

## **USFWS/REGION 7/SIMBA/AMBCC**

### **Finding of No Significant Impact**

#### **Migratory Bird Subsistence Harvest in Alaska; Harvest regulations for Migratory Bird in Alaska During the 2024 Season**

##### Introduction

The United States is signatory to international agreements (known as treaties) on migratory bird conservation and protection in North America with Great Britain (for Canada), Mexico, Japan, and the U.S.S.R. The 1916 Convention for the Protection of Migratory Birds in Canada and the United States (Canada Treaty) between the United States and Great Britain is the earliest and, until recently, the most restrictive agreement regarding the subsistence use of migratory birds. With limited exception, the Canada Treaty prescribed a closed season on the harvest of migratory birds between March 10 and September 1 of each year, which in effect prohibited many peoples of northern Canada and Alaska from taking birds during their primary subsistence harvest period. In 1995, after many years of discussion and negotiation, Canada and the United States signed a Protocol amending the Canada Treaty (Protocol), which provided for a regulated and legal subsistence harvest of migratory birds by eligible people between March 10 and September 1.

As directed by the Protocol, the U.S. Fish and Wildlife Service (Service) initiated statewide public meetings in 1998 to determine what system of implementation would best meet the needs of traditional harvesters. Based on input from that public process, the Service established an organizational structure composed of three elements to meet the mandates of the Protocol. First, the Alaska Migratory Bird Co-Management Council (AMBCC), which consists of Federal, State, and Alaska Native representatives serving as equal partners, was established. Second, regional management bodies consisting of local people were established to provide input to the AMBCC. Regional boundaries established by the Alaska Native Claims Settlement Act of 1971 were adopted by the AMBCC and announced in the Federal Register. Third, partner organizations responsible for implementing this process were identified within each region.

The regulation recommendations presented in Alternative 2 of this document were developed by the AMBCC and the regional partners. Based on the AMBCC's recommendations, the Service proposes to open a legal and regulated subsistence harvest during spring and summer of 2024, as provided for in the Protocol. Regulations for the proposed hunt prescribe season dates (outer limits for dates when harvesting of birds may occur), species that can be taken, and methods and means of take.

##### Proposed Action

The proposed action is opening the 2024 spring/summer migratory bird subsistence harvest season using baseline regulations in Title 50 Code of Federal Regulations (CFR) Part 92 (baseline regulations). These baseline regulations include: 1) a list of prohibited methods and means and 2) season open and closing dates by region, including a closure period of no less than 30 days within the open season to protect nesting birds. The harvest will also

occur within the constraints imposed by the international migratory bird treaties (i.e., season dates must be between March 10 and September 1). Hunt regulations allow continuation of the longstanding customary and traditional harvest of migratory birds during spring/summer in Alaska and provide a mechanism for co-management of this resource among the Service, the State of Alaska, and permanent residents of included areas.

This proposed hunt could affect nesting migratory birds. The 1972 Convention for the Protection of Migratory Birds and Birds in Danger of Extinction, and their Environment between the United States and Japan (Japan Treaty) states that hunting seasons shall be set so as to avoid birds' principal nesting seasons. To minimize the effects to nesting birds and comply with the Japan Treaty, 30-day or longer harvest closure periods have been implemented for each region during the breeding season.

Section 7 consultation under the Endangered Species Act was conducted with the Service's Northern Alaska Fish and Wildlife Field Office (USFWS 2024b) to ensure that the proposed harvest would not likely jeopardize the continued existence of the listed spectacled eider (*Somateria fischeri*) and Alaska-breeding Steller's eiders (*Polysticta stelleri*). This action is also deemed not likely to adversely affect the threatened polar bear (*Ursus maritimus*) and northern sea otter (*Enhydra lutris kenyoni*). The justifications for non-jeopardy determinations relative to the listed eiders were summarized by the following:

#### **Steller's eiders**

Available data suggest that very few Steller's eiders, perhaps tens of individuals, breed in western Alaska (USFWS 2019), and the Alaska-breeding population primarily consists of individuals breeding in northern Alaska. Three surveys provide some information on the number of Steller's eiders present on the Arctic Coastal Plain (ACP) annually. These are the ACP Waterfowl Breeding Population Survey (ACP Survey), the Utqiagvik Triangle Survey, and the Utqiagvik ground-based breeding pair survey. Design and caveats of each survey are described in detail in the Steller's Eider Species Status Assessment (USFWS 2019). By combining the mean estimates from each survey, the number of adult Steller's eiders present annually in northern Alaska is approximately 326 (USFWS 2019). However, this estimate should be interpreted with caution when characterizing the size of the Alaska-breeding population. Several caveats are outlined in the Steller's eider Species Status Assessment, including low confidence given the number of actual observations and the high annual variation in estimates resulting in low precision (USFWS 2019). It is important to note that because the population is relatively small, it may be more vulnerable to stochastic events and anthropogenic effects.

