

Fish and Wildlife Service (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal

Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical

order under Flowering Plants, to the List of Endangered and Threatened Plants, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
<i>Castilleja levisecta</i> ...	Golden paintbrush ..	U.S.A. (OR, WA), Canada (B.C.).	Scrophulariaceae	T	615	NA	NA
*	*	*	*	*	*		*

Dated: May 16, 1997.

Jay L. Gerst,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–15245 Filed 6–10–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC19

Endangered and Threatened Wildlife and Plants; Threatened Status for the Alaska Breeding Population of the Steller's Eider

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the Alaska breeding population of the Steller's eider (*Polysticta stelleri*) to be threatened pursuant to the Endangered Species Act of 1973, as amended. This determination is based upon a substantial decrease in the species' nesting range in Alaska, a reduction in the number of Steller's eiders nesting in Alaska, and the resulting increased vulnerability of the remaining breeding population to extirpation. This rule implements the Federal protection and recovery provisions of the Act for this species. Critical habitat is not being designated at this time.

EFFECTIVE DATE: July 11, 1997.

ADDRESSES: The complete file for this rule is available for inspection, by

appointment, during normal business hours at the Ecological Services Fairbanks Field Office, U.S. Fish and Wildlife Service, 101 12th Avenue, Box 19, Fairbanks, Alaska, 99701, telephone (907) 456–0441 or facsimile (907) 456–0208.

FOR FURTHER INFORMATION CONTACT: Ted Swem, Wildlife Biologist, at the above address (telephone (907) 456–0441).

SUPPLEMENTARY INFORMATION:

Background

The Steller's eider is the smallest of four eider species. It was first described by Pallas in 1769 as *Anas stelleri* and was subsequently grouped with the other eiders in the genus *Somateria*. The Steller's eider is now recognized as a monotypic genus, *Polysticta stelleri* (American Ornithologists' Union 1983).

The adult male Steller's eider has a white head with a greenish tuft and a small black eye patch, a black back, white shoulders, and a chestnut breast and belly with a black spot on each side. Adult females and juveniles are mottled dark brown. Both adult sexes have a blue wing speculum with a white border. The Inupiat Eskimo name for this eider is Iginikkauktuk and Yupik Eskimos call them Anarnissaguq. The Siberian Yupik name used by residents of St. Lawrence Island is Aglekesegak.

Steller's eiders are sea ducks that spend the majority of the year in shallow, near-shore marine waters where they feed by diving and dabbling for molluscs and crustaceans (Petersen 1980). Principal foods in marine areas include bivalves, crustaceans, polychaete worms, and molluscs

(Petersen 1980, Troy and Johnson 1987, Metzner 1993).

During the breeding season, Steller's eiders move inland in coastal areas, where they nest adjacent to shallow ponds or within drained lake basins (King and Dau 1981, Flint *et al.* 1984, Quakenbush and Cochrane 1993). In inland areas, their diet includes aquatic insects (primarily chironomid larvae), plant materials, crustaceans, and mollusks (Cottam 1939, Quakenbush and Cochrane 1993).

The current breeding distribution of the Steller's eider encompasses the arctic coastal regions of northern Alaska from Wainwright to Prudhoe Bay up to 90 kilometers (km) (54 miles) inland (King and Brackney 1993), and Russia from the Chukotsk Peninsula west to the Taimyr, Gydan and Yamal peninsulas (American Ornithologists' Union 1983, Yesou and Lappo 1992). Actual numbers nesting in Alaska and Russia are unknown but the majority of Steller's eiders nest in arctic Russia (Palmer 1976, Bellrose 1980).

After the nesting season, Steller's eiders return to marine habitats where they molt (Jones 1965; Petersen 1980, 1981). Concentrations of molting Steller's eiders have been noted in Russia (Gerasimov in Kistchinski 1973), near St. Lawrence Island in the Bering Sea (Fay 1961), and along the northern shore of the Alaska Peninsula (Jones 1965; Petersen 1980, 1981). In some years, groups of tens of thousands may molt in the bays and lagoons along the Alaska Peninsula, in particular Nelson Lagoon and Izembek Lagoon (Petersen 1980). In other years, many of the birds complete their molt before arriving on the Peninsula (Jones 1965). Band

recoveries show that both Russia and Alaska nesting Steller's eiders come together to molt in southwestern Alaskan waters (Jones 1965).

During winter, most of the world's Steller's eiders concentrate along the Alaska Peninsula from the eastern Aleutian Islands to southern Cook Inlet in shallow, near-shore marine waters (Palmer 1976). They also occur, although in lesser numbers, in the western Aleutian Islands and along the Pacific coast, occasionally to British Columbia (Palmer 1976). A small number also winter along the Asian coast, from the Commander Islands to the Kuril Islands (Palmer 1976), and some are found along the north Siberian coast west to the Baltic States and Scandinavia (Dement'ev and Gladkov 1967, Frantzen 1985, Petraitis 1991, Frantzen and Henricksen 1992). In spring, large numbers concentrate in Bristol Bay before migration; in 1992, an estimated 138,000 Steller's eiders congregated before sea ice conditions allowed movement northward (Larned *et al.* 1994).

