) deep and the underlying substrate, the associated invertebrate fauna in the water column and in and on the underlying substrate, and, where present, eelgrass beds and their associated flora and fauna.

3. Critical habitat does not include existing human structures.

Unit 1. North Slope Nesting Unit

All Umiat Meridian, Alaska

Beginning at a point of land on the line of mean high tide of the Chukchi Sea known as Icy Cape at approximate Latitude 70° 19' 50" North, Longitude 161° 53' 00" West, within Township 11 North, Range 39 West, Umiat Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE in a southwesterly direction with the line of mean high tide along the ocean side of the barrier islands and sand spits approximately 30 miles to the meander corner for the line dividing Townships 7 and 8 North, Range 43 West;

THENCE east with the line dividing Townships 7 and 8 North approximately 22 miles to the corner common to Townships 7 and 8 North, Ranges 39 and 40 West;

THENCE north with the line dividing Ranges 39 and 40 West approximately 6 miles to the line dividing Townships 8 and 9 North;

THENCE east with the line dividing Townships 8 and 9 North approximately 112 miles to the line dividing Township 8 North, Ranges 20 and 21 West;

THENCE south with the line dividing Ranges 20 and 21 West approximately 6 miles to the corner common to Townships 7 and 8 North, Ranges 20 and 21 West;

THENCE east with the line dividing Townships 7 and 8 North approximately 42 miles to the corner common to Townships 7 and 8 North, Ranges 13 and 14 West;

THENCE south with the line dividing Ranges 13 and 14 West approximately 6 miles to the corner common to Townships 6 and 7 North, Ranges 13 and 14 West;

THENCE east with the line dividing Townships 6 and 7 North approximately 6 miles to the corner common to Townships 6 and 7 North, Ranges 12 and 13 West;

THENCE south with the line dividing Ranges 12 and 13 West approximately 6 miles to the corner common to Townships 5 and 6 North, Ranges 12 and 13 West;

THENCE east with the line dividing Townships 5 and 6 North approximately 6 miles to the corner common to Townships 5 and 6 North, Ranges 11 and 12 West;

THENCE south with the line dividing Ranges 11 and 12 West approximately 6 miles to the line dividing Townships 4 and 5 North;

THENCE east with the line dividing Townships 4 and 5 North approximately 1

mile to the line dividing Township 4 North, Ranges 11 and 12 West;

THENCE south with the line dividing Ranges 11 and 12 West approximately 6 miles to the corner common to Townships 3 and 4 North, Ranges 11 and 12 West;

THENCE east with the line dividing Townships 3 and 4 North approximately 6 miles to the corner common to Townships 3 and 4 North, Ranges 10 and 11 West;

THENCE south with the line dividing Ranges 10 and 11 West approximately 6 miles to the corner common to Townships 2 and 3 North, Ranges 10 and 11 West;

THENCE east with the line dividing Townships 2 and 3 North approximately 36 miles to the corner common to Townships 2 and 3 North, Ranges 4 and 5 West;

THENCE north with the line dividing Ranges 4 and 5 West approximately 6 miles to the corner common to Townships 3 and 4 North, Ranges 4 and 5 West;

THENCE east with the line dividing Townships 3 and 4 North approximately 37 miles to the line of mean high water on the eastern (right) bank of the Colville River within Section 31 of Township 4 North, Range 3 East;

THENCE in a north and northeasterly direction downstream with the line of mean high water on the eastern (right) bank of the Colville River, following the eastern banks of the easternmost sloughs approximately 100 miles along the line of mean high tide of the Arctic Ocean to the meander corner common to Section 36 of Township 13 North, Range 7 East and Section 31 of Township 13 North, Range 8 East;

THENCE in a northwesterly, westerly, and southwesterly direction with the outer perimeter of the Colville River Delta at the line of mean high tide of the Arctic Ocean, including all islands and bars, approximately 30 miles to the boundary of the National Petroleum Reserve-Alaska within Section 32 of Township 13 North, Range 4 East;

THENCE in a northwesterly and southwesterly direction with the highest highwater mark of the Arctic Ocean and the Chukchi Sea, common with the boundary of the National Petroleum Reserve-Alaska as withdrawn by Executive Order 3797-A on February 27, 1923, approximately 400 miles to Icy Cape within Township 11 North, Range 39 West, Umiat Meridian, Alaska, the TRUE POINT OF BEGINNING.

Unit 2. Yukon-Kuskokwim Nesting Unit

All Seward Meridian

Beginning at the U.S. Coast and Geodetic Survey monument "Kokechik South Base" at Latitude 61°38'13.11" North, Longitude 166°10'16.12" West (NAD 83), within Section 21 of Township 18 North, Range 93 West, Seward Meridian, Alaska, the TRUE POINT OF BEGINNING of the lands to be described.

THENCE west approximately 150 feet to the line of mean high tide of the Bering Sea;

THENCE southerly and southeasterly with the line of mean high tide of the Bering Sea, common with the boundary of the Yukon Delta and Alaska Maritime National Wildlife Refuges as established by the Alaska National Interest Lands Conservation Act (Public Law 96-487) on December 2, 1980, to the meander corner common to Sections 10 and 11 of Township 16 North, Range 94 West;

THENCE southeasterly with said refuge boundaries, closing the mouth of Hooper Bay to include all islands within Hooper Bay, approximately 7¼ miles to the meander corner common to Sections 2 and 3 of Township 15 North, Range 93 West;

THENCE continuing southeasterly with said refuge boundaries, closing the mouths of all inlets, rivers, and straits, along the line of mean high tide of the Bering Sea to the mouth of the Kashunuk River at the northern meander corner common to Sections 28 and 29 of Township 14 North, Range 91 West;

THENCE southerly with said refuge boundaries approximately 4,200 feet to the south bank of the mouth of the Kashunuk River at the southern meander corner common to Sections 28 and 29 of Township 14 North, Range 91 West;

THENCE continuing southerly with said refuge boundaries along the line of mean high tide of the Bering Sea approximately 20 miles to the easternmost point of a headland at the west side of Hazen Bay within Section 1 of Township 11 North, Range 91 West;

THENCE continuing with said refuge boundaries on an approximate forward bearing of South 38° East approximately 8 miles across the mouth of Hazen Bay to a point on the headland at approximate Latitude 60°59'00" North, Longitude 165°12'00" West, within Section 2 of Township 10 North, Range 90 West;

