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## **Title 50 —Wildlife and Fisheries**

### **Chapter I —United States Fish and Wildlife Service, Department of the Interior**

#### **Subchapter G —Miscellaneous Provisions**

#### **Part 92** Migratory Bird Subsistence Harvest in Alaska

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

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

**Source:** 67 FR 53517, Aug. 16, 2002, unless otherwise noted.

### **Subpart A—General Provisions**

## § 92.1 Purpose of regulations.

The regulations in this part implement the Alaska migratory bird subsistence program as provided for in Article II(4)(b) of the 1916 Convention for the Protection of Migratory Birds in Canada and the United States (the “Canada Treaty”), as amended.

## § 92.2 Authority.

The Secretary of the Interior issues the regulations in this part under the authority granted to the Secretary by the Migratory Bird Treaty Act (MBTA), 16 U.S.C. 703-712.

## § 92.3 Applicability and scope.

- (a) ***In general.*** The regulations in this part apply to all eligible persons harvesting migratory birds and their eggs for subsistence purposes in Alaska between the dates of March 10 and September 1. The provisions in this part do not replace or alter the regulations set forth in part 20 of this chapter, which relate to the hunting of migratory game birds and crows during the regular open season from September 1 through March 10. The provisions set forth in this part implement the exception to the closed season, which authorizes the taking of migratory birds in Alaska for subsistence purposes between March 10 and September 1.
- (b) ***Land ownership.*** This part does not alter the legal authorities of Federal and State land managing agencies or the legal rights of private land owners to close their respective lands to the taking of migratory birds.
- (c) ***Federal public lands.*** The provisions of this part are in addition to, and do not supersede, any other provision of law or regulation pertaining to national wildlife refuges or other federally managed lands.
- (d) ***Migratory bird permits.*** The provisions of this part do not alter the terms of any permit or other authorization issued pursuant to part 21 of this chapter.
- (e) ***State laws for the protection of migratory birds.*** No statute or regulation of the State of Alaska relieves a person from the restrictions, conditions, and requirements contained in this part. Nothing in this part, however, prevents the State of Alaska from making and enforcing laws or regulations that are consistent with the regulations in this part, the conventions between the United States and any foreign country for the protection of migratory birds, and the Migratory Bird Treaty Act, and that give further protection to migratory birds.

## § 92.4 Definitions.

The following definitions apply to all regulations contained in this part:

***Alaska Native*** means the same as “Native,” defined in section 3(b) of the Alaska Native Claims Settlement Act, 16 U.S.C. 1602(b).

***Authentic Native article of handicraft or clothing*** means any item created by an Alaska Native to which inedible parts of migratory birds authorized for use in handicrafts or clothing are incorporated and which is fashioned by hand, or with limited use of machines, provided no mass production occurs.

***Closure*** means the season is closed to all forms of harvest, including hunting and egg gathering, unless specified otherwise.

*Co-management Council* means the Alaska Migratory Bird Co-management Council, consisting of Alaska Native, Federal, and State of Alaska representatives as equals.

*Edible meat* means the meat from the breast, back, thighs, legs, wings, gizzard, and heart. The head, neck, feet, other internal organs, and skin are considered inedible byproducts, and not edible meat, for all provisions of this part.

*Eligible person* means an individual within the State of Alaska who qualifies to harvest migratory birds and their eggs for subsistence purposes during the spring and summer.

*Excluded areas* are defined in § 92.5.

*Flyway Council* means the Atlantic, Mississippi, Central, or Pacific Flyway Council.

*Game Management Unit*, also referred to simply as *Unit*, means 1 of the 26 geographical areas listed in the codified State of Alaska hunting and trapping regulations and on maps of the Alaska State Game Management Units.

*Immediate family* means spouse, children, parents, grandchildren, grandparents, and siblings.

*Included areas* are defined in § 92.5.

*Indigenous inhabitant* means a permanent resident of a village within a subsistence harvest area, regardless of race.

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

*Migratory birds authorized for use in handicrafts or clothing* means the species of birds listed at § 92.6(b) that were taken for food in a nonwasteful manner during the Alaska subsistence-harvest season by an eligible person of an included area.

*Native* means the same as “Alaska Native” as defined in this section.

*Nonwasteful taking* means making a reasonable effort to retrieve all birds killed or wounded, and retaining all edible meat until the birds have been transported to the location where they will be consumed, processed, or preserved as human food.

*Partner organization or regional partner* means a regional or local organization, or a local or tribal government that has entered into a formal agreement with the U.S. Fish and Wildlife Service for the purpose of coordinating the regional programs necessary to involve subsistence hunters in the regulatory process described in this part.

*Permanent resident* means any person whose primary, permanent home for the previous 12 months was within a subsistence harvest area in Alaska. Whenever absent from this primary, permanent home, the person has the intention of returning to it. Factors demonstrating a person's primary, permanent home may include: an address listed on an Alaska Permanent Fund dividend application; an Alaska license to drive, hunt, fish, or engage in an activity regulated by a government entity; voter registration; location of residences owned, rented, or leased; location of stored household goods; the residence of the person's spouse, minor children, or dependents; tax documents; whether the person claims residence in another location for any purpose; or status as a tribal member of a tribe in a subsistence harvest area.

