funds do not subsidize restricted activities; and

(b) The recipient is, to the extent practicable in the circumstances, separate from the affiliated organization. Mere bookkeeping separation of Leadership Act HIV/AIDS funds from other funds is not sufficient. HHS will determine, on a case-by-case basis and based on the totality of the facts, whether sufficient separation exists. The presence or absence of any one or more factors relating to legal, physical, and financial separation will not be determinative. Factors relevant to this determination shall include, but not be limited to, the following:

(1) Whether the organization is a legally separate entity;

(2) The existence of separate personnel or other allocation of personnel that maintains adequate separation of the activities of the affiliated organization from the recipient;

(3) The existence of separate accounting and timekeeping records;

(4) The degree of separation of the recipient's facilities from facilities in which restricted activities occur; and

(5) The extent to which signs and other forms of identification that distinguish the recipient from the affiliated organization are present.

[FR Doc. 2010–8378 Filed 4–12–10; 8:45 am]

BILLING CODE 4150–38–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

[FWS–R7–MB–2009–0082; 91200–1231–9BPP–L2]

RIN 1018–AW67

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2010 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) establishes migratory bird subsistence harvest regulations in Alaska for the 2010 season. These regulations enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. This rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking establishes region-specific regulations that go into effect April 13, 2010 and expire August 31, 2010.

DATES: The amendments to subpart D of 50 CFR part 92 are effective April 13, 2010, through August 31, 2010.

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

SUPPLEMENTARY INFORMATION:

Why Is This Rulemaking Necessary?

This rulemaking is necessary because, by law, the migratory bird harvest season is closed unless opened by the Secretary of the Interior, and the regulations governing subsistence harvest of migratory birds in Alaska are subject to public review and annual approval. This rule establishes regulations for the taking of migratory birds for subsistence uses in Alaska during the spring and summer of 2010. This rule lists migratory bird season openings and closures in Alaska by region.

How Do I Find the History of These Regulations?

Background information, including past events leading to this rulemaking, accomplishments since the Migratory Bird Treaties with Canada and Mexico were amended, and a history addressing conservation issues can be found in the following **Federal Register** documents:

Date	Federal Register citation
August 16, 2002	67 FR 53511.
July 21, 2003	68 FR 43010.
April 2, 2004	69 FR 17318.
April 8, 2005	70 FR 18244.
February 28, 2006	71 FR 10404.
April 11, 2007	72 FR 18318.
March 14, 2008	73 FR 13788.
May 19, 2009	74 FR 23336.

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

What Is the Process for Issuing Regulations for the Subsistence Harvest of Migratory Birds in Alaska?

The U.S. Fish and Wildlife Service (Service or we) establishes migratory bird subsistence harvest regulations in Alaska for the 2010 season. These regulations enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives.

We opened the process to establish regulations for the 2010 spring and summer subsistence harvest of migratory birds in Alaska in a proposed rule published in the **Federal Register** on April 10, 2009 (74 FR 16339). While that proposed rule dealt primarily with the regulatory process for hunting migratory birds for all purposes throughout the United States, we also discussed the background and history of Alaska subsistence regulations, explained the annual process for their establishment, and requested proposals for the 2010 season. The rulemaking processes for both types of migratory bird harvest are related, and the April 10, 2009, proposed rule explained the connection between the two.

The Alaska Migratory Bird Co-management Council (Co-management Council) held a meeting in April 2009 to develop recommendations for changes that would take effect during the 2010 harvest season. These recommendations were presented first to the Flyway Councils and then to the Service Regulations Committee at the committee's meeting on July 29 and 30, 2009.

Who Is Eligible To Hunt Under These Regulations?

Eligibility to harvest under the regulations established in 2003 was limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, and in areas north and west of the Alaska Range (50 CFR 92.5). These geographical restrictions opened the initial subsistence migratory bird harvest to about 13 percent of Alaska residents. High populated areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, and Southeast Alaska were excluded from eligible subsistence harvest areas.

Based on petitions requesting inclusion in the harvest, in 2004, we added 13 additional communities based on criteria set forth in 50 CFR 92.5(c). These communities were Gulkana, Gakona, Tazlina, Copper Center,

Mentasta Lake, Chitina, Chistochina, Tatitlek, Chenega, Port Graham, Nanwalek, Tyonek, and Hoonah, with a combined population of 2,766. In 2005, we added three additional communities for glaucous-winged gull egg gathering only, based on petitions requesting inclusion. These southeastern communities were Craig, Hydaburg, and Yakutat, with a combined population of 2,459.

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

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

We have monitored subsistence harvest for the past 25 years through the use of annual household surveys in the most heavily used subsistence harvest areas, such as the Yukon–Kuskokwim Delta. In recent years, more intensive surveys combined with outreach efforts focused on species identification have been added to improve the accuracy of information gathered from regions still reporting some subsistence harvest of listed or candidate species.