Species Status, Worldwide

The status of Steller's eiders worldwide has been poorly documented. The species occurs primarily in Russia during the nesting season, where few population censuses have been conducted. The rest of the year is spent in marine areas where large-scale surveys are difficult and expensive, and distribution varies within and among years in response to weather and other factors (Jones 1965). Therefore, the variance in repeated counts in specific areas is too high to identify statistically significant population trends (Robert Stehn, U.S. Fish and Wildlife Service, pers. comm., 1994). Also, relative to many other waterfowl species, Steller's eiders have not been an important sport or subsistence species so have received less attention.

Although the factors mentioned above have contributed to the lack of population information, anecdotal observations suggest that Steller's eider numbers may have been declining range-wide for a number of decades. Dement'ev and Gladkov (1952) reported that the enormous flocks wintering near the Commander Islands at the turn of the century were greatly reduced by the 1930s. Similarly, Murie (1959) wrote "it is also clear that there has been a great diminution in numbers."

More recently, the number of wintering Steller's eiders may have declined along the Alaska Peninsula, where the majority of the worldwide population winters (Larned *et al.* 1994).

Several biologists who have studied or censused the species in this area believe that Steller's eider numbers have decreased, possibly to a considerable degree, during the past few decades (Chris Dau, U.S. Fish and Wildlife Service, pers. comm., 1994; Jim King, U.S. Fish and Wildlife Service, ret., pers. comm., 1994; Margaret Petersen, National Biological Service, pers. comm., 1994; Robert Stehn, National Biological Service, pers. comm., 1994). However, disagreement exists as to the certainty and extent of a population decline.

In summary, there is concern that Steller's eiders may be declining in number range-wide, but the magnitude of any change in population size is unknown because of a lack of precise population estimates. The worldwide population is still sizable; 138,000 were counted in Bristol Bay in 1992 (Larned *et al.* 1994), and it is likely that this count did not include the entire worldwide population. Thus, this rule does not include the entire range of the species but includes only those Steller's eiders that nest in Alaska.

Species Status, Alaska Breeding Population

Historically, Steller's eiders nested in Alaska in two general regions: western Alaska, where the species has been essentially extirpated, and the North Slope, where the species still occurs. In western Alaska, Steller's eiders occurred primarily in the coastal fringe of the Yukon-Kuskokwim (Y-K) Delta, where the species was common at some areas in the 1920s, was still present in the 1960s, but is virtually absent as a breeder today (Kertell 1991). On the North Slope, Steller's eiders historically occurred from Wainwright east, nearly to the United States-Canada border (Anderson 1913, Brooks 1915). The species may have abandoned the eastern North Slope in recent decades, but it still occurs at low densities from Wainwright to at least as far east as Prudhoe Bay.

Trends in Distribution—Information on both historical and current distribution of Steller's eiders in Alaska is limited. However, it is certain that Steller's eiders once nested over a considerably larger area in Alaska than they do now. Although the species no longer nests on the Y-K Delta, early qualitative assessments indicated the species was "common" at several coastal sites in the central Y-K Delta (Murie 1924, Conover 1926, Brandt 1943). Specifically, the species was found nesting near Kokechik Bay (Brandt 1943), along the Kokechik River (Murie 1924, Conover 1926), and near

Hooper Bay (Dufresne 1924).

Additionally, Alaska Natives reported that large numbers nested on Nelson Island in 1924 (Murie 1959) and Gillham (1941) found them "in considerable number" in the intertidal reaches of the lower Kashunuk River in 1941. No systematic searches were conducted for Steller's eiders on the Y-K Delta during this period, so the extent of their nesting distribution and abundance was never determined.

By the 1960s or 70s, the species had largely vanished from the Y-K Delta. Researchers (Johnsgard 1964, Kessel *et al.* 1964, Holmes and Black 1973) failed to find any nests in the Kokechik Bay area in the 1960s, whereas the species was described as "surprisingly common" in the area in 1924 (Brandt 1943). Although pairs displaying nesting behavior were observed near the Kashunuk River as late as 1973, no nests were found in the area after 1963 (Kertell 1991). Nesting was documented along the Opagarak River in 1969 and again in 1975; the single nest found in 1975 was the last documented nesting attempt on the Y-K Delta (Kertell 1991) until a pair nested unsuccessfully near the Kashunuk River in 1994 (Paul Flint, National Biological Service, pers. comm., 1994).

Steller's eiders also apparently nested in low numbers in southwestern Alaska, on the Seward Peninsula, and on St. Lawrence Island. The species was reported to nest "sparingly" on Agattu Island in the western Aleutians in the 1880s and a nest was found at Unalaska in the eastern Aleutians in 1872. A "few" nested at the western end of the Alaska Peninsula in the 1880s or 1890s (Murie 1959). A single nest was found on the Seward Peninsula in 1879 (Portenko 1981) and a few nests were found on St. Lawrence Island as late as the 1950s (Fay and Cade 1959). None have been found nesting in any of these areas since. Apparently, Steller's eiders nested in several widely scattered areas in western Alaska in addition to the Y-K Delta, but presumably in low numbers, and they probably ceased nesting in these areas many years ago.