**Sale by consignment** means that an Alaska Native sends or supplies an authentic Native article of handicraft or clothing to a person who sells the item for the Alaska Native. The consignment seller need not be an Alaska Native and the Alaska Native craftsman retains ownership of the item and will receive money for the item when it is sold.

**Seabirds** refers to all bird species listed in § 92.32 within the families Alcidae, Laridae, Procellariidae, and Phalacrocoracidae.

**Service Regulations Committee** means the Migratory Bird Regulations Committee of the U.S. Fish and Wildlife Service.

**Shorebirds** refers to all bird species listed in § 92.32 within the families Charadriidae, Haematopodidae, and Scolopacidae.

**State** means State of Alaska.

**Subsistence** means the customary and traditional harvest or use of migratory birds and their eggs by eligible indigenous inhabitants for their own nutritional and other essential needs.

**Subsistence harvest areas** encompass customary and traditional hunting areas of villages in Alaska that qualify for a spring or summer subsistence harvest of migratory birds under this part.

**Taxidermy** refers to birds preserved and mounted in lifelike representations. Taxidermy does not include preserving bird parts to be integrated into traditional arts and crafts.

**Village** is defined as a permanent settlement with one or more year-round residents.

**Waterfowl** refers to all bird species listed in § 92.32 within the family Anatidae.

[67 FR 53517, Aug. 16, 2002, as amended at 68 FR 43027, July 21, 2003; 69 FR 17327, Apr. 2, 2004; 78 FR 11993, Feb. 21, 2013; 81 FR 18787, Apr. 1, 2016; 82 FR 34270, July 24, 2017]

## § 92.5 Who is eligible to participate?

If you are a permanent resident of a village within a subsistence harvest area, you will be eligible to harvest migratory birds and their eggs for subsistence purposes during the applicable periods specified in subpart D of this part.

(a) **Included areas.** Village areas located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, or in areas north and west of the Alaska Range are subsistence harvest areas, except that villages within these areas not meeting the criteria for a subsistence harvest area as identified in paragraph (c) of this section will be excluded from the spring and summer subsistence harvest.

(1) Any person may request the Co-management Council to recommend that an otherwise included area be excluded by submitting a petition stating how the area does not meet the criteria identified in paragraph (c) of this section. The Co-management Council will forward petitions to the appropriate regional management body. The Co-management Council will then consider each petition and will submit to the Service any recommendations to exclude areas from the spring and summer subsistence harvest. The Service will publish any approved recommendations for public comment in the FEDERAL REGISTER.

(2) Based on petitions for inclusion recommended by the Co-management Council, the Service has added the following communities to the included areas under this part:

- (i) Upper Copper River Region—Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina.
- (ii) Gulf of Alaska Region—Chugach Community of Chenega, Chugach Community of Cordova, Chugach Community of Nanwalek, Chugach Community of Port Graham, and Chugach Community of Tatitlek.
- (iii) Cook Inlet Region—Tyonek.
- (iv) Southeast Alaska Region—Hoonah, Craig, Hydaburg, and Yakutat.

(b) **Excluded areas.** Excluded areas are not subsistence harvest areas and are closed to harvest, with the exception of any portion of an excluded area that falls within a harvest area that has been designated for a specific community under paragraph (a)(2) of this section. Residents of excluded areas are not eligible persons as defined in § 92.4. Communities located within the excluded areas provided in paragraphs (b)(2) and (b)(3) of this section may petition the Co-management Council through their regional management body for designation as a spring and summer subsistence harvest area. The petition must state how the community meets the criteria identified in paragraph (c) of this section. The Co-management Council will consider each petition and will submit to the Service any recommendations to designate a community as a spring and summer subsistence harvest area. The Service will publish any approved new designations of communities for public comment in the FEDERAL REGISTER. Excluded areas consist of the following:

- (1) All areas outside of Alaska.
- (2) The Municipality of Anchorage, the Matanuska-Susitna Borough, the Kenai Peninsula roaded area (as described in paragraph (b)(3) of this section), the Gulf of Alaska roaded area (as described in paragraph (b)(4) of this section), Southeast Alaska, and the Central Interior Excluded Area (as described in paragraph (b)(5) of this section) do not qualify for a spring and summer harvest.
- (3) The Kenai Peninsula roaded area comprises the following: Game Management Unit (Unit) 7, Unit 15(A), Unit 15(B), and that portion of Unit 15(C) east and north of a line beginning at the northern boundary of Unit 15(C) and mouth of the Kasilof River at 60°23'19" N; 151°18'37" W, extending south along the coastline of Cook Inlet to Bluff Point (59°40'00" N), then south along longitude line 151°41'48" W to latitude 59°35'56" N, then east to the tip of Homer Spit (excluding any land of the Homer Spit), then northeast to the north bank of Fox River (59°48'57" N; 150°58'44" W), and then east to the eastern boundary of Unit 15(C) at 150°19'59" W.
- (4) The Gulf of Alaska roaded area comprises the incorporated city boundaries of Valdez and Whittier, Alaska.
- (5) The Central Interior Excluded Area comprises the following: The Fairbanks North Star Borough and that portion of Unit 20(A) east of the Wood River drainage and south of Rex Trail, including the upper Wood River drainage south of its confluence with Chicken Creek; that portion of Unit 20(C) east of Denali National Park north to Rock Creek and east to Unit 20(A); and that portion of Unit 20(D) west of the Tanana River between its confluence with the Johnson and Delta Rivers, west of the east bank of the Johnson River, and north and west of the Volkmar drainage, including the Goodpaster River drainage. The following communities are within the Excluded Area: Delta Junction/Big Delta/Fort Greely, McKinley Park/Village, Healy, Ferry, and all residents of the formerly named Fairbanks North Star Borough Excluded Area.