Spectacled and Steller's Eiders

Spectacled eiders (*Somateria fischeri*) and the Alaska-breeding population of Steller's eiders (*Polysticta stelleri*) are listed as threatened species; their migration and breeding distribution overlap with where the spring and summer subsistence migratory bird hunt is open in Alaska. Both species are closed to hunting, although harvest surveys and Service documentation indicate both species have been taken in several regions of Alaska.

The Service has dual goals and responsibilities for authorizing a subsistence harvest while protecting migratory birds and threatened species. Although these goals continue to be challenging, they are not irreconcilable, providing sufficient recognition is given to the need to protect threatened species, measures to remedy documented threats are implemented, and the subsistence community and other conservation partners commit to working together. With these dual goals in mind, the Service, working with partners, developed measures in 2009 to further reduce the potential for shooting mortality or injury of closed species. These conservation measures included: (1) Increased waterfowl hunter outreach and community awareness partnering with the Migratory Bird Task Force; (2) continued enforcement of the migratory bird regulations that are protective of listed eiders; and (3) in-season Service verification of the harvest to detect Steller's eider mortality.

This rule is focused on the North Slope from Barrow through Point Hope because listed spectacled and Steller's eiders from the listed Alaska breeding population, are known to breed and migrate there. These regulations address several eider management needs by restricting hunting to times of day with sufficient daylight to improve a hunter's ability to distinguish between species and minimize shooting species closed for harvest; clarifying for subsistence users that Service law enforcement personnel have authority to verify species of birds possessed by hunters; clarifying that it is illegal to possess any bird closed to harvest; and describing how the Service's existing authority of emergency closure would be implemented, if necessary, to protect Steller's eiders. These regulations, implemented in accordance with conservation measures, are considered the principal means by which the threat from shooting mortality of threatened eiders will be reduced. In addition, the emergency closure authority provides another level of assurance if an unexpected amount of Steller's eider shooting mortality occurs.

In-season, real-time harvest survey information obtained by the local community is desirable at Point Hope, Point Lay, Wainwright, and Barrow. The North Slope Borough has offered to assist with collection of this information, including traveling to hunters in the field and providing photo documentation of some portion of the harvest. In-season harvest monitoring information will be used to independently evaluate harvest survey reports, as well as evaluate the efficacy of regulations, conservation measures, and outreach efforts.

On the North Slope in 2009, no Steller's eider harvest was reported, and no Steller's eiders were found shot during in-season verification of the subsistence harvest. Based on these successes, the Service will continue the same regulations for the 2010 season. The 2009 conservation measures will also be continued, although there will be some modification of the amount of effort and emphasis each will receive. Specifically, as local communities develop greater responsibility for taking actions to ensure Steller's and spectacled eider conservation and recovery, and hunters demonstrate greater compliance with hunting regulations, the Service's Office of Law Enforcement plans to decrease its presence in Barrow.

The longstanding general emergency closure provision at 50 CFR 92.21 specifies that the harvest may be closed or temporarily suspended upon finding that a continuation of the regulation allowing the harvest would pose an imminent threat to the conservation of any migratory bird population. With regard to Steller's eiders, the regulation at 50 CFR 92.32, carried over from last year, clarifies that we will take action under 50 CFR 92.21 as is necessary to prevent further take of Steller's eiders, and that action could include temporary or long-term closures of the harvest in all or a portion of the geographic area open to harvest. If mortality of threatened eiders occurs, we will evaluate each mortality event by criteria such as cause, quantity, sex, age, location, and date. We will consult with the Co-management Council when we are considering an emergency closure. If we determine that an emergency closure is necessary, we will design it to minimize its impact on the subsistence harvest.

Yellow-billed Loon and Kittlitz's Murrelet

Yellow-billed loon (*Gavia adamsii*) and Kittlitz's murrelet (*Brachyramphus brevirostris*) are listed as candidate species for Endangered Species Act Listing. Their migration and breeding distribution overlaps with where the spring and summer migratory bird hunt is open in Alaska. Both species are closed to hunting, and there is no evidence Kittlitz's murrelets are harvested. On the other hand, harvest surveys have indicated harvest of yellow-billed loons on the North Slope and St. Lawrence Island. Some or all of the yellow-billed loons reported harvested on the North Slope were found to be entangled loons salvaged from subsistence fishing nets as described below. The Service will continue outreach efforts in both areas in 2010, engaging partners to improve harvest estimates and decrease take of yellow-billed loons.

