

**§ 87.303 Frequencies.**

\* \* \* \* \*

(b) These additional frequencies are available for assignment only to flight test stations of aircraft manufacturers:

MHz	MHz	MHz	MHz
123.125 <sup>2</sup>	123.275 <sup>3</sup>	123.425 <sup>3</sup>	123.550 <sup>3</sup>
123.150 <sup>2</sup>	123.325 <sup>3</sup>	123.475 <sup>3</sup>	123.575 <sup>2</sup>
123.250 <sup>3</sup>	123.350 <sup>3</sup>	123.525 <sup>3</sup>	

<sup>1</sup> When R3E, H3E or J3E emission is used, the assigned frequency will be 3282.4 kHz (3281.0 kHz carrier frequency).

<sup>2</sup> This frequency is available only to itinerant stations that have a requirement to be periodically transferred to various locations.

<sup>3</sup> Mobile station operations on these frequencies are limited to an area within 320 km (200 mi) of an associated flight test land station.

\* \* \* \* \*

(f) Frequency assignments for Flight Test VHF Stations may be based on either 8.33 kHz or 25 kHz spacing. Assignable frequencies include the interstitial frequencies 8.33 kHz from the VHF frequencies listed in paragraphs (a) and (b) of this section. Each 8.33 kHz interstitial frequency is subject to the same eligibility criteria and limitations as the nearest frequency listed in paragraphs (a) and (b) of this section.

[FR Doc. 2011-4003 Filed 3-28-11; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 87

[WT Docket No. 01-289; FCC 11-2]

#### Aviation Communications

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; suspension of effectiveness.

**SUMMARY:** In this document, the Federal Communications Commission (FCC) stays indefinitely a rule that rule prohibits the certification, manufacture, importation, sale, or continued use of 121.5 MHz emergency locator transmitters (ELTs). The Commission is staying the effective date of the amendment because information that first came to its attention after the adoption and release of the *Third R&O* indicates that it would serve the public interest to augment the record on this issue by providing an additional opportunity for public comment.

**DATES:** Effective March 29, 2011, § 87.195 is stayed until further notice.

**FOR FURTHER INFORMATION CONTACT:** Jeff Tobias, Mobility Division, Wireless Telecommunications Bureau, at (202) 418-0620.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Order*, released on January 11, 2011. Contemporaneous with this document, the Commission

issues a *Third Report and Order (Third R&O)*, (published elsewhere in this publication). The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the FCC's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by sending an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

In this *Order*, the FCC stayed the effectiveness of 47 CFR 89.195, as amended in the *Third R&O*, which prohibits the certification, manufacture, importation, sale, or continued use of 121.5 MHz ELTs. The stay will remain in effect indefinitely, and the question of the appropriate regulatory treatment of 121.5 MHz ELTs will be addressed anew after the FCC has received additional public comment on the question. The FCC will separately publish in the **Federal Register** a document requesting such comment.

#### List of Subjects in 47 CFR Part 87

Communications equipment, Radio.

For the reasons discussed in the preamble, the FCC amends 47 part 87 as follows:

#### PART 47—[AMENDED]

■ 1. The authority citation for part 47 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

■ 2. Effective March 29, 2011, § 87.195 is stayed indefinitely.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

[FR Doc. 2011-4007 Filed 3-28-11; 8:45 am]

**BILLING CODE 6712-01-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 92

[Docket No. FWS-R9-MB-2010-0082; 91200-1231-9BPP-L2]

RIN 1018-AX30

#### Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2011 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 2011 season. These regulations will 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. The 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 on April 2, 2011, and expire on August 31, 2011.

**DATES:** The amendments to subpart D of 50 CFR part 92 are effective April 2, 2011, through August 31, 2011.

**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 2011. This rule establishes a list of 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
April 13, 2010 .....	75 FR 18764

These documents, which are all final rules setting forth the annual harvest regulations, are available at <http://alaska.fws.gov/ambcc/regulations.htm> or by contacting one of the people listed under **FOR FURTHER INFORMATION CONTACT**.

#### 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) are establishing migratory bird subsistence harvest regulations in Alaska for the 2011 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 2011 spring and summer subsistence harvest of migratory birds in Alaska in a proposed rule published in the **Federal Register** on June 10, 2010 (75 FR 32872). 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 2011 season. The rulemaking processes for both types of migratory bird harvest are related, and the June 10, 2010, proposed rule explained the connection between the two.