THENCE continuing with said refuge boundaries southerly and southeasterly along the line of mean high tide of the Bering Sea approximately 8 miles to a point on the Naskonat Peninsula at the meander corner common to Sections 2 and 3 of Township 9 North, Range 89 West;

THENCE continuing with said refuge boundaries on an approximate forward bearing of South 21° West approximately 3½ miles to the most northerly tip of Nunivachak Island within Section 21 of Township 9 North, Range 89 West;

THENCE continuing with said refuge boundaries southwesterly along the line of mean high tide of Hazen Bay of the Bering Sea on the seaward side of Nunivachak Island approximately ½ mile to the most southerly tip of Nunivachak Island within Section 21 of Township 9 North, Range 89 West;

THENCE continuing with said refuge boundaries on an approximate forward bearing of South 22° West approximately 4 miles to the most northwesterly tip of Nelson Island within Section 11 of Township 8 North, Range 90 West;

THENCE continuing with said refuge boundaries southeasterly along the line of mean high tide of Hazen Bay of the Bering Sea approximately 4½ miles to the line dividing Townships 7 and 8 North, Range 89 West;

THENCE east with the line dividing Townships 7 and 8 North approximately 6 miles to the corner common to Townships 7 and 8 North, Ranges 88 and 89 West;

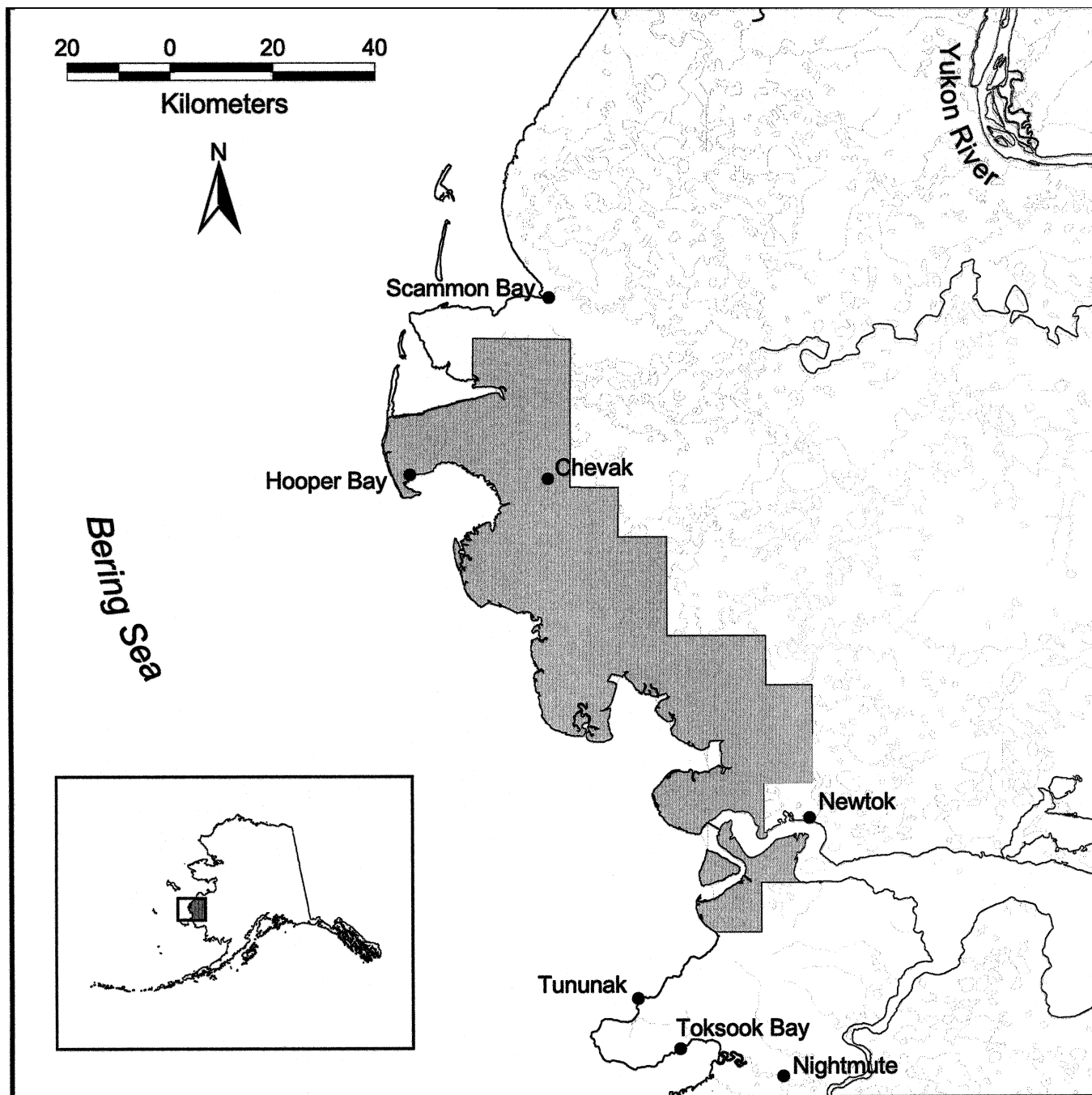
THENCE north with the line dividing Ranges 88 and 89 West approximately 6 miles to the line dividing Townships 8 and 9 North;

THENCE east with the line dividing Townships 8 and 9 North approximately 6

miles to the line dividing Township 9 North, Ranges 86 and 87 West;

THENCE north with the line dividing Ranges 86 and 87 West approximately 6 miles to a point in the waters of the Ninglick

River on the line dividing Townships 9 and 10 North;



THENCE west with the line dividing Townships 9 and 10 North approximately 6 miles to the corner common to Townships 9 and 10 North, Ranges 87 and 88 West;

THENCE north with the line dividing Ranges 87 and 88 West approximately 6 miles to the corner common to Townships 10 and 11 North, Ranges 87 and 88 West;

THENCE east with the line dividing Townships 10 and 11 North approximately 6 miles to the corner common to Townships 10 and 11 North, Ranges 86 and 87 West;

THENCE north with the line dividing Ranges 86 and 87 West approximately 12 miles to the line dividing Townships 12 and 13 North;

THENCE west with the line dividing Townships 12 and 13 North approximately 6 miles to the line dividing Township 13 North, Ranges 86 and 87 West;