Near Barrow, at the northernmost tip of Alaska, Steller's eiders still occur regularly, though not annually. In some years, up to several dozen pairs may breed in a few square kilometers. The area immediately surrounding Barrow is relatively accessible, and bird studies have been conducted there for decades. As a result, there are records of the species' presence or absence from 1900 (Stone 1900, in Gabrielson and Lincoln 1959), 1958 (Myres 1958), and 1975–1981 (Myers and Pitelka 1975, Myers *et al.* 1976–1981). In 1991, more intensive

studies on the nesting biology, predation, and habitat selection of Steller's eiders in the area were initiated (Quakenbush *et al.* 1995). In contrast, elsewhere on the North Slope, the species apparently occurs at extremely low densities over a huge area and use of specific areas appears to be irregular. Evidence of nesting elsewhere from Barrow has been documented only twice in recent years; females with young were seen in 1993 near Prudhoe Bay (Michele Johnson, University of California, Davis, pers. comm., 1994) and in 1987 along the Colville River (T. Swem, unpubl. Service data). As a result, the vast majority of both historical and recent observations of the species on the North Slope come from Barrow. While part of this distinction may be attributable to the differences in accessibility and search effort between Barrow and elsewhere, it is also true that Steller's eiders seem to favor the Barrow vicinity. Unfortunately, because of the scarcity of observations elsewhere, it is currently impossible to determine how important the Barrow area is to the Alaska breeding population as a whole.

Sightings made during extensive aerial waterfowl breeding pair surveys provide the most comprehensive view of the distribution of Steller's eiders on the North Slope. Waterfowl are counted annually from systematically located transects that sample approximately 2 percent of the 63,210 sq km (24,404.12 sq mi) of waterbird habitat on the arctic coastal plain of Alaska between the northwest coast of Alaska and the Alaska-Canada border (Brackney and King 1993). Between 1989 and 1995, Steller's eiders were seen on 76 separate occasions during these surveys, with sightings ranging from single birds up to flocks containing 20 individuals (Brackney and King 1993, King and Brackney 1995). All 76 sightings were west of the Colville River or in the Colville River drainage (Alan Brackney, U.S. Fish and Wildlife Service, pers. comm., 1994; Rod King, U.S. Fish and Wildlife Service, pers. comm., 1995), indicating that the species currently occurs predominantly in the northwestern portion of the North Slope. Within the large area in which birds were seen, sightings were widely distributed and ranged up to about 90 km (54 mi) inland from the coast. Despite the large area over which sightings occurred, very few were observed. In 1993, for example, only 20 of 2,617 ducks seen along 3,300 km (1,980 mi) of transects were Steller's eiders (Brackney and King 1993), an

average of one Steller's eider per 165 km of survey route.

In recent years, efforts have been made to search for eiders or, in some cases, specifically for Steller's eiders, on the North Slope. From 1992 to 1996, extensive aerial searches for nesting eiders were conducted on the arctic coastal plain of the North Slope. These searches sampled approximately 4 percent of a 42,000 sq. km (16,215 sq. mi) area. A maximum of 12 Steller's eiders per year was recorded during these searches (Larned *et al.* 1992; Larned and Balogh 1994; Balogh and Larned 1994; Bill Larned, U.S. Fish and Wildlife Service, *in litt.*, 1995; B. Larned, pers. comm., 1996). In 1994, 59 plots, 2.6 sq. km (1 sq mi) in size, were intensively searched for Steller's eiders from a helicopter in a 7,041 sq. km (2,718.39 sq. mi) area (Laing 1995); none were encountered. In 1995, intensive aerial searches were conducted in two specific areas, near Teshekpuk Lake and near the mouth of the Chipp River, where Steller's eiders have been observed previously; none were observed (Robert Ritchie, ABR Inc., *in litt.*, 1995). The low number of Steller's eiders observed during extensive searches of suitable habitat and intensive searches of previously occupied areas indicates that the species occurs at extremely low densities on the North Slope.

Steller's eiders have been observed recently near Prudhoe Bay during intensive eider searches conducted from the ground. Although the species was not recorded during the 1980s (North 1990; Declan Troy, Troy Ecological Research and Associates, pers. comm., 1995), a few pairs were seen each year between 1992 and 1994 (D. Troy, pers. comm., 1995), and a female with young was seen in 1992 (M. Johnson, pers. comm., 1994).

Observations of local residents and early naturalists indicate that the species originally occupied the eastern North Slope, whereas none have been seen in this region for several decades. For instance—(1) Bill Patkotak, a resident of Wainwright, saw Steller's eiders near Collinson Point, Camden Bay in the 1930s, but none have been seen in this area for many years; (2) Anderson (1913) recorded the species at Barter Island but none have been reported there for many years; and (3) Brooks (1915) noted the species at Demarcation Bay but none have been seen there since. It is unknown how widespread or numerous the Steller's eider was throughout the eastern North Slope, but apparently the species has abandoned this region in recent decades.

In the central North Slope, Steller's eiders have also abandoned some local areas where they historically nested. Steller's eiders nested near Cape Halkett (north of Teshekpuk Lake) in the 1940s, and bred commonly at Nikilik on the Colville River Delta (P. Sovalik in Myres 1958). Although these areas are within the broad region occupied by Steller's eiders, none have been seen in these specific areas for decades, despite continued observation (Jim Helmericks, pers. comm., 1995).