Harvest: Although indigenous knowledge suggests Steller's eiders were not specifically targeted for subsistence, an unknown level of incidental harvest occurred across the North Slope prior to listing spectacled and Steller's eiders under the Endangered Species Act. All harvest of spectacled and Steller's eiders was closed in 1991 by Alaska State regulations and Service policy, and outreach efforts have been conducted by the Service, North Slope Borough, and Bureau of Land Management to encourage compliance. However, AMBCC harvest surveys have indicated that at least some Steller's eiders continue to be incidentally taken during subsistence activities on the North Slope.

Ongoing efforts to help subsistence users avoid incidental harvest are being implemented in North Slope villages, particularly at Utqiagvik. Although estimates are imprecise, harvest of all migratory bird species, including listed eiders, were reported annually by the AMBCC Harvest Assessment Program through 2019.

The Service expects roughly tens of Alaska-breeding Steller's eiders have been harvested in some years, although harvest likely varies considerably among years with the species availability to harvest. We expect Steller's eiders face the highest mortality risk near Utqiagvik, where most of the Alaska-breeding population nests proximal to the largest community on the North Slope. In addition to mortality from shooting, adverse effects of the Action also include potential egg harvest; however, due to their low nesting density, we expect no Steller's eider eggs are harvested in most years, and a small number of nests may be disturbed during harvest of other species open to harvest.

The Service anticipate up to 4 adult and/or juvenile Steller's eiders could be shot and killed, and no eggs would be lost due to collection during the 2024 Spring/Summer Harvest (USFWS 2024b). It is difficult to estimate the actual number of Steller's eiders that could be taken by the proposed hunt because harvest data has been unreliable, but the above estimate equates to a very low percentage (1.2 percent) of the Alaska-breeding population of Steller's eiders (USFWS 2024b).

The small size of the Alaska-breeding population, the lack of information from which to adequately assess the risk from subsistence harvest on the population, and the apparent vulnerability of Steller's eiders to harvest mortality in Utqiagvik is of concern to the Service. While we believe it is unlikely the subsistence hunt will appreciably reduce the likelihood of survival and recovery of Alaska-breeding Steller's eiders, given uncertainty surrounding harvest rates and population status, we cannot be certain jeopardy will not result if the hunt is left unmitigated. Therefore, to meet the obligation that we ensure the proposed Action will not appreciably reduce the likelihood of survival and recovery of the Alaska-breeding population of Steller's eiders, the Service has: 1) committed to ongoing aerial and ground-based monitoring efforts in breeding areas to identify high-use areas, habitat preferences, and population size and trends, which help inform management decisions, 2) committed to maintain a North Slope presence of law enforcement during the hunt commensurate with the risk to listed eiders to enforce existing regulations, ensure compliance with regulations prohibiting harvest of Steller's eiders, and to conduct outreach, and 3) committed to ongoing, long-term, collaborative outreach and education with hunters and North Slope residents. Combined, we believe these efforts will reduce the effects of subsistence harvest on Alaska-breeding Steller's eiders, including harvest in spring, summer, and fall, to the point that we have ensured that the 2024 harvest will not appreciably reduce the likelihood of survival and recovery of Alaska-breeding Steller's eiders.

Furthermore, the proposed regulations are not anticipated to appreciably impact designated critical habitat for Steller's eiders, and any lead shot deposition associated with the 2024 hunt would likely be minimal. Therefore, the Action would be unlikely to destroy or adversely modify critical habitat for Steller's eiders.

## **Spectacled eiders**

All three breeding populations winter together in one area of the Bering Sea, and surveys of spectacled eiders in the wintering area therefore present an opportunity to estimate the size of the global population. An aerial survey conducted in March 2010 resulted in an estimate of 369,122 spectacled eiders (90% CI = 364,190–374,054; Larned et al. 2012). This survey was designed to be a census and was conducted under optimal conditions, and we consider the estimate to be an accurate minimum size of the global population (USFWS 2021). The most recent winter aerial survey was conducted in March 2020, using similar methods to previous surveys. The 2020 survey resulted in a count of 76,592 spectacled eiders (USFWS 2021). Spectacled eider flock distribution, size, and locations were notably different in 2020 than in the two prior survey periods, as were sea ice conditions. Additionally, detection within the survey area was likely less than 100 percent due to smaller flock size and increased open water conditions. Thus, the 2020 count should be considered as a crude minimum count, which is not comparable to previous counts (USFWS 2021).