THENCE north with the line dividing Ranges 86 and 87 West approximately 6 miles to the corner common to Townships 13 and 14 North, Ranges 86 and 87 West;

THENCE west with the line dividing Townships 13 and 14 North approximately 12 miles to the corner common to Townships 13 and 14 North, Ranges 88 and 89 West;

THENCE north with the line dividing Ranges 88 and 89 West approximately 12 miles to the corner common to Townships 15 and 16 North, Ranges 88 and 89 West;

THENCE west with the line dividing Townships 15 and 16 North approximately 6 miles to the corner common to Townships 15 and 16 North, Ranges 89 and 90 West;

THENCE north with the line dividing Ranges 89 and 90 West approximately 6 miles to the line dividing Townships 16 and 17 North;

THENCE west with the line dividing Townships 16 and 17 North approximately 6 miles to the line dividing Township 17 North, Ranges 89 and 90 West;

THENCE north with the line dividing Ranges 89 and 90 West approximately 18 miles to the corner common to Townships 19 and 20 North, Ranges 89 and 90 West;

THENCE west with the line dividing Townships 19 and 20 North approximately 12 miles to the corner common to Townships 19 and 20 North, Ranges 91 and 92 West;

THENCE south with the line dividing Ranges 91 and 92 West approximately 5 miles to the line of mean high tide of

Kokechik Bay of the Bering Sea at the meander corner common to Section 31 of Township 19 North, Range 91 West and Sections 36 of Township 19 North, Range 92 West;

THENCE southeasterly approximately $\frac{1}{4}$ mile, closing the mouth of the Lithkealik River, to a point on the line of mean high tide of Kokechik Bay of the Bering Sea within Section 31 of Township 19 North, Range 91 West;

THENCE with the said line of mean high tide southerly and easterly approximately $4\frac{1}{4}$ miles to the most-western point at the mouth of the Kolomak River within Section 3 of Township 18 North, Range 91 West;

THENCE southerly approximately $\frac{1}{2}$ mile to the said line of mean high tide on the south bank of the Kokechik River within

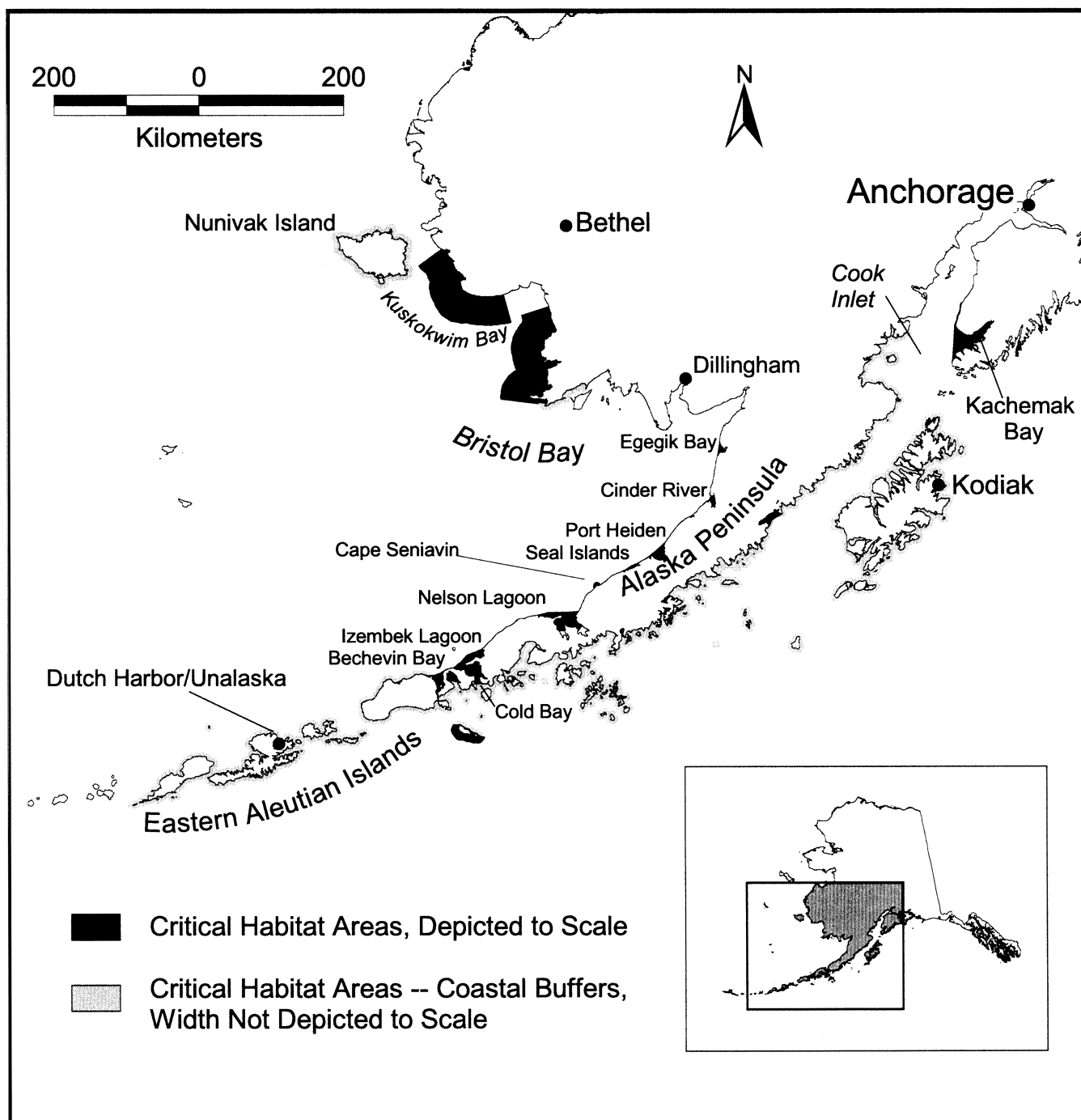
Section 3 of Township 18 North, Range 91 West;

THENCE in a southwesterly direction with the said line of mean high tide approximately 13 miles to the southernmost point of Kokechik Bay within Section 22 of Township 18 North, Range 93 West;

THENCE south approximately 500 feet to the base of the bluff within the same section and township;

THENCE northwesterly parallel to the base of said bluff approximately 1 mile to USC&GS monument "Kokechik South Base" within Section 21 of Township 18 North, Range 93 West, Seward Meridian, Alaska, the TRUE POINT OF BEGINNING.