Consistent with the request of the North Slope Borough Fish and Game Management Committee and the recommendation of the Co-management Council, this rule continues into 2010 the provisions originally established in 2005 to allow subsistence use of yellow-

billed loons (*Gavia adamsii*) inadvertently entangled in subsistence fishing (gill) nets on the North Slope. Yellow-billed loons are culturally important for the Inupiat Eskimo of the North Slope for use in traditional dance regalia. A maximum of 20 yellow-billed loons may be caught in 2010 under this provision. This provision does not authorize intentional harvest of yellow-billed loons, but allows use of those loons inadvertently entangled during normal subsistence fishing activities. Individual reporting to the North Slope Borough Department of Wildlife is required by the end of each season. However, the North Slope Borough has asked fishermen, through announcements on the radio and through personal contact, to report inadvertent entanglements of loons as they occur, to better estimate the level of mortality caused by gill nets. In 2008, the North Slope Borough reported that one yellow-billed loon was found dead in a fishing net; one severely injured yellow-billed loon was observed by Borough staff; and two were released uninjured from fishing nets by Borough staff.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act (16 U.S.C. 1536) requires the Secretary of the Interior to "review other programs administered by him and utilize such programs in furtherance of the purposes of the Act" and to "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *." We conducted an intra-agency consultation with the Service's Fairbanks Field Office on this harvest as it will be managed in accordance with this final rule and the conservation measures. The consultation was completed with an April 2, 2010, biological opinion that concluded the final rule and conservation measures are not likely to jeopardize the continued existence of Steller's eider, spectacled eider, yellow-billed loon, or Kittlitz's murrelet, or result in the destruction or adverse modification of designated critical habitat for Steller's eider or spectacled eider.

What Is Different in the Region-Specific Regulations for 2010?

Aleutian and Arctic Terns

We are removing the provision that opened a season from May 15 to June 30 for harvesting Aleutian (*Onychoprion aleutica*) and arctic tern (*Sterna paradisaea*) eggs in the Yakutat Harvest area, from Icy Bay (Icy Cape to Point Riou) and the coastal islands bordering the Gulf of Alaska from Point Manby southeast to and including Dry Bay. The Yakutat Tlingit Tribe requested that we remove this regulation at the April 2009 Co-Management Council meeting, stating that they will not be able to adequately monitor the tern subsistence take as requested by the Service, so they would prefer to withdraw the regulation at this time.

Summary of Public Involvement

On November 20, 2009, we published in the **Federal Register** a proposed rule (74 FR 60228) to establish spring and summer migratory bird subsistence harvest regulations in Alaska for the 2010 subsistence season. The proposed rule provided for a public comment period of 60 days. We posted an announcement of the comment period dates for the proposed rule, as well as the rule itself and related historical documents, on the Co-management Council's Internet homepage. We issued a press release announcing our request for public comments and the pertinent deadlines for such comments, which was faxed to the media Statewide. Additionally, all documents were available on *http://www.regulations.gov*.

In mid-December 2009, we received a request to extend the public comment period and hold a public hearing in Barrow, Alaska. Based on this request, we held a public meeting to record public comments on the proposed regulations on January 12, 2010, at the Inupiat Heritage Center, 5421 North Star St., Barrow. We also reopened the public comment period until February 18, 2010, by publishing a document in the January 25, 2010, **Federal Register** (75 FR 3888). The public was informed that if they had submitted comments previously, they did not need to resubmit because we had already incorporated those comments into the public record and would consider them in preparation of our final determination. By the close of the second public comment period on February 18, 2010, we received responses from 20 individuals and 2 organizations.

Response to Public Comments

General Comments

Comment: We received two general comments on the overall regulations that expressed strong opposition to the concept of allowing any harvest of migratory birds in Alaska.

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

One of the goals of the Protocol amending the Canada Treaty is to allow a traditional subsistence hunt while also improving conservation of migratory birds through effective regulation of this hunt. Although the Protocol sanctions a traditional subsistence hunt, the Parties did not intend to cause significant increases in the take of migratory birds, relative to their continental population sizes. If at some point the subsistence harvest regulations result in significantly increased harvest, management strategies would be implemented to ensure maintenance of continental populations.

Comment: Fourteen commenters explained the true value of subsistence to their way of life on the North Slope—it includes both providing essential food that is shared and preserves the age-old customs and traditions associated with it.

Service Response: We respectfully acknowledge the importance of the customs and traditions that go along with the subsistence way of life in rural Alaska. The amendments to the Migratory Bird Treaties with Canada and Mexico recognize the importance of maintaining the cultural and traditional lifestyle of the indigenous inhabitants of Alaska.

Comment: One commenter requested that the public comment period be extended.

Service Response: We reopened the public comment period until February 18, 2010, by publishing a document in the January 25, 2010, **Federal Register** (75 FR 3888). The public was informed that if they had submitted comments previously, they did not need to resubmit those comments because we had already incorporated them into the public record and would consider them in preparation of our final determination.

Comment: Twelve commenters expressed continued disappointment with the duck stamp and license issue and that these requirements were pushed upon them and were not cultural and traditional. One commenter

added that some of the elders in Barrows are afraid to go out bird hunting because of the threat of getting a ticket for no license or duck stamp. One commenter explained the difficulty of buying a State hunting license, Federal duck stamp, and State duck stamp for subsistence hunters on a limited income. Several commenters stated that purchasing a license and stamps is a burden for a family on a fixed, low income.