*Yukon-Kuskokwim Delta breeding population* – To estimate the abundance and growth of the Yukon-Kuskokwim Delta (Y-K Delta) breeding population over the most recent time period, Dunham et al. (2021) used a Bayesian state-space model and annual estimates of breeding birds (2007 to 2019), corrected for detection. The posterior mean abundance of the Y-K Delta breeding population in 2019 was 16,113 eiders (95% CRI = 12,313–21,352; Dunham et al. 2021). This estimate represents breeding birds in the Y-K Delta population and does not include non-nesting individuals and juveniles that may have remained in marine areas. The posterior mean (log) population growth rate of the Y-K Delta breeding population was 0.016 (95 percent CRI: -0.065–0.091) from 2007 to 2019 (Dunham et al. 2021). In addition, the Service conducted an Integrated Population Model-Population Viability Analysis (IPM-PVA) Bayesian population viability analysis to estimate population abundance and growth rate of spectacled eiders using the available demographic data and population abundance data. The IPM-PVA model is detailed in USFWS (2021). The IPM-PVA estimated mean abundance of the Y-K Delta breeding population in 2019 as 14,027 spectacled eiders (95% CI = 9,781–18,257), and the mean annual population growth rate from 1988 to 2019 as 1.053 (95% CI = 1.035–1.069; USFWS 2021).

*ACP breeding population* – To estimate the abundance and growth of the ACP breeding population over the most recent time period, Dunham et al. (2021) used a Bayesian state-space model and annual estimates of breeding birds (2007 to 2019), corrected for detection. The posterior mean abundance of the ACP breeding population in 2019, which is the best available estimate for the number of spectacled eiders breeding in this region, is 6,401 eiders (95% CRI = 3,766–9,750; Dunham et al. 2021). The posterior mean (log) population growth rate of the ACP breeding population is -0.005 (95% CRI: -0.092–0.082) from 2007 to 2019 (Dunham et al. 2021). The IPM-PVA estimated mean abundance of the ACP breeding population in 2019 as 5,408 spectacled eiders (95% CI = 3,696–7,364), and the mean annual population growth rate from 1988 to 2019 as 0.996 (95% CI = 0.982–1.008). Restricted to 2007 – 2019, the mean annual (log) growth rate is estimated as -0.025 (95 percent CRI: -0.055 – 0.004; USFWS 2021).

**Harvest:** While the accuracy of harvest estimates may be affected by misidentification, reports of spectacled eider harvest are generally consistent with known spectacled eider distribution and therefore are conceivable. Numerous unquantifiable biases render

estimation of annual harvest impractical; however, these data, combined with information on spectacled eider availability, direct observations, and information from local residents suggest roughly tens to hundreds of adult and/or juvenile spectacled eiders are harvested each year. In addition to mortality from shooting, adverse effects of the Action also include potential egg harvest, and we expect small numbers (low tens) of spectacled eider eggs may be harvested annually.

The Service anticipates up to 400 adult and/or juvenile spectacled eiders could be shot and killed and up to 20 eggs could be lost due to collection during the 2024 Spring/Summer Harvest (USFWS 2024b). It is difficult to estimate the actual number of spectacled eiders that could be taken by the proposed hunt because harvest data has been unreliable, however this estimate equates to a very low percentage (0.5 percent) of the listed U.S. population of spectacled eiders (conservatively based on a crude minimum population estimate; USFWS 2024b).

Furthermore, the proposed regulations are not anticipated to appreciably impact designated critical habitat for spectacled eiders, and any lead shot deposition associated with the 2024 hunt would likely be minimal. Therefore, the Action would be unlikely to destroy or adversely modify critical habitat for spectacled eiders.

#### Alternatives and Environmental Effects

The Service has analyzed three alternative actions in the Environmental Assessment (EA; USFWS 2024a): 1) The no action alternative (do not open the spring/summer subsistence harvest), 2) The proposed action (open a spring/summer season in 2024 with the same regulations as 2023), and 3) Open a spring/summer season which incorporates fall/winter season regulations.

1. Under Alternative 1, the Service would not open the spring/summer harvest of migratory birds and their eggs in Alaska. This would be the first time the season would be closed in over 20 years, making the harvest of migratory birds for subsistence purposes in Alaska illegal.
2. Under Alternative 2, the Service would seek to open a spring/summer harvest of migratory birds and their eggs, which is allowed under the Protocol. The harvest would occur within the constraints imposed by the treaties, using the same harvest regulations as 2023. Also, the mandate to legalize the customary and traditional subsistence harvest of migratory birds by permanent residents of villages within subsistence harvest areas would continue to be enacted. Migratory bird populations are not expected to be significantly affected because of current population sizes, harvest levels, and growth rates.
3. Under Alternative 3, the Service would seek to open a spring/summer harvest of migratory birds and their eggs using the more restrictive regulations of the fall/winter hunting season. Fall/winter season methods and means would be adopted (e.g., shotgun only with a 3 shotshell capacity), bag limits for individual hunters would be imposed, and fall regulations on exchange and transport of birds and bird parts would apply. Some take of Federally listed migratory bird species would be expected, but listed species would not be expected

to be significantly affected.