Trends in Numbers

Although Steller's eiders are seen and counted during extensive waterfowl surveys and breeding eider surveys, these observations cannot be used to precisely estimate the number of Steller's eiders on the North Slope for three reasons—1) the species-specific probability of detecting Steller's eiders during aerial surveys has not been determined (Rod King, pers. comm., 1994), therefore it is impossible to use the number of sightings in the area sampled to estimate the number of birds actually present in the sample area; 2) so few Steller's eiders are seen during surveys that confidence intervals around estimates of the total number in the study area are extremely wide; and 3) it is unknown whether Steller's eiders are evenly or unevenly distributed, and differences in distribution greatly affect the precision of population size estimates (Alan Brackney, pers. comm., 1995). As a result, no statistically meaningful population size estimates are available for the North Slope. However, two waterfowl researchers who have conducted extensive aerial waterfowl surveys on the North Slope in recent years subjectively estimate that hundreds to a few thousand Steller's eiders inhabit the region (Bill Larned, pers. comm., 1995; Rod King, pers. comm., 1995).

Since there are no reliable counts of Steller's eiders from which to calculate a trend, all conclusions about trends must be made by inferring that the number of Steller's eiders decreased as the species' range in Alaska contracted. It is unknown how many Steller's eiders nested historically on the Y-K Delta, but Kertell (1991) estimated that a maximum of 3,500 pairs may have nested on the Delta. This estimate was made by extrapolating from the number nesting in one sample plot in 1951 and 1961–1966 to the entire vegetated intertidal zone of the central Y-K Delta. This estimate could be biased, however, if the number in this study plot was not representative of coastal areas in the central delta in general, or if numbers in the 1960s were not representative of

historical population size. Regardless of the number occurring historically on the delta, however, the number of Alaska breeding Steller's eiders decreased with its extirpation from western Alaska, including the Y-K Delta, the Aleutians, Alaska and Seward Peninsulas, and St. Lawrence Island.

Similarly, the number of Steller's eiders nesting on the North Slope has also likely decreased in recent decades as a result of their abandonment of several previously used nesting areas. Although birds using these areas could have shifted to other areas of the North Slope, there have been no indications that numbers have increased in other areas or that Steller's eiders have colonized previously unused areas in recent decades.

Additionally, anecdotal observations suggest that numbers may have decreased in one area on the North Slope in which Steller's eiders are still found. Inupiat elders from Wainwright recall that the species was common near Wainwright many years ago, which corresponds with the observations of Bailey (1948) and D. Bodfish (in Myres 1958). Now, Steller's eiders are considered rare near Wainwright and none have been found nesting there for several years (Quakenbush 1993).

In addition to changes in distribution and numbers, anecdotal observations suggest that Steller's eiders may be successfully nesting in fewer locations than in previous decades. In recent decades, nesting Steller's eiders have been documented in only three areas—(1) at Barrow; (2) on the lower Colville River, where a female with young was seen in 1987 (T. Swem, unpubl. data); and (3) near Prudhoe Bay, where a female with young was seen in 1993 (M. Johnson, pers. comm., 1994). In earlier decades, Steller's eiders were found nesting at Wainwright (Bailey 1948), inland on the Meade River (Bailey 1948), Admiralty Bay (Reed 1965), at the confluence of the Chipp and Ikpikpuk Rivers (Bailey 1948), the mouth of the Ikpikpuk River (nest and oological records from the Western Foundation of Vertebrate Zoology), the Topaguruk River (Bee 1958), and Pitt Point (Gabrielson and Lincoln 1959). Although birds have been detected in these general areas in recent years, no nests have been found despite increasing interest in the species. Breeding may resume in these areas; Steller's eiders near Barrow show considerable annual variation in reproductive effort and performance (Myers and Pitelka 1975a,b; Myers *et al.* 1977–1981; Quakenbush *et al.* 1995, L. Quakenbush, U.S. Fish and Wildlife Service, pers. comm., 1996).

In summary, the breeding range of Steller's eiders in Alaska has contracted in recent decades. The species no longer nests on the Y-K Delta or other areas in western Alaska, and is now found exclusively on the North Slope. Breeding range on the North Slope may also have contracted. Apparently the species is no longer found in areas historically occupied on the eastern North Slope and in at least two other areas on the central North Slope. Current and historical population sizes remain unknown, but overall numbers have likely declined. Steller's eiders still occur over a large area on the North Slope, but at such low densities that only hundreds or a few thousand occupy the huge expanse of seemingly suitable habitat. Although dozens of pairs periodically nest near Barrow, only two nests have been documented elsewhere on the North Slope in recent years.

Petition Background

On December 10, 1990, the Service received a petition from Mr. James G. King of Juneau, Alaska, dated December 1, 1990, to list the Steller's eider as endangered throughout its range and to designate critical habitat on the Yukon Delta National Wildlife Refuge and the National Petroleum Reserve in Alaska. Pursuant to section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), the Service determined on May 8, 1992, that listing the Steller's eider was warranted, but precluded by listing actions for higher priority species (57 FR 19852).

In August 1993, the Service reviewed the status of the species and concluded that the available information did not support listing range-wide, but did support listing the Alaska breeding population. On July 14, 1994, the Service proposed to list this population as threatened (59 FR 35896).