- (c) **Criteria for determining designation as a spring and summer subsistence harvest area.** A previously excluded community may be included in the spring/summer harvest regulations if recommended by the Alaska Migratory Bird Co-management Council. The Alaska Migratory Bird Co-management Council will recommend designation of subsistence harvest areas based on a deliberative process using the best available information on nutritional and cultural needs and customary and traditional use. The Alaska Migratory Bird Co-management Council recommendations will accommodate traditional spring and summer harvests without creating new traditions or increasing harvest of migratory birds. Recommendations will be made based on the majority of factors and the weight of the evidence using the following criteria:
- (1) A pattern of use recurring in the spring and summer of each year prior to 1999, excluding interruptions by circumstances beyond the user's control;
  - (2) The consistent harvest and use of migratory birds on or near the user's permanent residence;
  - (3) A use pattern that includes the handing down of knowledge of hunting skills and values from generation to generation;
  - (4) A use pattern in which migratory birds are shared or distributed among others within a definable community of persons; a community for purposes of subsistence uses may include specific villages or towns, with a historical pattern of subsistence use; and
  - (5) A use pattern that includes reliance for subsistence purposes upon migratory birds or their eggs and that meets nutritional and other essential needs including, but not limited to, cultural, social, and economic elements of the subsistence way of life.
- (d) **Participation by permanent residents of excluded areas.** Immediate family members who are residents of excluded areas may participate in the customary spring and summer subsistence harvest in a community's subsistence area with permission of the Village or Tribal council, whichever is appropriate, to assist indigenous inhabitants in meeting their nutritional and other essential needs or for the teaching of cultural knowledge using one of the following procedures:
- (1) A letter of invitation will be sent by the Tribal or village council to the hunter with a copy to the Executive Director of the Co-management Council, who will inform the Service's Alaska Region Law Enforcement Office and the Service's Co-management Council Coordinator within 2 business days. The Service will then inform any affected Federal agency when residents of excluded areas are allowed to participate in the subsistence harvest within their Federal lands.
  - (2) For the Upper Copper River Region, a permit may be issued by the Tribal Council or their authorized Tribal representative to the invited hunter certifying that the permit holder is an immediate family member authorized to assist eligible family members in hunting migratory birds in the Tribe's subsistence harvest area. A permit is valid for 2 years from date of issuance. A list of permit holders will be sent to the Executive Director of the Co-management Council, who will inform the Service's Alaska Region Office of Law Enforcement and the Service's Co-management Council Coordinator within 2 business days. The Service will then inform any affected Federal agency when residents of excluded areas are allowed to participate in the subsistence harvest within their Federal lands.

[67 FR 53517, Aug. 16, 2002, as amended at 68 FR 43027, July 21, 2003; 69 FR 17327, Apr. 2, 2004; 70 FR 18248, Apr. 8, 2005; 72 FR 18322, Apr. 11, 2007; 79 FR 19458, Apr. 8, 2014; 86 FR 20318, Apr. 19, 2021; 87 FR 38673, June 29, 2022]

## § 92.6 Use and possession of migratory birds.

You may not sell, offer for sale, purchase, or offer to purchase migratory birds, their parts, or their eggs taken under this part, except as provided in this section.

(a) ***Giving and receiving migratory birds.*** Under this part, you may take migratory birds for human consumption only. Harvest and possession of migratory birds must be conducted using nonwasteful taking. Edible meat of migratory birds may be given to immediate family members by eligible persons. Inedible byproducts of migratory birds taken for food may be used for other purposes, except that taxidermy is prohibited, and these byproducts may only be given to other eligible persons or Alaska Natives.

(b) ***Authentic native articles of handicraft or clothing.***

(1) Under this section, authentic native articles of handicraft or clothing may be produced for sale only from the following bird species:

- (i) Tundra swan (*Cygnus columbianus*).
- (ii) Blue-winged teal (*Anas discors*).
- (iii) Redhead (*Aythya americana*).
- (iv) Ring-necked duck (*Aythya collaris*).
- (v) Greater scaup (*Aythya marila*).
- (vi) Lesser scaup (*Aythya affinis*).
- (vii) King eider (*Somateria spectabilis*).
- (viii) Common eider (*Somateria mollissima*).
- (ix) Surf scoter (*Melanitta perspicillata*).
- (x) White-winged scoter (*Melanitta fusca*).
- (xi) Barrow's goldeneye (*Bucephala islandica*).
- (xii) Hooded merganser (*Lophodytes cucullatus*).
- (xiii) Pacific loon (*Gavia pacifica*).
- (xiv) Common loon (*Gavia immer*).
- (xv) Double-crested cormorant (*Phalacrocorax auritus*).
- (xvi) Black oystercatcher (*Haematopus bachmani*).
- (xvii) Lesser yellowlegs (*Tringa flavipes*).
- (xviii) Semipalmated sandpiper (*Calidris semipalmatus*).
- (xix) Western sandpiper (*Calidris mauri*).
- (xx) Wilson's snipe (*Gallinago delicata*).
- (xxi) Bonaparte's gull (*Larus philadelphia*).