Service Response: The only way the requirement to possess a Federal Migratory Bird Hunting and Conservation Stamp could be changed is through a congressional modification of the Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718 *et seq.*). Similarly, the requirement for an Alaska hunting license and Waterfowl Conservation Tag (duck stamp) is codified in Alaska's statutes and regulations and can be changed only by the State legislature. There are a few exemptions. Hunters under the age of 16 or 60 years or older and qualified disabled veterans are not required to purchase licenses and duck stamps to hunt. Residents who qualify for a $5.00 low income license are not required to purchase a duck stamp.

The Subsistence Division (AS 16.05.340(17)(B)) of the Alaska Department of Fish and Game (Department) has the responsibility to evaluate the impact of State and Federal laws and regulations on subsistence hunting and, when corrective action is indicated, make recommendations to the Department, who in turn make recommendations to the Alaska Board of Game regarding amendment and repeal of regulations affecting subsistence hunting.

The Alaska Board of Game (AS 16.05.130(b)(2)–(4)) can establish regulations to exempt the requirement to purchase a waterfowl conservation tag (duck stamp) for waterfowl hunting in areas of the State not likely to benefit from the following programs: (1) The acquisition of wetlands important for waterfowl and public use of waterfowl, (2) waterfowl related projects approved by the State commissioner, and (3) the administration of the waterfowl conservation program.

Comment: Two commenters noted that the **Federal Register** document did not address Executive Order 13175, Government-to-Government Relations, and should have.

Service Response: We did discuss Executive Order 13175 in the November 20, 2009, proposed rule; see 74 FR 60232–60233. In that discussion, we stated that because eligibility to hunt under these regulations is not limited to tribal members, but rather extends to all indigenous inhabitants of the subsistence harvest areas, we are not required to engage in formal consultation with tribes. However, in keeping with the spirit of the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), and Executive Order 13175 (65 FR 67249; November 6, 2000) and Memorandum on Tribal Consultations dated November 5, 2009, concerning consultation and coordination with Indian Tribal Governments, we conducted a public hearing in Barrow, Alaska, for the express purpose of gathering public comments on our November 20, 2009, proposed rule (74 FR 60228). We also conducted local meetings with the Migratory Bird Task Force, which is comprised of Alaska Native Tribes, Alaska Native corporations, and Alaska Native nonprofit organizations, to develop an outreach strategy for the coming spring and summer season. The Service's Alaska Regional Director also traveled to Barrow to meet with local leaders on the 2010 migratory bird regulations and discuss how the local community could be involved in the conservation of listed eiders.

Comment: One commenter requested the Service to consider, under Executive Order 12898 on environmental justice, the impacts of the regulations on the Inupiat subsistence lifestyle, because neither the proposed November 20, 2009, proposed rule (74 FR 60228) nor the environmental assessment on which they are based cite the order.

Service Response: The Service, working with the Co-management Council, already complies with Section 4–401 of this Executive Order, by annually collecting and publishing subsistence harvest data; however, the Service does not have the responsibility to evaluate any potential health risks associated with the consumption of environmentally contaminated wild foods. We have notified the public in our regulations of the risks associated with the potential presence of highly pathogenic H5N1 bird flu in the migratory birds being taken and consumed. The implication from the question appears to be more focused on the additional 2009 regulations imposed on 4 North Slope Inupiat communities within the North Coastal Zone. Our regulations at 50 CFR 92.31(g)(5)(i), which establish shooting hours, have the potential to safeguard human health and safety by preventing the use of firearms when light levels are inadequate to ensure safe practices. The other two regulations under this section pertain more to law enforcement with no applicability to human health.

Comment: One commenter expressed concern that the growing numbers of bird watchers in the Barrow area causing disturbance and affecting bird movement, and that the birdwatchers are there for pleasure, while subsistence is a lifestyle.

Service Response: The Gasline/Cakeeater and Freshwater Lake roads are primarily located on Native owned or privately owned lands and use is managed by the Ukpeagvik Inupiat Corporation, which does restrict use by commercial birdwatching tours and professional photographers by requiring permits.

Comment: One commenter expressed that we should remove spectacled eiders from the list of threatened species, because the population surveys the commenter had read stated that there were plenty of these birds worldwide, and that only a small percentage migrate along the North Slope. The commenter stated that any subsistence take should be allowed.

Service Response: We intend to re-evaluate the species' status rangewide this year during a "5-year review" that we are conducting on spectacled eiders. One result of this review will be to consider whether recent changes in the species' status warrant reconsideration of its protection under the Endangered Species Act. It should be noted, however, that standardized aerial surveys indicate a decline in the number of spectacled eiders nesting on the North Slope.