At the time of publication of the proposed rule, the Service implemented a policy requiring that listing proposals be reviewed by at least three independent specialists (59 FR 34270). To comply with the new Service policy requiring peer review the Service reopened the public comment period on June 30, 1995 (60 FR 34225), and solicited the opinions of seven independent specialists.

The completion of the listing process for this species was also affected by legislation (Public Law 104–6) signed into law on April 10, 1995, that prevented the Service from making final determinations on listing actions during Fiscal Year 1995. This moratorium was extended until April 26, 1996, by

continuing budget resolutions. When the moratorium was lifted, the Service established listing priority guidance (61 FR 24722) that gave highest priority to emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of outstanding proposed listings. Following receipt of its fiscal year 1997 appropriation, the Service issued revised listing priority guidelines (61 FR 64475). However, the Tier 1 and Tier 2 priorities are unchanged from the previous guidelines. This final rule falls under Tier 2. At this time there are no pending Tier 1 actions; therefore, the processing of this final listing rule conforms with the Service's current listing priority guidance.

This rule constitutes the final determination resulting from the listing proposal and all comments received during both comment periods.

Summary of Comments and Recommendations

In the July 14, 1994, proposed rule (59 FR 35896) and associated publications, all interested parties were requested to submit factual reports or information that might contribute to the development of a proposed rule. Appropriate Federal and State agencies, borough, city, and village governments, scientific organizations, and other interested parties were contacted and requested to comment. Notices inviting public comments were published in the Anchorage Daily News and Fairbanks Daily News-Miner. On June 30, 1995, the comment period was reopened (FR 60 FR 34225), and again, appropriate parties were contacted and invited to comment. Comments were received from a total of nine parties during the two comment periods, including the North Slope Borough, the Alaska Department of Fish and Game, the Federal Aviation Administration, three conservation organizations, two oil companies, and one private individual. No one requested a public hearing on the proposal. Of the comments, four supported listing, four were neutral, and one, the Alaska Department of Fish and Game, opposed listing.

Peer reviewers were selected from a group of recognized experts on seaduck or eider population monitoring, modeling, or management. Individuals with possible conflicts of interest in listing were not selected to ensure an unbiased review. Seven individuals, who had published a combined total of 453 articles on relevant topics in peer-reviewed scientific journals, were selected. Four were employed by the Canadian Wildlife Service, two by universities, and one by the U.S.

National Biological Service (now the U.S. Geological Survey Biological Resources Division). Five of the seven individuals that were selected reviewed the proposal and supporting documents. All five supported listing the Alaska breeding population as threatened, and one of the five suggested that the population should be classified as endangered.

Written comments received during the comment periods are addressed in the following summary. Comments from all respondents, including the peer reviewers, are combined. Because multiple respondents offered similar comments in some cases, comments of a similar nature or point are grouped. These comments and the Service's responses are as follows:

Comment: The Alaska Department of Fish and Game does not believe that the Alaska breeding population is currently, or ever was, a discrete or significant part of the world population. Therefore, they believe it is inappropriate to consider this segment of the population a listable entity, and they are opposed to listing.

Service response: In recognizing distinct vertebrate population segments for purposes of listing, delisting, or reclassifying species under the Endangered Species Act, the Service currently uses guidelines published in the **Federal Register** on February 7, 1996 (61 FR 4721). To qualify as a listable vertebrate population, the population must be both discrete in relation to the remainder of the species to which it belongs, and significant to the species to which it belongs.

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions:

1. It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or
2. It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

In the case of Alaska breeding Steller's eiders, the population is discrete by both criteria above. First, Alaska breeding Steller's eiders are physically separated from Asia nesting populations by hundreds of kilometers across the Bering and Chukchi seas. Second, the Alaska breeding population of Steller's eiders is delimited by international boundaries. Within these international boundaries differences in conservation status exist. While available information suggests that the

species in Russia also may have declined, population numbers are estimated to range well over 100,000 birds. However, the status of the breeding population in the U.S., as inferred by the contraction of nesting range, is reduced considerably from historic times, despite the existence of regulatory protections and an abundance of seemingly suitable habitat.

If a population is considered discrete under one or both of the above conditions, its biological and ecological significance will then be considered in light of Congressional guidance (Senate Report 151, 96th Congress, 1st Session) that the authority to list distinct vertebrate population segments be used "sparingly" while encouraging the conservation of genetic diversity. In carrying out this examination, the Service considers available scientific evidence of the discrete population segment's importance to the taxon to which it belongs. This consideration may include, but is not limited to, the following:

1. Persistence of the distinct vertebrate population segment in an ecological setting unusual or unique for the taxon;
2. Evidence that loss of the distinct vertebrate population segment would result in a significant gap in the range of a taxon;
3. Evidence that the distinct vertebrate population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or
4. Evidence that the distinct vertebrate population segment differs markedly from other populations of the species in its genetic characteristics.

Loss of the Alaska breeding population of Steller's eiders would represent a significant reduction in the species' breeding range worldwide. Steller's eiders nested historically along many hundreds of kilometers of coastline in southwestern Alaska and the North Slope, which are two separate, major biogeographic regions of the State. On the North Slope, the species currently occurs from the north coast to as much as 90 km inland, and from Wainwright in the west to Prudhoe Bay in the east, so its current range covers a sizable area. Additionally, because it historically also occurred on the Y-K Delta, other areas in southwestern Alaska, and the eastern North Slope, its historical range in Alaska was considerably more extensive.