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Unit 3. Nunivak Island

Those marine waters immediately surrounding Nunivak Island, Bering Sea, Alaska.

The Nunivak Island Unit consists of the water column from the line of mean high tide of said island to a distance of 1/4 mile (400 meters) seaward for the entire coastline, including the waters surrounding offshore islets, rocks, and reefs. Said unit lies entirely within the boundary of the Yukon Delta National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act (Public Law 96-487) on December 2, 1980.

Unit 4. Kuskokwim Bay

Northern Subunit

All Seward Meridian

Beginning at a point of land on the line of mean high tide of Etolin Strait of the Bering Sea at a meander corner common to Section 6 of Township 2 North, Range 89 West, and Section 1 of Township 2 North, Range 90 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE easterly and southeasterly with the line of mean high tide of Etolin Strait, closing the mouth of the Kolavinarak River,

approximately 8 miles to the meander corner common to Section 19 of Township 2 North, Range 88 West, and Section 24 of Township 2 North, Range 89 West;

THENCE southeasterly and easterly with the line of mean high tide of the Bering Sea, common with the boundary of the Yukon Delta and Alaska Maritime National Wildlife Refuges as established by the Alaska National Interest Lands Conservation Act (Public Law 96-487) on December 2, 1980, approximately 70 miles to the meander corner common to Section 6 of Township 4 South, Range 80 West, and Section 1 of Township 1 South, Range 81 West;

THENCE southeasterly, perpendicular to the coastline for a distance of 25 miles (40 kilometers) to a point in the waters of the Bering Sea;

THENCE southwesterly, westerly, and northwesterly, parallel to the coastline of the Bering Sea and Etolin Strait for approximately 80 miles, to a point in the waters of Etolin Strait 25 miles (40 kilometers) southwest of the meander corner common to Section 6 of Township 2 North, Range 89 West, and Section 1 of Township 2 North, Range 90 West;

THENCE northeast 25 miles (40 kilometers) to the line of mean high tide of Etolin Strait at the aforementioned meander corner and the TRUE POINT OF BEGINNING.

Southern Subunit

All Seward Meridian

Beginning at a point of land on the line of mean high tide of Kuskokwim Bay of the Bering Sea at the meander corner common to Section 35 of Township 4 South, Range 74 West, and Section 1 of Township 5 South, Range 74 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE southerly with the line of mean high tide of Kuskokwim Bay, common with the boundary of the Yukon Delta, Togiak, and Alaska Maritime National Wildlife Refuges as established by the Alaska National Interest Lands Conservation Act (Public Law 96-487) on December 2, 1980, approximately 120 miles to the meander corner common to Sections 15 and 22 of Township 15 South, Range 75 West;

THENCE continuing with the line of mean high tide of Kuskokwim and Bristol Bays in a southerly, westerly, and easterly direction, inside the boundary of the Togiak National Wildlife Refuge, for approximately 60 miles to the meander corner common to Sections 9 and 10 of Township 18 South, Range 74 West;

THENCE easterly with the line of mean high tide of Bristol Bay and Hagemester Strait, common with the boundary of the Togiak and Alaska Maritime National Wildlife Refuges, approximately 40 miles to Tongue Point within Section 9 of Township 16 South, Range 69 West;

THENCE south $\frac{1}{2}$ mile (0.8 kilometers) to a point in the waters of Bristol Bay of Hagemester Strait;

THENCE southwesterly and northerly, parallel to the coastline of Hagemester Strait and Bristol Bay approximately 60 miles to a point in the waters of Bristol Bay $\frac{1}{2}$ mile west of the meander corner common to Section 36 of Township 18 South, Range 76 West and Section 1 of Township 19 South, Range 76 West;

THENCE due west $24\frac{1}{2}$ miles;

THENCE in a general westerly, easterly, and northerly direction, parallel to the coastline of Bristol and Kuskokwim Bays of the Bering Sea for approximately 100 miles, to a point in the waters of Kuskokwim Bay 25 miles (40 kilometers) southwest of the meander corner common to Section 35 of Township 4 South, Range 74 West, and Section 1 of Township 5 South, Range 75 West;

THENCE northeast 25 miles (40 kilometers) to the line of mean high tide of Kuskokwim

Bay at the aforementioned meander corner and the TRUE POINT OF BEGINNING.

Unit 5. North Side of the Alaska Peninsula

Egegik Bay Unit

All Seward Meridian

Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Bristol Bay of the Bering Sea at a meander corner common to Section 36 of Township 21 South, Range 51 West, and Section 1 of Township 22 South, Range 51 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE southeasterly and northeasterly with the line of mean high tide of the Bering Sea, common with the boundary of the Alaska Maritime National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act (Public Law 96-487) on December 2, 1980, approximately 8 miles to the meander corner common to Section 35 of Township 22 South, Range 50 West and Section 2 of Township 23 South, Range 50 West;

THENCE east with the line dividing Townships 22 and 23 South approximately $\frac{1}{2}$ miles to a point in the waters of Egegik Bay immediately north of the village of Egegik on the line dividing Ranges 49 and 50 West;

THENCE with the line dividing Ranges 49 and 50 West approximately $\frac{1}{4}$ mile to the line of mean high tide of Egegik Bay on the boundary of the Alaska Maritime National Wildlife Refuge;

THENCE continuing with said line of mean high tide and refuge boundary in a southwesterly, northerly, and southwesterly direction for approximately 14 miles to the meander corner common to Section 35 of Township 23 South, Range 51 West and Section 2 of Township 24 South, Range 51 West;

THENCE northerly through the waters of Bristol Bay, closing Egegik Bay, to the aforementioned meander corner, the TRUE POINT OF BEGINNING.