Comment: One commenter brought up that, under the Small Business Regulatory Enforcement Fairness Act, the proposed rule stated that this action will not have an annual effect on the economy, but the commenter felt the North Slope regulations would negatively affect their subsistence economy.

Service Response: The Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2), addresses potential annual effects on the economy of $100 million or more, which is well beyond the scope of the action contained in this **Federal Register** document.

Comment: One commenter was concerned that under the Unfunded Mandates Reform Act, participation on regional management bodies and the Co-management Council requires travel expenses for some Alaska Native organizations and local governments, but that the local tribal governments have not been paid to participate.

Service Response: As part of the Co-management Council, regional groups were formed to provide for local village

and tribal representation. Grants are annually provided by the Service for each regional representative and their sponsoring organization to fund travel for village representatives to attend regional meetings twice a year.

Law Enforcement

Comment: Six commenters said that the extra law enforcement presence in Barrow created extra tension in the community. Several commenters stated that subsistence hunters in Barrow have been impacted because of the presence of law enforcement. Another commenter said that the additional law enforcement intimidated some people from going hunting. Another commenter suggested we use local people, the city council, and the local Native government to enforce regulations.

Service Response: For several years, the Service's Office of Law Enforcement and Divisions of Endangered Species and Migratory Bird Management have worked with many groups and individuals in the greater North Slope area and Barrow specifically to provide information on the regulatory requirements and enforcement of the regulations. Our approach has focused on significant outreach efforts, including public meetings, radio talk show opportunities, posted fliers, and brochures followed by a phased-in, increased reliance on enforcement actions. The Service and its partners have conducted outreach over the past couple of years to increase hunter awareness. We expect hunter compliance with the regulations and thus do not plan on having a continuous presence in Barrow this season.

Who Is Eligible To Hunt Under These Regulations?

Comment: One commenter questioned what the purpose was of adding the communities of Gulkana, Tazlina, Copper Center, Mentasta Lake, and the rest. The commenter questioned whether or not they hunt birds there.

Service Response: In 2003, the interior Alaska communities in question submitted petitions for inclusion in the subsistence migratory bird. Part of the petitioning process is to show evidence of customary and traditional use of the migratory bird resource. Upon review of these petitions, the Co-management Council at its April and May 2003 meetings recommended that 13 additional communities be included, starting in 2004, based on the five criteria set forth in 50 CFR 92.5(c). The Upper Copper River region included the communities of Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, and Chistochina, totaling 1,172 people.

Comments on Original Region-Specific Regulations

Comment: One commenter expressed concern about global warming and how it is changing the timing of birds' departure, which causes problems with having fixed dates in the regulations, specifically on the North Slope.

Service Response: The Service has accommodated concerns about fixed regulatory dates in the Yukon-Kuskokwim Delta region by allowing the Regional Director or his designee to consult with field biologists and the regional Native Representative group to announce different closure dates each year. A similar request could be made for the North Slope during the open proposal period of November 1 through December 15 of each year.

Comment: Two commenters asked that the Service continue using the provisions proposed in 50 CFR 92.31(g)(4) (originally established in 2005) to allow subsistence use of yellow-billed loons inadvertently entangled in subsistence fishing nets on the North Slope.

Yellow-billed loons remain an important part of the Inupiaq culture.

Service Response: We are retaining the yellow-billed loon provision for the North Slope for 2010.

Comment: Two commenters expressed concerns regarding the special brant harvest for the community of Wainwright. The commenter said that the hunt should be extended from 16 days to a full month to allow for variables in weather and brant migration patterns. Another commenter requested that the Service consider the extent to which climate change is already limiting this harvest and attempt to accommodate Wainwright's request to change the special brant season.

Service Response: Proposals to change regional regulations are accepted from November 1 through December 15 of each year. The Service encourages the commenters to submit a proposal, working with their regional representative, to address their concerns during the next open proposal season.

Comment: Three commenters were concerned that the Service has not defined criteria that would trigger emergency regulations (50 CFR 92.32). A definition of what constitutes an "imminent threat" to Steller's eider conservation is not provided, nor is there any indication of the geographic scale to which this imminent threat applies. One commenter added that critical thresholds or imminent threats should be determined in advance through consultation with the Recovery Team and affected Co-management Council partner organizations. One commenter added that there is no reliable way presented for estimating how small numbers of inadvertently shot eiders would affect the sustainability of the listed population.

Service Response: The Service has intentionally avoided identifying specific thresholds for management actions, including possible closure of the hunt, in order to preserve flexibility for decision makers. Although the number of Steller's eiders known to be taken is one indication of the actual threat, other information will be used to help assess the threat and determine whether further management actions are warranted. Information on the proportion of the hunters checked; degree of cooperation with conservation measures by the hunting community as a whole, circumstances surrounding the birds being shot; breeding status of the species; and the individuals taken, date of take, and other factors may all contribute to the assessment of the situation and identification of appropriate measures in response. We believe identifying specific thresholds would compromise the desire to balance the dual objectives of supporting the hunt while adequately providing for the conservation of Steller's eiders.