In addition, the Service finds that another factor is pertinent. Alaska is the

only location in the United States where the species breeds. As such, Alaska is the only portion of the species' breeding range over which the United States government can exercise its authority to provide for the conservation of the species during nesting. If, as some researchers believe, the species is declining range-wide (Jim King, pers. comm., 1994, Margaret Peterson, pers. comm., 1994, Chris Dau, pers. comm., 1994, Robert Stehn, pers. comm., 1994), the importance of providing for the conservation of the species in Alaska will increase. Furthermore, by securing the survival of the Alaska breeding population, access to the species for scientists to identify the factors controlling the population and causing declines in other areas will be facilitated. Ultimately, this may be essential to the survival of the species as a whole. As a result of the extent of the species' historical breeding range in Alaska, and the potential future importance to the worldwide population, the Service finds that the disappearance of the Alaska breeding population of Steller's eiders would be a significant loss to the species as a whole.

Comment: Accounts suggest that the abundance of Steller's eiders near Barrow has varied widely among years. It is likely that Steller's eiders have always been rare on the North Slope and reflect a failure to thrive, typical of birds in suboptimal range.

Service response: Little is known of annual variation in Steller's eider population size and breeding performance. However, recent studies have found Steller's eider numbers in the Lena River Delta in Siberia to vary tremendously among years, as well (Diane Solovieva, Lena Delta Nature Reserve, pers. comm., 1995 to L. Quakenbush). This suggests that the variation in abundance seen at Barrow may be typical of Steller's eiders in general, rather than peculiar to Barrow or symptomatic of birds on the periphery of the eastern end of the species' range. Furthermore, although Steller's eiders occur at low densities on the North Slope, they occur over an extensive area so that possibly hundreds or as many as a few thousand may occur there (Bill Larned, pers. comm., 1994; Rod King, pers. comm., 1994). Historically, they were likely even more numerous, as they have apparently abandoned the eastern North Slope and some other local areas in the northwestern North Slope. Therefore, although historical abundance is impossible to determine, the Service does not agree that the current apparent

scarcity of the species implies that the North Slope is suboptimal habitat.

Comment: Kertell's (1991) estimate of the number of Steller's eiders nesting on the Y-K delta was a gross extrapolation from a single small plot surveyed only seven times during 16 years. The use of Kertell's estimate is a poor basis for a listing action. Furthermore, it is doubtful that the species was ever very abundant on the Y-K Delta, and their occurrence in this region was marginal.

Service response: Kertell's (1991) estimate of the number of Steller's eiders was not the basis for this listing. His estimate was based upon an extrapolation from one small plot to a large expanse of habitat deemed to be similar at a very coarse scale. This extrapolation would have overestimated historical population size if the density within that single plot exceeded the average density in the areas outside the plot, which is quite possible. Conversely, if density within the plot had declined by the 1950s and 1960s, this extrapolation would have underestimated historical population size. The latter case is supported by the observation that Steller's eiders had disappeared from nearby Kokechik Bay by the 1960s although the species was common there in 1924 (Brandt 1943). For these reasons, the Service agrees that it is impossible to retrospectively estimate historical population size with any degree of accuracy.

However, while we have no reliable estimate of historical population size, Steller's eiders were considered to be common by several observers in several locations in the Y-K delta (Murie 1924, Dufresne 1924, Conover 1926, Gillam 1941, Brandt 1943, Murie 1959). If Steller's eiders were equally common in large areas with comparable habitat, the total number occupying the delta would have been sizable.

Comment: Steller's eiders should be listed throughout their range, not just the population that breeds in Alaska.

Service response: Concern that Steller's eiders have declined in number range-wide remains a concern but additional data are needed. Regardless of any possible worldwide population decline, at least 138,000 Steller's eiders wintered in southwest Alaska in 1992 (Larned *et al.* 1993). Based upon this large recent count, the Service finds that the species is neither in danger of extinction nor likely to become endangered within the foreseeable future (the definitions of endangered and threatened species, respectively).

Comment: The Alaska breeding population should be listed as endangered.

Service response: As defined in the Act, an "endangered species" is in danger of extinction while a "threatened species" is likely to become an endangered species within the foreseeable future. The information currently available to the Service indicates that the species regularly occurs in low numbers near Barrow. Although no more than a few dozen pairs occur there, there is no suggestion that the number near Barrow has declined since the late 1960s, when the earliest observations were made. Elsewhere on the North Slope, the species is thought to number in the hundreds to a few thousand (Bill Larned, pers. comm., 1994; Rod King, pers. comm., 1994). This information indicates that threatened status is the most appropriate designation at this time. The Service will continue to actively collect and evaluate status information on Steller's eiders and may propose reclassification at any time, should this become warranted.

Comment: Critical habitat should be established in order to protect nesting, molting, and wintering areas.

Service response: This issue is addressed under the section entitled "Critical Habitat" in this rule.

Comment: The impacts of oil and gas development have been inadequately addressed.