The Alaska Migratory Bird Co-management Council (Co-management Council) held a meeting in April 2010 to develop recommendations for changes that would take effect during the 2011 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 28 and 29, 2010.

On October 26, 2010, we published in the **Federal Register** (75 FR 65599) a proposed rule that provided our proposed migratory bird subsistence harvest regulations in Alaska for the 2011 season. Regulations presented in that proposed rule were identical to those for the 2010 harvest season.

#### 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 migratory bird subsistence 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, based on the latest census information at that time.

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.

#### What is different in the region-specific regulations for 2011?

As stated earlier, regulations presented in the October 26, 2010, proposed rule (75 FR 65599) were identical to those for the 2010 harvest season. However, after reviewing public comments received on the proposed rule and further internal discussions, the Service is removing the shooting hours restriction effective for the North Coastal Zone of the North Slope of Alaska. A full justification of this decision and how we will monitor results are detailed later in this final rule.

#### 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 areas 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 North Slope 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 continues to focus on the North Slope from Barrow through Point Hope because Steller's eiders from the listed Alaska breeding population are known to breed and migrate there. These regulations were designed to address several ongoing eider management needs by clarifying for subsistence users that (1) service law enforcement personnel have authority to verify species of birds possessed by hunters, and (2) it is illegal to possess any bird closed to harvest. It also describes how the Service's existing authority of emergency closure would be implemented, if necessary, to protect Steller's eiders. We are willing to discuss many of the regulations with our partners on the North Slope to ensure the regulations protect closed species as well as provide subsistence hunters an opportunity to harvest migratory birds in a way that maintains the culture and traditional harvest of the community. The regulations pertaining to bag checks and possession of illegal birds are deemed necessary to verify compliance with not harvesting protected eider species.

As for the shooting hours restriction, this regulation is similar to one in the State of Alaska's fall regulations, which take effect on September 1 each year. The goal of the shooting hours restrictions is to minimize the risk of inadvertent shooting of closed species when light levels are low and misidentification is more likely. The Service believes this regulation adds some level of conservation benefit for protected eiders. However, our co-management partners over the past couple of years have pointed out correctly that no Steller's eiders have been documented as taken during periods of low or no adequate light, and that the Service was addressing a non-problem with the shooting hours restrictions. It has been suggested that this action may be actually counterproductive to developing

community understanding and support for conservation of Steller's eiders.

The Service is aware and appreciates the considerable efforts by North Slope partners to raise awareness and educate hunters on Steller's eider conservation via the bird fair, meetings, radio shows, signs, school visits, and one-on-one contacts since 2008. We also recognize that no listed eiders have been documented shot in that last 2 years, although we note that Steller's eiders did not have a significant breeding population in the Barrow area during this period. Also the Service acknowledges progress made with the other eider conservation measures including partnering with the North Slope Migratory Bird Task Force for increased waterfowl hunter awareness, continued enforcement of the regulations, and in-season verification of the harvest. At this time, the Service is removing the shooting hours restriction during subsistence harvest on the North Slope to foster moving forward with a stronger co-management approach to Steller's eider conservation. However, if evidence is gathered in the future indicating that shooting during times of low or no light is resulting in protected eider species being taken, then a return to the shooting hours restrictions will have to be considered. We plan to work closely with the North Slope Migratory Bird Task Force to develop and implement a harvest monitoring program that will verify that closed species are not being taken during the period when shooting hours would have been in effect. This monitoring program would be implemented starting this coming harvest season. Our primary strategy to reduce the threat of shooting mortality of threatened eiders continues to be working with North Slope partners to conduct education, outreach, and harvest monitoring, followed when necessary by law enforcement. In addition, the emergency closure authority provides another level of assurance if an unexpected amount of Steller's eider shooting mortality occurs (50 CFR 92.21 and 50 CFR 92.32).

In-season harvest monitoring information will be used to evaluate the efficacy of regulations, conservation measures, and outreach efforts. In 2009 and 2010, no Steller's eider harvest was reported on the North Slope, and no Steller's eiders were found shot during in-season verification of the subsistence harvest. However, 2009 was a non-nesting year for Steller's eiders on the North Slope, and in 2010, only one active nest was found in the Barrow area. Based on these relative successes, the 2010 conservation measures will

also be continued, although there will be some modification of the amount of effort and emphasis each will receive. Specifically, local communities have continued to develop greater responsibility for taking actions to ensure Steller's and spectacled eider conservation and recovery; and based on last year's observations, local hunters have demonstrated greater compliance with hunting regulations, so the Service's Office of Law Enforcement does not plan on maintaining a continuous presence in Barrow this season.