What Is Different in the Region-Specific Regulations for 2010?

Comment: One commenter stated that the final rule should note that North Coastal Zone regulations did not originate from the Co-management Council nor were they endorsed by the Co-management Council.

Service Response: The North Slope Borough requested that the regulations go back to the published regulations for the 2008 season, eliminating the three Steller's eider regulations instituted for the 2009 season. The Co-management Council recommended that we revert back to the 2008 regulations because the MOU between the Service and the North Slope partners was only enacted for 2009, and did not address what to do for the 2010 subsistence season.

Comment: Three commenters requested that we remove the regulations added to protect Steller's eiders for the North Slope in 2009. The commenter explained that Steller's eiders are not a targeted species. The commenter added a recommendation to remove the shooting hours and any other provision that is not a customary and traditional practice. Another commenter added a concern that the proposed regulations may not be based on the best science, do not adequately

consider the health and customs of the Inupiat people, and may increase (rather than reduce) the mortality rates of threatened eider species.

Service Response: The Service has dual goals and responsibilities of authorizing a subsistence harvest while protecting migratory birds and threatened species. Although these goals were and continue to be challenging, they are not irreconcilable with sufficient recognition of the need to protect threatened species, measures to remedy documented threats, and commitment from the subsistence community and other conservation partners to work together toward these dual goals. With these dual goals in mind, the Service Regulations Committee decided to continue the 2009 provisions that were designed to help protect Steller's eiders during their summer presence on the North Slope.

Comment: One commenter challenged that there is little scientific information on which the proposed regulations are based. Little is known regarding the migratory route, winter habitat, and nesting range of Steller's eiders, such that it is difficult to assess their actual population status. As FWS stated during the January 12, 2010, hearing, the recovery goal in terms of an ideal population number for Steller's eiders has yet to be set. The regulations proposed for four villages on the North Slope differ significantly from those proposed for the rest of Alaska. Without science to justify this difference, the regulations appear arbitrary.

Service Response: The Service's Migratory Bird Division has conducted aerial surveys of the Arctic Coastal Plain annually since 1993 to monitor Steller's and spectacled eider populations. These surveys, in addition to aerial surveys by Alaska Biological Research, Inc. and ground searches by Service personnel near Barrow, provide an index of population size and nesting range on the North Slope. Furthermore, telemetry data from Steller's eider fitted with transmitters in Barrow in 2000 and 2001 revealed migration corridors, molting areas, and movements between wintering areas, which are also surveyed aerially each spring by Service personnel. Given the best available scientific information, the nesting range and migratory route of Alaska breeding Steller's eider support the position that listed Steller's eiders are vulnerable to harvest by subsistence hunters at Point Hope, Point Lay, Wainwright, and Barrow.

Comment: One commenter said that it is difficult to understand why the North Slope villages are subject to hunting hours, while Kivalina, just 72 miles south of Point Hope, is not. The commenter added that at the January 12, 2010, hearing, the Service explained that it assumed that once the migratory birds move farther south, they mingle with the Russian population. What study has the Service done showing that the American and Russian populations mingle in the 72 miles between Point Hope and Kivalina?

Service Response: The Service is implementing regulations to protect the North American breeding population of Steller's eiders. The mixing of North American and Russian/Siberian-breeding birds likely changes in latitude and longitude as seasonal weather and land and sea conditions change each year. We do not know exactly where this will occur in 2010, as no definitive biological information on mixing rates and locations exists at this time. To obtain that information with current biological investigative techniques would require handling a significant percentage of the fewer than 600 estimated North American breeding birds, which in our estimation could negatively impact the population and delay recovery. In balancing our dual goals of recovery while providing hunting opportunities for the other species that are open to harvest, we are attempting to minimize the impact of the regulations to those areas in which we are confident the majority of Steller's eiders encountered are North American breeding birds. We believe the Steller's eiders around the four affected villages are comprised of North American breeding birds, and therefore we are applying and limiting the regulations specific to Steller's eider conservation to those areas.

Comment: Two commenters oppose the North Slope regulation that requires hunters to present any birds taken upon request by a Service law enforcement officer. One commenter said they thought this activity should require a search warrant. Another commenter opined that this regulation has caused some hunters to reduce their activity because of perceived intrusion.

Service Response: Our ability to monitor and verify the ongoing harvest is an important component of the conservation strategy that we developed in 2009 to enable us to issue the annual regulations to open the subsistence harvest. This requirement enables our officers to effectively verify harvest composition while contacting hunters in the field.

Comment: One commenter stated 50 CFR 92.31(g)(5)(ii) would prohibit hunters (and even non-Service biologists) from touching Steller's eiders (whether dead or injured) under any circumstances. The commenter further pointed out that aside from contravening Inupiaq culture, this rule is detrimental to the Service's ability to monitor and investigate eider deaths.