- (xxii) Mew gull (*Larus canus*).
- (xxiii) Red-legged kittiwake (*Rissa brevirostris*).
- (xxiv) Arctic tern (*Sterna paradisaea*).
- (xxv) Black guillemot (*Cephus grylle*).
- (xxvi) Cassin's auklet (*Ptychoramphus aleuticus*).
- (xxvii) Great horned owl (*Bubo virginianus*).

- (2) Only Alaska Natives may sell or re-sell any authentic native article of handicraft or clothing that contains an inedible byproduct of a bird listed in paragraph (b)(1) of this section that was taken for food during the Alaska migratory bird subsistence harvest season. Eligibility under this paragraph (b)(2) can be shown by a Tribal Enrollment Card, Bureau of Indian Affairs card, or membership in the Silver Hand program. All sales and transportation of sold items are restricted to within the United States. Each sold item must be accompanied by either a certification (FWS Form 3-2484) signed by the artist or a Silver Hand insignia. Purchasers must retain this documentation and produce it upon the request of a law enforcement officer.
- (3) Sales by consignment are allowed. Each consigned item must be accompanied by either a certification (FWS Form 3-2484) signed by the artist or Silver Hand insignia. All consignees, sellers, and purchasers must retain this documentation with each item and produce it upon the request of a law enforcement officer. All consignment sales are restricted to within the United States.
- (4) The Office of Management and Budget reviewed and approved the information collection requirements contained in this section and assigned OMB Control No. 1018-0168. We use the information to monitor and enforce the regulations. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. You may send comments on the information collection requirements to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, at the address listed at 50 CFR 2.1(b).

[82 FR 34270, July 24, 2017]

## §§ 92.7-92.9 [Reserved]

### Subpart B—Program Structure

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

- (a) **Establishment.** The U.S. Fish and Wildlife Service hereby establishes, as authorized by the Protocol amending the Canada Treaty, a statewide management body to be known as the Alaska Migratory Bird Co-management Council.
- (b) **Membership.** The Co-management Council must include Alaska Native, Federal, and State of Alaska representatives, as equals.
  - (1) The Federal and State governments will each seat one representative. The Federal representative will be appointed by the Alaska Regional Director of the U.S. Fish and Wildlife Service, and the State representative will be appointed by the Commissioner of the Alaska Department of Fish and Game. Regional partner organizations may seat 1 representative from each of the 12 regions identified in § 92.11(a).



- (2) The Federal and State representatives and the collective Native representatives will each have one vote, for a total of three votes for the entire council.

(c) **Roles and responsibilities.** The Co-management Council is authorized to:

- (1) Hold public meetings for the purpose of conducting business related to spring and summer subsistence harvest of migratory birds;
- (2) Develop recommendations for regulations governing the spring and summer subsistence harvest of migratory birds and their eggs;
- (3) Develop recommendations for, among other things, law enforcement policies, population and harvest monitoring, education programs, research and use of traditional knowledge, and habitat protection;
- (4) Develop procedures and criteria by which areas and communities can be determined to be eligible or ineligible for a spring/summer subsistence harvest;
- (5) Provide guidelines to the regional management bodies each year for formulation of annual regulations;
- (6) Consolidate regional recommendations and resolve interregional differences in order to prepare statewide recommendations;
- (7) Establish committees to gather or review data, develop plans for Co-management Council actions, and coordinate programs with regional management bodies;
- (8) Send regional representatives from the Co-management Council to meetings of the Pacific Flyway Council and to meetings of the other Flyway Councils as needed, and to meetings of the Service Regulations Committee;
- (9) Elect officers; and
- (10) Conduct other business as the Council may determine is necessary to accomplish its purpose.

(d) **Meetings.** Meetings of the Co-management Council will be open to the public. The Co-management Council will:

- (1) Hold meetings at least twice annually;
- (2) Conduct meetings in accordance with bylaws approved by the Co-management Council;
- (3) Provide an opportunity at each meeting for public comment;
- (4) Establish the dates, times, and locations of meetings; and
- (5) Maintain a written record of all meetings.

(e) **Staff support.** Administrative support for the Co-management Council will be provided by the U.S. Fish and Wildlife Service and will include, but not be limited to:

- (1) Making arrangements for the meeting rooms and associated logistics related to Co-management Council meetings;
- (2) Preparing public notices announcing Co-management Council meetings;
- (3) Maintaining records of discussions and actions taken by the Co-management Council;

- (4) Coordinating with the Alaska Department of Fish and Game to provide technical information needed by the Co-management Council for its deliberations;
- (5) Preparing documents and gathering information needed by the Co-management Council for its meetings; and
- (6) Preparing the annual subpart D regulations package recommended by the Co-management Council for submission to the flyway councils and the Service Regulations Committee.