Ugashik Bay Unit

All Seward Meridian

Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Bristol Bay of the Bering Sea at a meander corner common to Section 34 of Township 29 South, Range 52 West, and Section 3 of Township 30 South, Range 52 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE southeasterly with the line of mean high tide of Bristol and Ugashik Bays, common with the boundary of the Alaska Maritime National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act (Public Law 96-487) on December 2, 1980, approximately $11\frac{1}{2}$ miles to the meander corner common to Sections 17 and 20 of Township 31 South, Range 51 West;

THENCE on the line dividing Sections 18 and 19 of Township 31 South, Range 51 West approximately 1 mile to the headland at the confluence of the Ugashik and King Salmon Rivers;

THENCE westerly with the headland, continuing with said refuge boundary on the

line of mean high tide of Ugashik Bay approximately $\frac{1}{2}$ mile to the meander corner common to Sections 13 and 24 of Township 31 South, Range 52 West;

THENCE west, continuing with said refuge boundary on the line dividing Sections 13 and 24 of Township 31 South, Range 52 West to the meander corner common to Sections 14 and 23 of the same township;

THENCE continuing west with the section line dividing the north and south halves of Township 31 South, Ranges 52 and 53 West approximately 8 miles to the line of mean high tide of Bristol Bay at the meander corner common to Sections 16 and 21 of Township 31 South, Range 53 West;

THENCE northwesterly, perpendicular to the coastline for a distance of $\frac{1}{4}$ mile (400 meters) to a point in the waters of Bristol Bay of the Bering Sea;

THENCE in a northeasterly direction, parallel to the coastline of Bristol Bay and closing the entrance to Ugashik Bay, for approximately 11 miles to a point in the waters of Bristol Bay $\frac{1}{4}$ mile (400 meters) southwest of the meander corner common to Section 34 of Township 29 South, Range 52 West, and Section 3 of Township 30 South, Range 52 West;

THENCE northeast $\frac{1}{4}$ mile to the aforementioned meander corner, the TRUE POINT OF BEGINNING.

Cinder River Unit

All Seward Meridian

Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Bristol Bay of the Bering Sea at a meander corner common to Sections 21 and 28 of Township 32 South, Range 54 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE in a general southwesterly direction with the line of mean high tide of Bristol Bay, common with the boundary of the Alaska Maritime National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act (Public Law 96-487) on December 2, 1980 approximately $3\frac{1}{2}$ miles to the southernmost point of Section 3 of Township 33 South, Range 55 West;

THENCE continuing with the line of mean high tide northeasterly, southwesterly, and northeasterly to encompass the Cinder River/Mud Creek tidal flats area, closing the mouths of the Cinder River and Mud Creek, approximately 15 miles to the northernmost point of Section 4 of Township 33 South, Range 55 West;

THENCE southwest with the said line of mean high tide, common with said refuge boundary, approximately 3 miles to the meander corner common to Section 18 of Township 33 South, Range 55 West, and Section 13 of Township 33 South, Range 56 West;

THENCE northwest, perpendicular to the coastline for a distance of $\frac{1}{4}$ mile (400 meters) to a point in the waters of Bristol Bay;

THENCE in a northeasterly direction, parallel to the coastline of Bristol Bay, closing the entrance to the Cinder River/Mud Creek tidal flats area, for approximately $6\frac{1}{2}$ miles to a point in the waters of Bristol Bay $\frac{1}{4}$ mile (400 meters) northwest of the

meander corner common to Sections 21 and 28 of Township 32 South, Range 54 West;

THENCE southeast $\frac{1}{4}$ mile to the aforementioned meander corner, the TRUE POINT OF BEGINNING.

Port Heiden Unit

All Seward Meridian

Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Bristol Bay of the Bering Sea at the meander corner common to Section 31 of Township 36 South, Range 58 West, and Section 3 of Township 37 South, Range 59 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE southwesterly, with the line of mean high tide of Bristol Bay, common with the boundary of the Alaska Maritime National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act (Public Law 96-487) on December 2, 1980, approximately $8\frac{1}{2}$ miles to the southernmost point of Section 17 of Township 38 South, Range 59 West;

THENCE in a general southeasterly direction with said refuge boundary along the line of mean high tide of Port Heiden and the right bank of the Meshik River upstream approximately 12 miles to the line dividing Sections 35 and 36 of Township 39 South, Range 59 West;

THENCE south with said Section line approximately $\frac{1}{4}$ mile to the line dividing Townships 39 and 40 South;

THENCE west with said township line approximately $\frac{1}{2}$ mile to the left bank of the Meshik River;

THENCE northwesterly with said refuge boundary along the left bank of the Meshik River approximately $3\frac{1}{2}$ miles to the westernmost point of the mouth of said river at the line of mean high tide of Port Heiden within Section 20 of Township 39 South, Range 59 West;

THENCE westerly, southwesterly, and northeasterly with said refuge boundary at the line of mean high tide of Port Heiden approximately 30 miles to Stroganof Point in Section 17 of Township 38 South, Range 60 West;

THENCE southwest with the said line of mean high tide, common with said refuge boundary, approximately 10 miles to the meander corner common to Section 18 of Township 39 South, Range 61 West, and Section 13 of Township 33 South, Range 62 West;

THENCE northwest, perpendicular to the coastline for a distance of $\frac{1}{4}$ mile (400 meters) to a point in the waters of Bristol Bay;

THENCE in a northeasterly direction, parallel to the coastline of Bristol Bay, closing the entrance to Port Heiden and parallel to the ocean side of Chistiakof Island, for approximately 20 miles to a point in the waters of Bristol Bay $\frac{1}{4}$ mile (400 meters) northwest of the meander corner common to Section 31 of Township 36 South, Range 58 West, and Section 3 of Township 37 South, Range 59 West;

THENCE southeast $\frac{1}{4}$ mile to the aforementioned meander corner, the TRUE POINT OF BEGINNING.

Seal Islands Unit

All Seward Meridian

Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Bristol Bay of the Bering Sea at the meander corner common to Section 32 of Township 39 South, Range 62 West, and Section 5 of Township 40 South, Range 62 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE southwesterly, with the line of mean high tide of Bristol Bay, common with the boundary of the Alaska Maritime National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act (Public Law 96-487) on December 2, 1980, approximately $4\frac{1}{2}$ miles to the southernmost point of Section 15 of Township 40 South, Range 63 West;

THENCE continuing with the line of mean high tide and said refuge boundary northeasterly, southwesterly, and northeasterly to encompass the Seal Islands lagoon and Ilnik Lake areas, approximately 45 miles to the northernmost point of Section 1 of Township 41 South, Range 65 West;

THENCE southwest with the said line of mean high tide and refuge boundary, approximately 7 miles to the meander corner common to Section 19 of Township 41 South, Range 65 West, and Section 24 of Township 41 South, Range 66 West;

THENCE northwest, perpendicular to the coastline for a distance of $\frac{1}{4}$ mile (400 meters) to a point in the waters of Bristol Bay;

THENCE in a northeasterly direction, parallel to the coastline of Bristol Bay and the ocean side of the Seal Islands, closing the entrance to the Seal Islands lagoon, for approximately 18 miles to a point in the waters of Bristol Bay $\frac{1}{4}$ mile (400 meters) northwest of the meander corner common to Section 32 of Township 39 South, Range 62 West, and Section 5 of Township 40 South, Range 62 West;

THENCE southeast $\frac{1}{4}$ mile to the aforementioned meander corner common, the TRUE POINT OF BEGINNING.