Service response: The past and potential future impacts of oil and gas development remain largely unknown. Currently, considerable effort is expended to research and monitor the effects of oil and gas activities and the resultant habitat alteration upon spectacted eiders and other birds near Prudhoe Bay. Likewise, one of the objectives of ongoing studies of the ecology of Steller's eiders near Barrow is to identify the effects of all forms of human disturbance upon the species, including those of the local gas pipeline and the accompanying service road. Knowledge of the impacts of oil and gas development will increase as these studies proceed. It is important to note, however, that it appears that the species may be tolerant of oil and gas development. Steller's eiders regularly nest within a few hundred meters of a gas pipeline near Barrow, and the majority of nests found in recent years in Alaska have been in proximity to "Gaswell Road," which parallels this pipeline. Furthermore, one of the only two successful nests found elsewhere from Barrow in recent years was located near Prudhoe Bay, the most heavily developed oil field in Alaska.

In addition to comments pertaining to listing or the designation of critical habitat, several respondents suggested

management or research objectives that could assist in conservation efforts. Specific recommendations were:

(1) A conservation plan to protect important Steller's eider habitat should be explored;

(2) Educational programs at villages within the range of Steller's eiders should be expanded to reduce shooting and eggging and to encourage the reporting of sightings of the species; and

(3) More information on the impacts of hunting should be gathered, including subsistence harvest, and accidental and illegal shooting by sport hunters.

The Service agrees that these suggested actions have potential for contributing significantly to the conservation of the species in Alaska. Each will be thoroughly considered during development of recovery strategies.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Alaska breeding population of the Steller's eider should be classified as a threatened species. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Alaska breeding population of the Steller's eider (*Polysticta stelleri*) are as follows:

A. Present or threatened destruction, modification, or curtailment of its habitat or range. Habitat destruction is not known to be a major factor in the decline of Steller's eiders in Alaska. The species disappeared from the Y-K Delta and the eastern North Slope although only a very small portion of the habitat in those areas has been affected by human activities. Other waterfowl species continue to nest in large numbers in these areas, demonstrating that what little habitat modification has taken place has not precluded waterfowl nesting. Habitat modification and destruction do not appear to have played a major role in the decline of breeding Steller's eiders in Alaska. However, the factor or factors causing the decline are not understood.

On the North Slope, the current range of Steller's eiders is largely contained within the National Petroleum Reserve-Alaska (NPR-A), which was set aside for oil and gas development. The National Petroleum Reserve Productions

Act of 1976 encourages expeditious leasing and permitting of oil exploration and development activities in Petroleum Reserves. Although very little of NPR-A has been leased, future leasing is possible in areas where industry interest is sufficient. Potential impacts of oil and gas exploration and development on nesting Steller's eiders are not known but Steller's eiders have nested successfully at Barrow within a few hundred meters of a gas pipeline and the accompanying service road and Steller's eiders frequently feed in ponds within meters of the pipeline (Lori Quakenbush, pers. comm., 1995).

All but two recent, known nests of Steller's eiders in Alaska have been near Barrow, which is the largest Native village in northern Alaska. The human population of Barrow increased 58 percent in 10 years, from 2267 in 1980 to 3469 in 1990 (Harcharek 1992), and village expansion is likely to continue in the future. Housing developments, gas field access and development, and conveyance of land from the Ukeagvik Inupiat Corporation to shareholders could lead to nesting habitat loss and disturbance to nesting birds. (Also see discussion of increasing predators around human use areas under factor C.) Although Steller's eiders nest successfully along heavily used all-terrain vehicle trails and directly under approach lanes to the airport that are used daily by large jets and numerous smaller aircraft (Lori Quakenbush, pers. comm., 1995), the indirect effects of development and human presence can be detrimental to Steller's eiders. Of 15 adult Steller's eiders found dead near Barrow in 1991–1994, one presumably died from striking wires and five had been shot (Quakenbush *et al.* 1995).

Much of the former Steller's eider breeding range in western Alaska is within the Yukon Delta National Wildlife Refuge and is protected from major development although some of the habitat where the species previously bred is on Alaska Native land where Federal involvement in protection is low. However, the likelihood that large-scale development will take place in this remote region is limited. Because of the large amount of unaltered habitat available on the Y–K Delta, it is unlikely that the recovery of Steller's eiders and the development of Native-owned private lands in the area will both proceed to the point that they conflict.

Steller's eiders occupy a vast expanse of marine habitat during the non-nesting season. Within the marine distribution of the Steller's eider the environment has likely been affected by any number of human activities, including marine transport, commercial fishing, and

environmental pollutants. However, there is no evidence that modifications of the marine environment have caused the decline of the Alaska breeding population of Steller's eiders. Substantial portions of the important molting and wintering areas have been designated as National Wildlife Refuges, State Game Refuges, or State Critical Habitat Areas.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Because of the small numbers taken, overutilization is unlikely to have caused the decline of Alaska Steller's eiders or their extirpation from the Yukon-Kuskokwim Delta. In the past, some Steller's eider eggs were collected in Alaska for avicultural exhibition and trade but the issuance of Federal permits for collecting Steller's eider eggs for avicultural purposes was terminated in 1987. A few dozen Steller's eiders were taken annually before 1991 by collectors and sport waterfowl hunters on the Alaska Peninsula and Kodiak and Nunivak islands (Robin West, U.S. Fish and Wildlife Service, pers. comm., 1991), but this was prohibited by Service policy in 1991. The Service will continue to collect information on any taking of Steller's eiders. The Service will consider listing the Russian population when in Alaska under the similarity of appearance provision of section 4(e) of the Act if such is deemed necessary to facilitate enforcement of taking of the Alaska breeding population.