[67 FR 53517, Aug. 16, 2002, as amended at 68 FR 43027, July 21, 2003]

## § 92.11 Regional management areas.

- (a) **Regions identified.** To allow for maximum participation by residents of subsistence eligible areas, the Alaska Regional Director of the Service established 12 geographic regions based on common subsistence resource use patterns and the 12 Alaska Native regional corporation boundaries established under the Alaska Native Claims Settlement Act. Despite using the Alaska Native regional corporation boundaries, we are not working directly with the regional corporations in this program and are instead working with the Alaska Native nonprofit groups and local governments in those corresponding regions. You may obtain records and maps delineating the boundaries of the 12 regions from the U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, 222 West 7th Ave., No. 13, Anchorage, AK 99513. The regions are identified as follows:

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

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

- (1) Organize or identify one or more management bodies within the region in which it is located.

- (2) Determine how the management body for the region should be organized, the manner in which it should function, its size, who serves on it, the length of terms, methods of involving subsistence users, and other related matters.
- (3) Coordinate regional meetings and the solicitation of proposals.
- (4) Ensure appointment of a person to represent the region by serving on the Co-management Council. If a region consists of more than one partner organization, each partner organization may appoint a member to sit on the Co-management Council.
- (5) Keep the residents of villages within the region informed of issues related to the subsistence harvest of migratory birds.
- (6) Work cooperatively with the U.S. Fish and Wildlife Service and the Alaska Department of Fish and Game to gather harvest data, numbers of subsistence users, and other management data and traditional knowledge for the benefit of the management bodies.

(c) ***Regional management bodies.***

- (1) Regional management bodies must provide a forum for the collection and expression of opinions and recommendations regarding spring and summer subsistence harvesting of migratory birds. They must develop requests and recommendations from the region to be presented to the Co-management Council for deliberation. They must provide for public participation in the meetings at which recommendations and requests are formulated.
- (2) Requests and recommendations to the Co-management Council may involve seasons and bag limits, methods and means, law enforcement policies, population and harvest monitoring, education programs, research and use of traditional knowledge, habitat protection, and other concerns related to migratory bird subsistence programs.
- (3) Regional management bodies may be established specifically for the purpose of carrying out the responsibilities identified in this part, or they may be existing entities that can add these responsibilities to their existing duties.

[67 FR 53517, Aug. 16, 2002, as amended at 68 FR 43027, July 21, 2003]

## **§ 92.12 Relationship to the process for developing national hunting regulations for migratory game birds.**

(a) ***Flyway councils.***

- (1) Proposed annual regulations recommended by the Co-management Council will be submitted to all flyway councils for review and comment. The Council's recommendations must be submitted prior to the SRC's last regular meeting of the calendar year in order to be approved for spring/summer harvest beginning March 11 of the following calendar year.
- (2) Alaska Native representatives may be appointed by the Co-management Council to attend meetings of one or more of the four flyway councils to discuss recommended regulations or other proposed management actions.

(b) ***Service regulations committee.*** Proposed annual regulations recommended by the Co-management Council will be submitted to the Service Regulations Committee for their review and recommendation to the Service Director. Following the Service Director's review and recommendation, the proposals will be

forwarded to the Department of Interior for approval. Proposed annual regulations will then be published in the FEDERAL REGISTER for public review and comment, similar to the annual migratory game bird hunting regulations (found in part 20 of this chapter). Final spring/summer regulations for Alaska will be published in the FEDERAL REGISTER in the preceding Fall.

## §§ 92.13-92.19 [Reserved]

### Subpart C—General Regulations Governing Subsistence Harvest

#### § 92.20 Methods and means.

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

- (a) Swivel guns, shotguns larger than 10 gauge, punt guns, battery guns, machine guns, fish hooks, poisons, drugs, explosives, or stupefying substances;
- (b) Shooting from a sinkbox or any other type of low-floating device that affords the hunter a means of concealment beneath the surface of the water;
- (c) Hunting from any type of aircraft;
- (d) Taking waterfowl and other species using live birds as decoys, except for auklets on Diomedes and St. Lawrence islands (Use of live birds as decoys is a customary and traditional means of harvesting auklets on Diomedes and St. Lawrence islands.);
- (e) Hunting with the aid of recorded bird calls;
- (f) Using any type of vehicle, aircraft, or boat for the purpose of concentrating, driving, rallying, or stirring up of any migratory bird, except boats may be used to position a hunter;
- (g) Having in possession or using lead or other toxic shot while hunting (Approved nontoxic shot types are listed in § 20.21(j) of subchapter B.);
- (h) Shooting while on or across any road or highway;
- (i) Using an air boat (Interior and Bristol Bay Regions only) or jet ski (Interior Region only) for hunting or transporting hunters;
- (j) Using private or chartered aircraft for hunting or transporting hunters, except for transportation between community airstrips (Unit 18, Yukon/Kuskokwim Delta Region only); or
- (k) By the aid of baiting, or on or over any baited area, where a person knows or reasonably should know that the area is or has been baited, as provided at 50 CFR 20.21(i) and 16 U.S.C. 704(b).