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 the past 2 years, would clarify 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 candidate species for listing under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). 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 that harvest of yellow-billed loons on the North Slope and St. Lawrence Island does occur. Most 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 2011, 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 final rule would continue into 2011 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 to the Inupiat Eskimo of the North Slope for use in traditional dance regalia. A maximum of 20 yellow-billed loons may be kept if found entangled in fishing nets in 2011 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. Service support of this proposal is contingent upon the North Slope Region representative collaborating with the Service and Co-management Council provide a scientifically defensible estimate of yellow-billed loons inadvertently entangled by North Slope subsistence fishers and kept for use during the 2011 season. Additional information is needed relative to species and number of loons entangled in subsistence nets, distribution across the North Slope Region, age of birds entangled (adult vs. young-of-year), status of loons when found entangled, and dates of capture. These data will allow the Service to better assess the potential effects of subsistence fishing on this species. Currently, individual reporting to the North Slope Borough Department of Wildlife is required by the end of each season. In 2009, two yellow-billed loons were reported entangled and found dead in fishing nets, while two others were released from fishing nets by the North Slope 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 Fairbanks Fish and Wildlife 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 a biological opinion

dated March 23, 2011, 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.

#### Summary of Public Involvement

On October 26, 2010, we published in the **Federal Register** a proposed rule (75 FR 65599) to establish spring and summer migratory bird subsistence harvest regulations in Alaska for the 2011 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>. The Service received two comments, both from organizations.

#### Response to Public Comments

##### General Comments

*Comment:* We received one comment on the operations of the Service Regulation Committee (SRC) in making regulatory decisions. The commenter stated that during the last 2 years the SRC has met behind closed doors and decided to reject both the recommendations of the Flyway Council and the Co-management Council for the North Slope eider regulations, creating a lack of transparency.

*Service Response:* The SRC meetings are public meetings, and the process allows for input from the four North American Flyway Councils and the Co-management Council to provide additional information on their recommendations. The SRC, the Service, and the Department then have to consider all sides and issues before making decisions in counsel with technical staff. The SRC strives to make the best decisions to ensure the long-term conservation of the resource in compliance with mandates imposed by law.

##### Law Enforcement

*Comment:* One commenter stated that efforts to promote cultural sensitivity with the Service's law enforcement actions seem to have had little success. The commenter added that interactions

between local hunters and law enforcement agents continue to generate angry reactions.

*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. This last year our approach focused on significant outreach efforts, including public meetings, radio talk show opportunities, posted fliers, and brochures followed by a reduced reliance on enforcement actions and law enforcement presence. The Service and its partners continue to take part in these activities in an effort to increase hunter awareness and to promote cultural sensitivity from our law enforcement officers, especially when they are interacting with hunters. Based on last year's observations, the Service expects hunter compliance with the regulations to continue and does not plan on having a continuous presence in Barrow this season.

##### Comments on Original Region-Specific Regulations

*Comment:* One commenter requested that criteria be written to provide guidance as to when the North Slope could see a return to pre-2009 regulations. More specifically the commenter would like these criteria to include Barrow's outreach efforts and the lack of intentional shooting since 2008. The commenter was further concerned that the criteria should not include a requirement for the Steller's eider population to increase before the regulations could be reversed. A second commenter asked that the Service not implement shooting hour regulations on the North Slope unless hunters understand and support the concept.

*Service Response:* The commenters seem to be defining "success" as a return to the 2008 regulations, which did not have any additional eider conservation regulations on the North Slope. Our definition of success for the North Slope subsistence harvest includes: (1) Continued opportunity for subsistence hunting on the North Slope; (2) compliance with the regulations, including no harvest or possession of closed species and adherence to the closed season; and (3) no use of lead shot. We are willing to discuss the regulations with our partners on the North Slope to ensure the regulations protect closed species as well as provide subsistence hunters an opportunity to harvest migratory birds in a way that

maintains the cultural and traditional lifestyle they have enjoyed for centuries. However, whatever regulatory changes are made, we must point out that to ensure success and verify compliance, the regulations pertaining to bag checks and possession of illegal birds will remain in place.