Cape Seniavin Unit

Those marine waters of the Bering Sea immediately fronting Cape Seniavin, Alaska Peninsula, Alaska.

The Cape Seniavin Unit consists of the water column from the line of mean high tide of the Bering Sea. The radius of the Unit is 3 miles (5 kilometers), the center of which is the Cape Seniavin Light, located at Latitude $56^{\circ} 23' 57.64''$ North, Longitude $160^{\circ} 08' 47.67''$ West, within Section 4 of Township 44 South, Range 69 West, Seward Meridian, Alaska.

Nelson Lagoon/Herendeen Bay/Port Moller Unit

Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Bristol Bay of the Bering Sea at the meander corner common to Section 33 of Township 47 South, Range 72 West, and Section 4 of Township 48 South, Range 72 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE southwesterly, with the line of mean high tide of Bristol Bay, common with

the boundary of the Alaska Maritime National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act (Public Law 96-487) on December 2, 1980, approximately 23 miles to the meander corner common to Section 34 of Township 49 South, Range 72 West and Section 3 of Township 50 South, Range 72 West;

THENCE southwesterly, leaving said refuge boundary, across the waters of Port Moller approximately 7 miles to the meander corner common to Section 31 of Township 50 South, Range 72 West and Section 6 of Township 51 South, Range 72 West;

THENCE northerly, westerly, and southerly with the line of mean high tide of Port Moller and Herendeen Bay common with said refuge boundary approximately 26 miles to the meander corner common to Section 32 of Township 50 South, Range 74 West and Section 6 of Township 51 South, Range 74 West;

THENCE west with the line dividing Townships 50 and 51 South, crossing Herendeen Bay, approximately $5\frac{1}{2}$ miles to the meander corner common to Section 32 of Township 50 South, Range 75 West and Section 5 of Township 51 South, Range 75 West;

THENCE northerly, westerly, and northeasterly with the line of mean high tide of Herendeen Bay and Nelson Lagoon, common with said refuge boundary, approximately 55 miles to Lagoon Point within Section 22 of Township 48 South, Range 76 West;

THENCE southwesterly with the line of mean high tide of the Bering Sea, common with said refuge boundary, approximately 8 miles to the meander corner common to Section 6 of Township 49 South, Range 78 West and Section 1 of Township 49 South, Range 79 West;

THENCE northwest, perpendicular to the coastline for a distance of $\frac{1}{4}$ mile (400 meters) to a point in the waters of Bristol Bay;

THENCE in a northeasterly direction, parallel to the coastline of Bristol Bay and the ocean side of the Kudobin Islands, closing the entrance to the Hague Channel, for approximately 40 miles to a point in the waters of Bristol Bay $\frac{1}{4}$ mile (400 meters) northwest of the meander corner common to Section 33 of Township 47 South, Range 72 West, and Section 4 of Township 48 South, Range 72 West;

THENCE southeast $\frac{1}{4}$ mile to the aforementioned meander corner common, the TRUE POINT OF BEGINNING.

Izembek Lagoon Unit

Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Bristol Bay of the Bering Sea at the meander corner common to Section 18 of Township 54 South, Range 86 West, and Section 13 of Township 54 South, Range 87 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE southwesterly, with the line of mean high tide of Bristol Bay, common with the boundary of the Alaska Maritime National Wildlife Refuge as established by the Alaska National Interest Lands

Conservation Act (Public Law 96-487) on December 2, 1980, approximately 4 miles to Moffet Point within Section 4 of Township 55 South, Range 87 West;

THENCE continuing with the line of mean high tide, inside the boundary of the Izembek National Wildlife Refuge, northeasterly, southwesterly, and northeasterly to encompass Moffet and Izembek Lagoons, Applegate Cove, and Norma Bay, approximately 55 miles to Cape Glazenap within Section 18 of Township 57 South, Range 90 West;

THENCE southwest with the line of mean high tide of Bristol Bay, common to the Alaska Maritime refuge boundary, approximately 14 miles to the meander corner common to Section 31 of Township 58 South, Range 92 West, and Section 36 of Township 58 South, Range 93 West;

THENCE northwest, perpendicular to the coastline for a distance of ¼ mile (400 meters) to a point in the waters of Bristol Bay;

THENCE in a northeasterly direction, parallel to the coastline of Bristol Bay and the ocean side of the Kudiakof Islands, closing the entrances to Izembek Lagoon, for approximately 30 miles to a point in the waters of Bristol Bay ¼ mile (400 meters) northwest of the meander corner common to Section 18 of Township 54 South, Range 86 West, and Section 13 of Township 54 South, Range 87 West;

THENCE southeast ¼ mile to the aforementioned meander corner common, the TRUE POINT OF BEGINNING.

Bechevin Bay Unit

Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Bristol Bay of the Bering Sea at the meander corner common to Section 31 of Township 53 South, Range 92 West, and Section 36 of Township 58 South, Range 93 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE southwesterly, with the line of mean high tide of Bristol Bay, common with the boundary of the Alaska Maritime National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act (Public Law 96-487) on December 2, 1980, approximately 6 miles to Cape Krenitzin at the meander corner common to Sections 17 and 20 of Township 59 South, Range 93 West;

THENCE southerly, northeasterly, and southerly with the line of mean high tide of Bechevin Bay and Isanotski Strait, common with said refuge boundary except to include Hot Springs Bay and Traders Cove, which lie inside the Alaska Peninsula refuge boundary, approximately 50 miles to Palisade Cliffs at the meander corner common to Section 18 of Township 62 South, Range 93 West, and Section 13 of Township 62 South, Range 94 West;

THENCE south with the line dividing Ranges 93 and 94 West, across Ikatan Bay of the Pacific Ocean approximately 3½ miles to a point of land on the Ikatan Peninsula of Unimak Island on the line of mean high tide of Ikatan Bay at the meander corner common to Section 6 of Township 63 South, Range 93 West, and Section 1 of Township 63 South, Range 94 West;