[68 FR 43028, July 21, 2003, as amended at 69 FR 17327, Apr. 2, 2004; 70 FR 18248, Apr. 8, 2005; 71 FR 10408, Feb. 28, 2006; 72 FR 18323, Apr. 11, 2007]

#### § 92.21 Emergency closures.

- (a) The Regional Director, after consultation with the Co-management Council, may close or temporarily suspend any regulation established under subparts C or D of this part:
  - (1) Upon finding that a continuation of the regulation would pose an imminent threat to the conservation of any endangered or threatened species or other migratory bird population; and

- (2) Upon issuance of local public notice by such means as publication in local newspapers of general circulation, posting of the areas affected, notifying the State wildlife conservation agency, and announcement on the internet and local radio and television.
- (b) The Service will also announce any such closure or temporary suspension by publication of a notice in the FEDERAL REGISTER simultaneously with the local public notice referred to in paragraph (a)(2) of this section. However, in the event that publishing a FEDERAL REGISTER notice simultaneously with the local public notice is impractical, we will publish in the FEDERAL REGISTER as soon as possible after the steps outlined in paragraph (a) of this section are taken.
- (c) Any closure or temporary suspension under this section will be effective on the date of publication of the FEDERAL REGISTER notice; or if such notice is not published simultaneously with the notification methods described in paragraph (a) of this section, then on the date and at the time specified in the local notification to the public given under paragraph (a)(2) of this section. Every notice of closure or temporary suspension will include the date and time of the closing, the area or areas affected, and the species affected. In the case of a temporary suspension, the date and time when the harvest may be resumed will also be provided by local notification to the public and by publication in the FEDERAL REGISTER as provided for in paragraphs (a) and (b) of this section.

[68 FR 43028, July 21, 2003]

## § 92.22 Subsistence migratory bird species.

You may harvest birds or gather eggs from the following species, listed in taxonomic order, within all included areas except Southeast Alaska, which is restricted to Glaucous-winged gull egg harvesting only. When birds are listed at the species level, all subspecies existing in Alaska are also open to harvest. All bird species not listed are closed to harvesting and egg gathering.

### (a) *Family Anatidae.*

- (1) Emperor Goose (*Anser canagicus*)—except no egg gathering is permitted.
- (2) Snow Goose (*Anser caerulescens*).
- (3) Greater White-fronted Goose (*Anser albifrons*).
- (4) Brant (*Branta bernicla*)—except no egg gathering is permitted in the Yukon/Kuskokwim Delta and the North Slope regions.
- (5) Cackling Goose (*Branta hutchinsii*)—except in the Semidi Islands.
- (6) Canada Goose (*Branta canadensis*).
- (7) Tundra Swan (*Cygnus columbianus*)—except in Units 9(D) and 10.
- (8) Blue-winged Teal (*Spatula discors*).
- (9) Northern Shoveler (*Spatula clypeata*).
- (10) Gadwall (*Mareca strepera*).
- (11) Eurasian Wigeon (*Mareca penelope*).
- (12) American Wigeon (*Mareca americana*).

- (13) Mallard (*Anas platyrhynchos*).
- (14) Northern Pintail (*Anas acuta*).
- (15) Green-winged Teal (*Anas crecca*).
- (16) Canvasback (*Aythya valisineria*).
- (17) Redhead (*Aythya americana*).
- (18) Ring-necked Duck (*Aythya collaris*).
- (19) Greater Scaup (*Aythya marila*).
- (20) Lesser Scaup (*Aythya affinis*).
- (21) King Eider (*Somateria spectabilis*).
- (22) Common Eider (*Somateria mollissima*).
- (23) Harlequin Duck (*Histrionicus histrionicus*).
- (24) Surf Scoter (*Melanitta perspicillata*).
- (25) White-winged Scoter (*Melanitta deglandi*).
- (26) Black Scoter (*Melanitta americana*).
- (27) Long-tailed Duck (*Clangula hyemalis*).
- (28) Bufflehead (*Bucephala albeola*).
- (29) Common Goldeneye (*Bucephala clangula*).
- (30) Barrow's Goldeneye (*Bucephala islandica*).
- (31) Hooded Merganser (*Lophodytes cucullatus*).
- (32) Common Merganser (*Mergus merganser*).
- (33) Red-breasted Merganser (*Mergus serrator*).

(b) **Family Podicipedidae.**

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

(c) **Family Gruidae.**

- (1) Sandhill Crane (*Antigone canadensis*).
- (2) [Reserved]

(d) **Family Haematopodidae.**

- (1) Black Oystercatcher (*Haematopus bachmani*).
- (2) [Reserved]

(e) **Family Charadriidae.**

- (1) Black-bellied Plover (*Pluvialis squatarola*).
- (2) Common Ringed Plover (*Charadrius hiaticula*).

(f) **Family Scolopacidae.**

- (1) Bar-tailed Godwit (*Limosa lapponica*).
- (2) Ruddy Turnstone (*Arenaria interpres*).
- (3) Sharp-tailed Sandpiper (*Calidris acuminata*).
- (4) Dunlin (*Calidris alpina*).
- (5) Baird's Sandpiper (*Calidris bairdii*).
- (6) Least Sandpiper (*Calidris minutilla*).
- (7) Semipalmated Sandpiper (*Calidris pusilla*).
- (8) Western Sandpiper (*Calidris mauri*).
- (9) Long-billed Dowitcher (*Limnodromus scolopaceus*).
- (10) Common Snipe (*Gallinago gallinago*).
- (11) Wilson's Snipe (*Gallinago delicata*).
- (12) Spotted Sandpiper (*Actitis macularius*).
- (13) Lesser Yellowlegs (*Tringa flavipes*).
- (14) Greater Yellowlegs (*Tringa melanoleuca*).
- (15) Red-necked Phalarope (*Phalaropus lobatus*).
- (16) Red Phalarope (*Phalaropus fulicarius*).