### **Environmental effects**

The environmental effects of the proposed action on aspects of the human environment were analyzed in the EA. There are no adverse or existing direct or cumulative effects related to subsistence socioeconomics under Alternative 2.

#### Selected Action and Summary of Effects

We have analyzed a reasonable range of alternatives including the proposed action, no action, and another reasonable alternative. The proposed action, Alternative 2, was selected as the preferred alternative over other alternatives because we have determined the baseline regulations as proposed will not have direct, cumulative, significant, or adverse effects on the human environment and are the most practicable for subsistence hunters.

Alternative 2 also provides a regulatory process for managing a subsistence harvest that has a long history and would likely continue unregulated and unmanaged without this process. It provides a mechanism for obtaining the cooperation of, and agreement by, Alaska Native peoples and other subsistence users by building a foundation for an extensive outreach program for bird conservation objectives and how they relate to managing harvest, including avoidance of harvesting Federal listed species. This alternative also best satisfies the purpose and need for legally recognizing customary and traditional migratory bird spring/summer subsistence harvest opportunities as specified by the 1995 Protocol amending the Canada Treaty.

Pursuant to Section 7 of the Endangered Species Act, the Northern Alaska Fish and Wildlife Field Office of the Service was consulted to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of spectacled or Steller's eiders or result in the destruction or adverse modification of their critical habitat. Findings from this consultation are included in the Intra-Service Biological Opinion for Migratory Bird Subsistence Hunting in Alaska: Regulations for the 2024 Spring/Summer Harvest (USFWS 2024b). The appended consultation concluded that the 2024 regulations are not likely to jeopardize the continued existence of the Alaska-breeding Steller's eiders or spectacled eiders.

#### Public Review and Comment Period

The regulations for the 2024 proposed action (baseline regulations; Alternative 2) did not undergo a public comment period as the AMBCC did not propose changes to the regulations in 2023 for the 2024 season. Therefore, the 2024 regulations are unchanged from 2023. In 2023, the AMBCC recommended a one-year extension to the three-year (2021-2023) experimental registration permit harvest on the Kodiak Island Roaded Area. This one-year extension was required to allow time for the 2021-2023 harvest data to be evaluated and a proposal submitted for future harvest regulations in this area. The recommendation was approved by the Service Regulations Committee and a notification was published as an Announcement in the Federal Register on May 1, 2024 (89 Federal Register 35010). There is no public comment period for this Announcement, it serves as a public notification only. Copies of this EA and finding will be made publicly available through the Service's AMBCC website (<https://www.fws.gov/office/alaska-migratory-birds/alaska-migratory-bird-co->

management-council) and provided upon request to all interested parties.

Determination: Finding of No Significant Impact

Based on a review and evaluation of the information contained in the EA, we have determined that the preferred alternative (Alternative 2) is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an Environmental Impact Statement on the proposed action is not required. The EA prepared by the Service (USFWS 2024a) has been adopted by the Service according to rules contained in 40 CFR 1506.3.

Supporting references:

Dunham K.D., Osnas E.E., Frost C.J., Fischer J.B., and Grand J.B. 2021. Assessing recovery of spectacled eiders using a Bayesian decision analysis. PLoS ONE 16(7): e0253895. <https://doi.org/10.1371/journal.pone.0253895>

Larned, W.W. 2012. Steller's eider spring migrations surveys, Southwest Alaska 2012. Unpubl. Report, U.S. Fish Wildlife Service, Soldotna, Alaska. 23 pp.

USFWS. 2019. Status assessment of the Alaska-breeding population of Steller's Eiders. Fairbanks Fish and Wildlife Field Office, Fairbanks, Alaska.

USFWS. 2021. Species Status Assessment for Spectacled eider (*Somateria fischeri*). September 29, 2021. Fairbanks Fish and Wildlife Field Office, Fairbanks, Alaska. 150 pp.

USFWS. 2024a. Environmental Assessment for Managing Migratory Bird Subsistence Hunting in Alaska: Regulations for the 2024 Spring/Summer Harvest, U.S. Fish and Wildlife Service, February 22, 2024.

USFWS. 2024b. Intra-Service Biological Opinion for Managing Migratory Bird Subsistence Hunting in Alaska: Regulations for the 2024 Spring/Summer Harvest. Unpubl. Rep. Northern Alaska Fish and Wildlife Field Office, U.S. Fish and Wildlife Service, Fairbanks, Alaska. Signed March 28, 2024. 80 pp.

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