THENCE northwesterly, easterly, and westerly on the shore of Unimak Island with the line of mean high tide of Ikatan Bay, Isanotski Strait, Bechevin Bay, and Bristol Bay, to the meander corner common to Section 30 of Township 59 South, Range 94 West, and Section 25 of Township 59 South, Range 95 West;

THENCE north, perpendicular to the coastline for a distance of ¼ mile (400 meters) to a point in the waters of Bristol Bay;

THENCE in a northeasterly direction, parallel to the coastline of Bristol Bay, closing the entrance to Bechevin Lagoon, for approximately 14 miles to a point in the waters of Bristol Bay ¼ mile (400 meters) northwest of the meander corner common to Sections 17 and 20 of Township 59 South, Range 93 West;

THENCE southeast ¼ mile to the aforementioned meander corner common, the TRUE POINT OF BEGINNING.

Unit 6. Eastern Aleutians

Those marine waters of the Bering Sea and Pacific Ocean immediately fronting Unimak Island (excluding the Bechevin Bay Unit), the Krenitzin Islands (Ugamak and Unalga group), Unalaska Island, Umnak Island, and Samalga Island, Alaska.

The Eastern Aleutians Unit consists of the water column from the line of mean high tide of the Bering Sea and Pacific Ocean to a distance of ¼ mile (400 meters) seaward for the entire coastline lying between the Bechevin Bay Unit on the east and Samalga Pass on the west. Included within the Unit are the waters within ¼ mile (400 meters) of all associated islands and offshore islets, rocks, and reefs.

Unit 7. South Side of the Alaska Peninsula All Seward Meridian

Those marine waters of the Pacific Ocean immediately fronting the south side of the Alaska Peninsula, Alaska.

The Alaska Peninsula Unit consists of the water column from the line of mean high tide of the Pacific Ocean to a distance of ¼ mile (400 meters) seaward for the entire coastline lying between Ikatan Bay on the west and Cook Inlet on the east. Said boundary points are more particularly described as follows:

West Boundary: a point of land on the Alaska Peninsula at Palisade Cliffs on the line of mean high tide of Ikatan Bay of the Pacific Ocean at the meander corner common to Section 18 of Township 62 South, Range 93 West, and Section 13 of Township 62 South, Range 94 West, Seward Meridian, Alaska.

East Boundary: a point of land on the Iniskin Peninsula of the Alaska Peninsula known as Chinitna Point on the line of mean high tide of Cook Inlet of the Pacific Ocean within Section 5 of Township 6 South, Range 22 West, Seward Meridian, Alaska.

Included within the Unit are the waters within ¼ mile (400 meters) of all associated islands including the Sanak, Shumagin, and Semidi island groups, Chirikof Island, and all offshore islets, rocks, and reefs. Excluded from the Unit are the waters surrounding the Trinity, Kodiak, and Afognak island groups.

Areas of the Unit that are exceptions to the ¼ mile (400 meters) seaward water column are described as follows:

Morzhovoi Bay: Those marine waters of northern Morzhovoi Bay, including Big and Middle lagoons, lying between Boiler Point on the west and Reynolds Head on the east, and to include Littlejohn Lagoon, east of Reynolds Head. The boundary line connecting said points are more particularly described as follows:

West Boundary: A point of land on the Alaska Peninsula known as Boiler Point on the line of mean high tide of Morzhovoi Bay of the Pacific Ocean within Section 6 of Township 60 South, Range 91 West, Seward Meridian, Alaska. Said point is approximately 850 feet northeast of USC&GS monument "Slope" which is at Latitude 55° 00' 41.69" North, Longitude 163° 08' 57.57" West (NAD 83).

East Boundary: A point of land on the Alaska Peninsula known as Reynolds Head on the line of mean high tide of Morzhovoi Bay of the Pacific Ocean within Section 5 of Township 60 South, Range 90 West, Seward Meridian, Alaska. Said point is the most northwestern point of land within Section 5 of said township.

Cold Bay: Those marine waters of Cold Bay, including Old Mans Lagoon, Lenard Harbor, Mortensons Lagoon, and Kinzarof Lagoon, lying north of a boundary line closing the mouth of Cold Bay. The points on the boundary line closing the mouth of Cold Bay are more particularly described as follows:

West Boundary: A point of land on the Alaska Peninsula on the line of mean high tide of Cold Bay at the meander corner common to Section 36 of Township 59 South, Range 88 West, and Section 1 of Township 60 South, Range 88 West Seward Meridian, Alaska.

East Boundary: A point of land on the Alaska Peninsula known as Vodapoini Point on the line of mean high tide of Cold Bay within Section 36 of Township 59 South, Range 87 West, Seward Meridian, Alaska. Said point is the most western point of land within Section 36 of said township.

Sanak Islands: Those marine waters of the Pacific Ocean surrounding the Sanak Island group, said waters being divided into north and south portions lying between Point Petrof on the west and Lookout Point on the east. These portions are defined as the water column from the line of mean high tide of the Pacific Ocean extending to a distance of 5 miles (8 kilometers) seaward for the southern portion and a distance of 1 mile (1.6 kilometers) seaward for the northern portion.

Said southern portion extends 5 miles from the southern coastlines of Point Petrof, Rabbit Island, Sanak Island, Long Island, Clifford Island, Elma Island, and Caton Island.

Said northern portion extends 1 mile from the northern coastlines of Point Petrof, Sanak Island, Finneys Island, and Caton Island.

Those westernmost and easternmost points that divide the southern and northern portions are more particularly described as follows:

West Boundary: A point of land known as Point Petrof on a small island on the northwest side of Sanak Harbor of the Pacific

Ocean on the line of mean high tide of the Pacific Ocean within Section 3 of Township 66 South, Range 91 West, Seward Meridian, Alaska. Said point is approximately 500 feet west of USC&GS monument "Petrof," which is at Latitude 54° 29' 37.62" North, Longitude 162° 49' 49.37" West (NAD 83).

East Boundary: A point of land on Caton Island known as Lookout Point on the line of mean high tide of the Pacific Ocean within Section 11 of Township 67 South, Range 88 West, Seward Meridian, Alaska. Said point is the most eastern point of land within Section 11 of said township.