(g) **Family Stercorariidae.**

- (1) Pomarine Jaeger (*Stercorarius pomarinus*).
- (2) Parasitic Jaeger (*Stercorarius parasiticus*).
- (3) Long-tailed Jaeger (*Stercorarius longicaudus*).

(h) **Family Alcidae.**

- (1) Common Murre (*Uria aalge*).
- (2) Thick-billed Murre (*Uria lomvia*).
- (3) Black Guillemot (*Cepphus grylle*).
- (4) Pigeon Guillemot (*Cepphus columba*).
- (5) Cassin's Auklet (*Ptychoramphus aleuticus*).
- (6) Parakeet Auklet (*Aethia psittacula*).
- (7) Least Auklet (*Aethia pusilla*).

- (8) Whiskered Auklet (*Aethia pygmaea*).
- (9) Crested Auklet (*Aethia cristatella*).
- (10) Rhinoceros Auklet (*Cerorhinca monocerata*).
- (11) Horned Puffin (*Fratercula corniculata*).
- (12) Tufted Puffin (*Fratercula cirrhata*).

(i) **Family Laridae.**

- (1) Black-legged Kittiwake (*Rissa tridactyla*).
- (2) Red-legged Kittiwake (*Rissa brevirostris*).
- (3) Ivory Gull (*Pagophila eburnea*).
- (4) Sabine's Gull (*Xema sabini*).
- (5) Bonaparte's Gull (*Chroicocephalus philadelphia*).
- (6) Mew Gull (*Larus canus*).
- (7) Herring Gull (*Larus argentatus*).
- (8) Slaty-backed Gull (*Larus schistisagus*).
- (9) Glaucous-winged Gull (*Larus glaucescens*).
- (10) Glaucous Gull (*Larus hyperboreus*).
- (11) Aleutian Tern (*Onychoprion aleuticus*).
- (12) Arctic Tern (*Sterna paradisaea*).

(j) **Family Gaviidae.**

- (1) Red-throated Loon (*Gavia stellata*).
- (2) Arctic Loon (*Gavia arctica*).
- (3) Pacific Loon (*Gavia pacifica*).
- (4) Common Loon (*Gavia immer*).
- (5) Yellow-billed Loon (*Gavia adamsii*)—In the North Slope Region only, a total of up to 20 yellow-billed loons inadvertently caught in fishing nets may be kept for subsistence purposes.

(k) **Family Procellariidae.**

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

(l) **Family Phalacrocoracidae.**

- (1) Double-crested Cormorant (*Phalacrocorax auritus*).
- (2) Pelagic Cormorant (*Phalacrocorax pelagicus*).

(m) **Family Strigidae.**



- (1) Great Horned Owl (*Bubo virginianus*).
- (2) Snowy Owl (*Bubo scandiacus*).

[73 FR 13791, Mar. 14, 2008, as amended at 81 FR 18787, Apr. 1, 2016; 82 FR 16304, Apr. 4, 2017; 83 FR 13688, Mar. 30, 2018; 86 FR 20318, Apr. 19, 2021]

## §§ 92.23-92.29 [Reserved]

### Subpart D—Annual Regulations Governing Subsistence Harvest

#### § 92.30 General overview of regulations.

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

- (a) The taking, possession, transportation, and other uses of migratory birds are generally prohibited unless specifically authorized by regulation developed in accordance with the Migratory Bird Treaty Act. Therefore, harvesting migratory birds is prohibited unless regulations are established ensuring the protection of the various populations of migratory birds. Migratory bird population levels, production, and habitat conditions vary annually. These conditions differ within Alaska and throughout North America. Therefore, the regulations governing migratory bird hunting may include annual adjustments to keep harvests within acceptable levels.
- (b) The development of the regulations in this part, like the development of the annual migratory game bird hunting regulations in part 20 of this chapter, involves annual data gathering programs to determine migratory bird population status and trends, evaluate habitat conditions, determine harvests, and consider other factors having an impact on the anticipated size of annual populations.
- (c) The Service proposes annual migratory game bird hunting regulations in the FEDERAL REGISTER in the spring for seasons beginning September 1 of that year. Following consideration of additional biological information and public comment, the Service publishes supplemental proposals throughout the summer. These are also open to public comment.
- (d) Sections 92.31 through 92.39 provide for the annual harvest of migratory birds and their eggs during spring and summer for subsistence users in Alaska.

[67 FR 53517, Aug. 16, 2002, as amended at 68 FR 43028, July 21, 2003]

#### § 92.31 Region-specific regulations.

The 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 (Aleutian 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 Game Management 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 field biologists and the Association of Village Council President's Waterfowl Conservation Committee. This 30-day period will occur between May 15 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.

(3) Special Black Brant 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.