Service Response: The Service encourages those that find a dead Steller's or Spectacled eider to immediately report the finding to either Federal or State law enforcement. This regulation does not prohibit the finder from covering the carcass to protect it from scavengers, mark the location, or rescue an injured eider.

Comment: Ten commenters specifically opposed the prohibition against hunting after sunset. One commenter said that brant fly lower after sunset and are then easier for people in Wainwright to shoot. Another commenter said that during the day it is harder to hunt and in the evenings it is cooler, and that ducks fly more in the cooler hours. Another commenter explained that shooting hours are not customary and traditional and suggested that the Service look into traditional knowledge relating to weather conditions and flight patterns before imposing hunting hours. Two commenters also questioned the science behind justifying the shooting hours restrictions.

Service Response: The Service is always receptive to the use of traditional and ecological knowledge in addressing environmental issues, and welcomes any local input that would aid in finding a solution for Steller's eiders being mistakenly shot. We designed the shooting hours restriction to eliminate hunting under poor visibility, to improve species' identification, and to reduce the probability of mistakenly shooting and crippling Steller's eiders. The Service believes that bird identification prior to shooting is key to preventing protected species from being accidentally taken during the harvest.

The determination of shooting hours for the individual communities used data provided by the Naval Meteorology and Oceanography Command (NMOC). Tables illustrating civil twilight times by date and location were used to determine the dates when shooting hour restrictions would begin in August. These restrictions were initiated on the dates when periods of "complete darkness" begin to occur. For consistency in managing bird hunting, the beginning and ending times of shooting hours in these subsistence regulations parallel those found in 50 CFR 20.102, which applies for all migratory bird hunting on the North Slope after September 1st of each year. These times are based on NMOC tables for sunrise and sunset. The Service

acknowledges that weather conditions also add a degree of variability in light conditions for shooting, but did not want to address this in the spirit of keeping the regulation as simple as possible.

Comment: One commenter brought up the 5-mile boundary used in delineating the North Coastal Zone. The commenter thought that it meant no hunting within the zone and complained about that.

Service Response: The 5-mile boundary for the North Coastal Zone applies only to the three regulations added in 2009, including presentation of birds upon request; possession prohibition of any illegally taken bird; and daylight-related shooting hours. Migratory bird hunting is not otherwise restricted within that 5-mile zone.

Comment: One commenter opined that targeting the North Slope with the special 2009 eider regulations was prejudiced, since those regulations were not equally applied throughout the birds' flyway range.

Service Response: We do consider and review the regulations Statewide regarding species protected under the Endangered Species Act, and all other federally authorized or funded activities. In the case of the Steller's eider, the regulations apply during the subsistence harvest, when the listed population of Steller's eiders are migrating and breeding on the North Slope.

Comment: One commenter explained that they did not like how Steller's eiders were shot in Barrow in 2008, but that the outlying communities of Point Lay, Wainwright, and Point Hope should not have been punished with additional regulations for what happened in Barrow.

Service Response: We have limited the Steller's eider specific regulations to the villages in the geographic area used by migrating, and possibly nesting, Alaska-breeding Steller's eiders (the listed population). Although approximately 60% of the listed population is thought to nest within 60 kilometers of Barrow, the four coastal villages are included because the listed population migrates past all those villages twice during the subsistence harvest. We would like to know more about the actual risk to listed eiders from shooting in the villages of Point Lay, Point Hope, and Wainwright and would welcome collection of village-specific subsistence harvest information to assist in setting future regulations.

Statutory Authority

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

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

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

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

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

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

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

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

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

(a) Will not have an annual effect on the economy of $100 million or more. It will legalize and regulate a traditional subsistence activity. It will not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns. The commodities being regulated under this rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this rule derives from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska would qualify as small businesses. We have no reason to believe that this rule will lead to a disproportionate distribution of benefits.

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

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

Unfunded Mandates Reform Act

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

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

Takings (Executive Order 12630)

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

Federalism (Executive Order 13132)

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

Civil Justice Reform (Executive Order 12988)