Ivanof Bay: Those marine waters of Ivanof Bay of the Pacific Ocean lying north of a boundary line closing the mouth of said bay. Said boundary line is common with the boundaries of the Alaska Peninsula and Alaska Maritime National Wildlife Refuges as established by the Alaska National Interest Lands Conservation Act (Public Law 96-487) on December 2, 1980. The points on the boundary line closing the mouth of Ivanof Bay are more particularly described as follows:

West Boundary: A point of land on the Alaska Peninsula on the line of mean high tide of Ivanof Bay at the meander corner common to Sections 9 and 16 of Township 51 South, Range 66 West, Seward Meridian, Alaska.

East Boundary: A point of land on the Alaska Peninsula known as Alexander Point on the line of mean high tide of Ivanof Bay within Section 1 of Township 51 South, Range 66 West, Seward Meridian, Alaska. Said point is the most southern point of land within Section 1 of said township.

Chignik Lagoon: Those marine waters of Chignik Lagoon including Mallard Duck Bay and Schooner Cove, lying west of the line dividing Township 44 South, Ranges 58 and 59 West, Seward Meridian, Alaska. The western extent of Chignik Lagoon is described as follows:

Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Chignik Lagoon and the Chignik River at the meander corner common to Sections 15 and 16 of Township 45 South, Range 60 West; THENCE south with the section line across the Chignik River approximately ¼ mile to the meander corner common to Sections 21 and 22 of the same township.

Wide Bay: Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Shelikof Strait of the Pacific Ocean at the meander corner common to Section 35 of Township 33 South, Range 44 West, and Section 2 of Township 34 South, Range 44 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE northerly, southwesterly, and northeasterly with the line of mean high tide of Shelikof Strait and Wide Bay approximately 60 miles to Cape Igvak at the southernmost portion of the Alaska Peninsula in Section 12 of Township 32 South, Range 42 West;

THENCE south, perpendicular to the coastline for a distance of 1 mile (1.6 kilometers) to a point in the waters of Shelikof Strait;

THENCE in a southwesterly direction, parallel to the coastline of the Alaska

Peninsula, closing the entrance to Wide Bay, and paralleling the ocean side of all islands fronting Wide Bay, for approximately 17 miles to a point in the waters of Shelikof Strait 1 mile east of the meander corner common to Section 35 of Township 33 South, Range 44 West, and Section 2 of Township 34 South, Range 44 West;

THENCE west 1 mile to the aforementioned meander corner common, the TRUE POINT OF BEGINNING.

Kamishak Bay: Beginning at a point of land on the Alaska Peninsula on the line of mean high tide of Kamishak Bay of the Pacific Ocean at the meander corner common to Section 7 of Township 14 South, Range 25 West, and Section 12 of Township 14 South, Range 26 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE northwesterly and northeasterly with the line of mean high tide of Kamishak Bay, including all associated bays and coves, approximately 190 miles to a point on the Iniskin Peninsula known as Chinitna Point on the line of mean high tide of Cook Inlet of the Pacific Ocean within Section 5 of Township 6 South, Range 22 West, Seward Meridian, Alaska;

THENCE south, perpendicular to the coastline for a distance of 1 mile (1.6 kilometers) to a point in the waters of Cook Inlet;

THENCE in a southwesterly direction, parallel to the coastline of the Alaska Peninsula, for approximately 150 miles to a point in the waters of Kamishak Bay 1 mile north of the meander corner common to Section 7 of Township 14 South, Range 25 West, and Section 12 of Township 14 South, Range 26 West;

THENCE south 1 mile to the aforementioned meander corner common, the TRUE POINT OF BEGINNING.

Unit 8. Kachemak Bay/Nililchik

Beginning at a point of land on the Kenai Peninsula on the line of mean high tide of Cook Inlet of the Gulf of Alaska of the Pacific Ocean at the meander corner common to Section 33 of Township 1 South, Range 14 West, and Section 4 of Township 2 South, Range 14 West, Seward Meridian, Alaska, and the TRUE POINT OF BEGINNING of the lands to be described.

THENCE southwesterly, southeasterly, northeasterly, and southwesterly with the line of mean high tide of Cook Inlet, Kachemak Bay, and all associated bays and coves, common with the boundary of the Alaska Maritime National Wildlife Refuge as established by the Alaska National Interest Lands Conservation Act (Public Law 96-487) on December 2, 1980, approximately 210 miles to a point on the Kenai Peninsula known as Point Bede at the western most extent of Section 16 of Township 10 South, Range 16 West;

THENCE northerly across the mouth of Kachemak Bay, approximately 29 miles to a point in the waters of Cook Inlet 1 mile (1.6 kilometers) northwest of the meander corner common to Section 33 of Township 4 South, Range 15 West, and Section 5 of Township 5 South, Range 15 West;

THENCE in a northeasterly direction, parallel to the coastline of the Kenai

Peninsula, approximately 18 miles to a point in the waters of Cook Inlet 1 mile northwest of the meander corner common to Section 33 of Township 1 South, Range 14 West, and Section 4 of Township 2 South, Range 14 West;

THENCE southeast 1 mile to the aforementioned meander corner common, the TRUE POINT OF BEGINNING.

Unit 9. Kodiak

Those marine waters immediately surrounding the islands of the Kodiak Archipelago, Gulf of Alaska, Pacific Ocean, Alaska.

The Kodiak/Afognak Island Unit consists of the water column from the line of mean high tide of Kodiak and Afognak islands to a distance of ¼ mile (400 meters) seaward. Said water column is reserved for all islands of the Kodiak Archipelago, including the waters within ¼ mile (400 m) of the Trinity Islands, Marmot Island, Shuyak Island, and all other offshore islets, rocks, and reefs.

* * * * *

Dated: February 29, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No.000218046-0046-01; I.D. 121599F]

RIN 0648-AN42

Antarctic Marine Living Resources; Harvesting and Dealer Permits, and Catch Documentation

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to revise permit requirements for U.S. vessels harvesting, or transshipping catch of, *Dissostichus eleginoides* (Patagonian toothfish) and *Dissostichus mawsoni* (Antarctic toothfish) harvested in all waters, including those under the jurisdiction of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). These regulations would also govern U.S. receivers, importers and exporters of toothfish, wherever caught. Persons receiving, importing or re-exporting toothfish would be required to validate and submit *Dissostichus* Catch Documents to