As for the shooting hours restrictions, this regulation is similar to one in the State of Alaska's fall hunt regulations, which take effect on September 1 each year. The goal of restricting shooting hours was to minimize the risk of inadvertent shooting of closed species when light levels are low and misidentification is more likely. However, commenters over the past couple of years have correctly pointed out that no Steller's eiders were ever documented as taken during periods of low or no adequate light, and that the Service was solving a non-problem with the shooting hours restrictions. It has been suggested that this action may be counterproductive to developing community understanding and support for conservation of Steller's eiders.

The Service is aware of and appreciates the considerable efforts by North Slope partners to raise awareness and educate hunters on Steller's eider conservation via the bird fair, meetings, radio shows, signs, school visits, and one-on-one contacts since 2008. We also recognize that no listed eiders have been documented shot in that last 2 years, although we note that Steller's eiders did not have a significant breeding population in the Barrow area during this period. At this time, the Service is willing to remove the shooting hours restriction during subsistence harvest on the North Slope to foster moving forward with a stronger co-management approach to Steller's eider conservation. However, if evidence is gathered in the future indicating that shooting during times of low or no light is resulting in protected eider species being taken, then a return to the shooting hours restrictions will have to be considered. It is the Service's intention to work closely with the North Slope Migratory Bird Task Force to develop and implement a program that will verify that closed species are not being taken during the period when shooting hours would have been in effect. This monitoring program would be implemented starting this coming harvest season.

*Comment:* One commenter asked that the Service continue using the provisions 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. Another commenter requested that yellow-billed loon regulations not be contingent upon a completed revision of the harvest survey in 2011.

*Service Response:* We are currently working with the State, the North Slope Borough, and the Co-management Council to develop a stronger harvest survey design for the North Slope. We are retaining the yellow-billed loon provision for the North Slope for the 2011 season, allowing for the use of yellow-billed loons inadvertently entangled in subsistence fishing nets on the North Slope.

#### 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 a 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*

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 implemented the amended treaty with Canada with a focus on local involvement. The treaty calls for the creation of management bodies to ensure an effective and meaningful role for Alaska's indigenous inhabitants in the conservation of migratory birds. According to the Letter of Submittal, management bodies are to include Alaska Native, Federal, and State of Alaska representatives as equals. They will develop recommendations for among other things: Seasons and bag limits, methods and means of take, law enforcement policies, population and harvest monitoring, education program, research and use of traditional knowledge, and habitat protection. The management bodies will involve village councils to the maximum extent possible in all aspects of management. To ensure maximum input at the village level, we required each of the 11 participating regions to create regional management bodies consisting of at least one representative from the participating villages. The regional management bodies meet twice annually to review and/or submit proposals to the statewide body.

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) a 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 (44 U.S.C. 3501 *et seq.*) 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 April 30, 2013. 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 (42 U.S.C. 4321 *et seq.*) Consideration*

The annual regulations and options were considered in the environmental assessment, "Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the 2011 Spring/Summer Harvest," October 18, 2010. 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.

#### 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 2011 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.

(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) 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.

(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: 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 Statewide longterm 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: February 23, 2011.

**Will Shafroth,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2011-7334 Filed 3-28-11; 8:45 am]

**BILLING CODE 4310-55-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 101126521-0640-02]

**RIN 0648-XA322**

**Fisheries of the Exclusive Economic Zone Off Alaska; Octopus in the Bering Sea and Aleutian Islands Management Area**

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

**ACTION:** Temporary rule; apportionment of reserves; request for comments.

**SUMMARY:** NMFS apportions amounts of the non-specified reserve to the initial total allowable catch of octopus in the Bering Sea and Aleutian Islands (BSAI). This action is necessary to allow the fisheries to continue operating. It is intended to promote the goals and objectives of the fishery management plan for the BSAI.

**DATES:** Effective March 24, 2011 through 2400 hrs, Alaska local time, December 31, 2011. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, April 8, 2011.

**ADDRESSES:** Send comments to James W. Balsiger, Regional Administrator, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648-XA322, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at <http://www.regulations.gov>.

- *Mail:* P.O. Box 21668, Juneau, AK 99802.

- *Fax:* (907) 586-7557, Attn: Ellen Sebastian.

*Instructions:* All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2011 initial total allowable catch (ITAC) of octopus in the BSAI was