(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.** The Kodiak Island Roaded Area is open to the harvesting of migratory birds and their eggs by registration permit only as administered by the Alaska Department of Fish and Game, Division of Subsistence, in cooperation with the Sun'aq Tribe of Kodiak. No hunting or egg gathering for Arctic terns, Aleutian terns, mew gulls, and emperor geese is allowed for the Kodiak Island Roaded Area Registration Permit Hunt. The Kodiak Island Roaded Area consists of that portion of Kodiak Island (including exposed tidelands) south of a line from Termination Point along the north side of Cascade Lake to Anton Larsen Bay and east of a line from Crag Point to the west end of Saltery Cove. Marine waters adjacent to the Kodiak Island Roaded Area within 500 feet from the water's edge are included in the Kodiak Island Roaded Area. The Kodiak Island Roaded Area does not include islands offshore of Kodiak Island. A registration permit is not required to hunt on lands and waters outside the Kodiak Island Roaded Area.

(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 14 and July 16-August 31 (hunting in general); waterfowl egg gathering April 2-June 14 only; seabird egg gathering May 20-July 12 only; hunting molting/non-nesting waterfowl July 1-July 15 only.

(2) Closure: June 15-July 15, 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 northeast to Icy Cape, and everything west of longitude line 161°55' W and south of latitude line 69°45' N to the west bank of the Sagavanirktok River and south along the west bank to the North Slope regional boundary, then west to the beginning):

(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 Season: June 20-July 5. The open area consists of the coastline from the mean high-water line outward to the North Slope regional boundary to include open water and barrier islands from southern Kasegaluk Lagoon from latitude line 69°16' N to the north and east to longitude line 158°30' W.

(2) Northern Unit (From Icy Cape, everything east of longitude line 161°55' W and north of latitude line 69°45' N to the west bank of Sagavanirktok River and north to 71°):

(i) Season: April 2-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) Annual 30-day closure periods in the Southern, Northern, and Eastern Units of the North Slope Region may differ from fixed dates (see unit-specific closure dates in paragraphs (g)(1) through (3) of this section) if environmental and biological conditions warrant such a change. After consultation with Service field biologists, the North Slope Borough (NSB) Department of Wildlife Management, and the NSB Fish and Game Management Committee, the Service's Alaska Regional Director or his/her designee may announce closure dates that differ from those fixed dates.

(5) All Units: yellow-billed loons. Annually, up to 20 yellow-billed loons total for the region inadvertently entangled in subsistence fishing nets in the North Slope Region may be kept for subsistence use.

(6) 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) 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 subparts C and D of this part.

(ii) 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: Game Management 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 Game Management 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 West (Harvest area: Game Management 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) Prince William Sound Area East (Harvest area: Game Management Units 6[B]and [C]—Barrier Islands between Strawberry Channel and Softtuk Bar), (Eligible Chugach communities: Cordova, Tatitlek, and Chenega Bay):

(i) Season: April 2-April 30 (hunting); May 1-May 31 (gull egg gathering).

(ii) Closure: May 1-August 31 (hunting); April 2-30 and June 1-August 31 (gull egg gathering).

- (iii) Species Open for Hunting: Greater white-fronted goose; snow goose; gadwall; Eurasian and American wigeon; blue-winged and green-winged teal; mallard; northern shoveler; northern pintail; canvasback; redhead; ring-necked duck; greater and lesser scaup; king and common eider; harlequin duck; surf, white-winged, and black scoter; long-tailed duck; bufflehead; common and Barrow's goldeneye; hooded, common, and red-breasted merganser; and sandhill crane. Species open for egg gathering: glaucous-winged, herring, and mew gulls.
  - (iv) Use of Boats/All-Terrain Vehicles: No hunting from motorized vehicles or any form of watercraft.
  - (v) Special Registration: All hunters or egg gatherers must possess an annual permit, which is available from the Cordova offices of the Native Village of Eyak and the U.S. Forest Service.
- (3) Kachemak Bay Area (Harvest area: That portion of Game Management Unit [Unit] 15[C] west and south of a line beginning at the northern boundary of Unit 15[C] and mouth of the Kasilof River at 60°23'19" N; 151°18'37" W, extending south along the coastline of Cook Inlet to Bluff Point [59°40'00" N], then south along longitude line 151°41'48" W to latitude 59°35'56" N, then east to the tip of Homer Spit [excluding any land of the Homer Spit], then northeast to the north bank of the Fox River [59°48'57" N; 150°58'44" W], and then east to the eastern boundary of Unit 15[C] at 150°19'59" W) (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 Game Management Unit 16[B] as specified below) (Eligible communities: Tyonek only):
- (1) Season: April 2-May 31—That portion of Game Management Unit 16(B) west of the east bank of the Yentna River, south of the north bank of the Skwentna River, and south of the north bank of Portage Creek to the boundary of Game Management Unit 16(B) at Portage Pass; and August 1-31—That portion of Game Management Unit 16(B) west of longitude line 150°56' W, south of the north banks of the Beluga River and Beluga Lake, then south of latitude line 61°26'08" N.
  - (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 part 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 and including Dry Bay):
  - (i) Season: glaucous-winged gull egg gathering: May 15-June 30.
  - (ii) Closure: July 1-August 31.

[84 FR 12951, Apr. 3, 2019, as amended at 85 FR 18459, Apr. 2, 2020; 85 FR 73233, Nov. 17, 2020; 86 FR 20319, Apr. 19, 2021; 86 FR 22361, Apr. 28, 2021; 87 FR 38673, June 29, 2022]

## § 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 statewide 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.

[84 FR 12952, Apr. 3, 2019]

## §§ 92.33-92.39 [Reserved]