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

Government-to-Government Relations With Native American Tribal Governments

Because eligibility to hunt under these regulations is not limited to tribal members, but rather extends to all indigenous inhabitants of the subsistence harvest areas, we are not required to engage in formal consultation with tribes. However, in keeping with the spirit of the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), and Executive Order 13175 (65 FR 67249; November 6, 2000), concerning consultation and coordination with Indian Tribal Governments, we conducted meetings with the affected tribes and tribal nonprofit organizations to discuss the changes in the regulations and determine possible effects on tribes or trust resources, and have determined that there are no significant effects. The rule will legally recognize the subsistence harvest of migratory birds and their eggs for indigenous inhabitants including tribal members. In 1998, we began a public involvement process to determine how to structure management bodies in order to provide the most effective and efficient involvement of subsistence users. We began by publishing in the **Federal Register** stating that we intended to establish management bodies to implement the spring and summer subsistence harvest (63 FR 49707, September 17, 1998). We held meetings with the Alaska Department of Fish and Game and the Native Migratory Bird Working Group to provide information regarding the amended treaties and to listen to the needs of subsistence users. The Native Migratory Bird Working Group was a consortium of Alaska Natives formed by the Rural Alaska Community Action Program to represent Alaska Native subsistence hunters of migratory birds during the treaty negotiations. We held forums in Nome, Kotzebue, Fort Yukon, Allakaket, Naknek, Bethel, Dillingham, Barrow, and Copper Center. We led additional briefings and discussions at the annual meeting of the Association of Village Council Presidents in Hooper Bay and for the Central Council of Tlingit & Haida Indian Tribes in Juneau.

On March 28, 2000, we published in the **Federal Register** (65 FR 16405) the Notice of Decision entitled, "Establishment of Management Bodies in Alaska To Develop Recommendations Related to the Spring/Summer Subsistence Harvest of Migratory Birds." This notice described the way in which management bodies would be established and organized. Based on the wide range of views expressed on the options document, the decision incorporated key aspects of two of the modules. The decision established one statewide management body consisting of 1 Federal member, 1 State member, and 7–12 Alaska Native members, with all components serving as equals.

Paperwork Reduction Act

This rule has been examined under the Paperwork Reduction Act of 1995 and does not contain any new collections of information that require Office of Management and Budget approval. OMB has approved our collection of information associated with the voluntary annual household surveys used to determine levels of subsistence take. The OMB control number is 1018–0124, which expires March 31, 2010. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act Consideration

The annual regulations and options were considered in the environmental assessment, "Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the 2010 Spring/Summer Harvest," October 9, 2009. Copies are available from the person listed under **FOR FURTHER INFORMATION CONTACT** or at *http://www.regulations.gov*.

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

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This is not a significant regulatory action under this Executive Order; it would allow only for traditional subsistence harvest and would improve conservation of migratory birds by allowing effective regulation of this harvest. Further, this rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action under Executive Order 13211, and no Statement of Energy Effects is required.

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553(d)) requires an agency to publish a final rule in most cases at least 30 days before the rule is to become effective. The Act also allows publication less than 30 days before the effective date if the agency finds that there is a good cause for doing so. (5 U.S.C. 553(d)(3)) The Department of the Interior finds that good cause exists for making this rule effective upon publication because:

—This rule is necessary to allow continuation of customary and traditional subsistence uses of migratory birds in Alaska; and

—Delaying publication of this rule would impose hardship upon those who harvest migratory birds for subsistence use.

List of Subjects in 50 CFR Part 92

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

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

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

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

Authority: 16 U.S.C. 703–712.

Subpart D—Annual Regulations Governing Subsistence Harvest

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

§ 92.31 Region-specific regulations.

The 2010 season dates for the eligible subsistence harvest areas are as follows:

(a) *Aleutian/Pribilof Islands Region.*

(1) Northern Unit (Pribilof Islands):

(i) Season: April 2–June 30.

(ii) Closure: July 1–August 31.

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

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

(ii) Closure: June 16–July 15.

(iii) Special Black Brant Season Closure: August 16–August 31, only in Izembek and Moffet lagoons.

(iv) Special Tundra Swan Closure: All hunting and egg gathering closed in units 9(D) and 10.

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

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

(ii) Closure: July 16–August 15.

(b) *Yukon/Kuskokwim Delta Region.*

(1) Season: April 2–August 31.

(2) Closure: 30-day closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with local subsistence users, field biologists, and the Association of Village Council President's Waterfowl Conservation Committee. This 30-day period will occur between June 1 and August 15 of each year. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.

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

(c) *Bristol Bay Region.*

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

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

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

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

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

(ii) Closure: June 15–July 15.

(2) Remainder of the region:

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

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

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

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

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

(f) *Northwest Arctic Region.*

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

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

(g) *North Slope Region.*

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

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

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

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

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

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

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

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

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

(ii) Closure: June 20–July 19.

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

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

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

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

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

(h) *Interior Region.*

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

(2) Closure: June 15–July 15.

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

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

(2) Closure: May 27–June 26.

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

(j) *Gulf of Alaska Region.*

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

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

(ii) Closure: June 1–30.

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

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

(ii) Closure: June 1–30.

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

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

(2) Closure: June 1–July 31.

(l) *Southeast Alaska.*

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

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

(ii) Closure: July 1–August 31.

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

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

(ii) Closure: July 1–August 31.

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

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

(ii) Closure: July 1–August 31.

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

§ 92.32 Emergency regulations to protect Steller's eiders.

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

Dated: April 1, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–8382 Filed 4–12–10; 8:45 am]

BILLING CODE 4310–55–P