C. Disease or predation. Disease is not known to be affecting the population at present, but small, restricted populations are more vulnerable to all decimating factors, including disease.

Natural predators of Steller's eiders in Alaska include raptors, gulls, jaegers, ravens, and foxes. Kertell (1991) hypothesized that arctic foxes (*Alopex lagopus*) may have contributed to the extirpation of Steller's eiders on the Yukon-Kuskokwim Delta by increasing predation pressure when major goose populations in the region crashed during the 1960s, but this remains unproven.

Some predators may be increasing in number as a result of human habitation and development. Predators and scavengers such as gulls, ravens, and foxes have increased in number due to the availability of refuse and handouts (Paul O'Neil, Animal and Plant Health Inspection Service, Animal Damage Control, pers. comm., 1993). Gulls and ravens are effective predators of eider eggs and young, and foxes depredate eggs, young, and adults. Predation is likely to increase near communities where refuse is available and could

significantly affect eiders in these areas. In fact, of 15 adult Steller's eiders found dead near Barrow between 1991 and 1994, 7 were believed to have been killed by predators. In addition, of 26 nests found, 17 failed and 8 of these failures were believed to have been caused by avian predators or foxes (Quakenbush *et al.* 1995). It is unknown how the rate of predation of eiders and eider nests has been affected by the possible artificial increase of predators in the Barrow area.

D. The inadequacy of existing regulatory mechanisms. Subsistence and sport hunting of waterfowl are regulated under authority of the Migratory Bird Treaty Act (16 U.S.C. 703–711). Spring and summer subsistence hunting of eiders in Alaska is currently in violation of the Migratory Bird Treaty Act, which prohibits hunting for most migratory birds between March 10 and September 1. The Service recognizes, however, that residents of certain rural areas in Alaska depend on waterfowl as a customary and traditional source of food. As a result, the Service has exercised discretion in enforcing seasonal restrictions to allow for traditional subsistence use of many species. Starting in 1994, the Service included Steller's eiders on the closed season species list, indicating that restrictions on taking Steller's eiders during all seasons would be enforced as violations of the Migratory Bird Treaty Act. Recently, modifications to the treaty have been made to legalize subsistence harvest during spring and summer, although implementation awaits ratification by the U.S. Senate. Once ratified, hunting between March 10 and September 1 will be permissible after suitable regulations are adopted. These regulations will be formulated to accommodate the conservation needs of individual species, such as Steller's eiders.

Historically, Alaska Natives hunted Steller's eiders and their eggs for food at several villages (Braund *et al.* 1989; Wentworth 1993; James Sheridan, U.S. Fish and Wildlife Service, pers. comm., 1993), but many villages along the Steller's eider migration route have not been surveyed so the total annual subsistence harvest is unknown (Cynthia Wentworth, U.S. Fish and Wildlife Service, pers. comm., 1993). However, Steller's eiders are not a preferred species (Quakenbush and Cochrane 1993), and they have been taken in far fewer numbers than the other three eider species (Klein 1966, Nelson 1969, Johnson 1971). While not an important subsistence species, Steller's eiders are occasionally killed

incidental to hunting of preferred species. Although apparently limited, this take may threaten the small breeding segment near Barrow and possibly near other villages. Ongoing Service information and education programs aimed at gaining support in Native villages for protection of Steller's and spectacled eiders continue.

Sport hunting of Steller's eiders was prohibited in 1991. A few may still be shot accidentally or illegally by sport hunters but the number taken, although unknown, is likely small.

E. Other natural or manmade factors affecting its continued existence. Some natural or manmade factor(s), currently unknown, caused the extirpation of the Steller's eider from the Y-K Delta and the eastern North Slope in Alaska. Several possible factors have been proposed but supporting evidence is lacking. Two possible factors warranting discussion are changes in the Bering Sea environment where Steller's eiders molt and winter, and ingestion of lead shot on the Y-K Delta.

Recent changes in the Bering Sea ecosystem have been proposed as a possible factor affecting the spectacled eider (Stehn *et al.* 1993), which was classified as threatened in 1993 due to rapid population declines on the Y-K Delta and elsewhere within its range. Increasing Pacific walrus (*Odobenus rosmarus*), gray whale (*Eschrichtius robustus*), and sea otter (*Enhydra lutris*) populations may have restructured the marine community that forms the prey base of these species (Stehn *et al.* 1993, Kvitek *et al.* 1992), and this in turn may have affected other members of the community. Similarly, changes in commercial fishing pressure may also have affected the marine ecosystem with possible effects upon marine birds, including eiders (Stehn *et al.* 1993).

Recently, other species in the Bering Sea have declined in numbers, including Steller's sea lions (*Eumatopias jubatus*) and oldsquaws (*Clangula hyemalis*) (Stehn *et al.* 1993). Declines in these species may have been caused by the restructuring of the trophic system outlined above or, alternatively, the declines may suggest a general deterioration of the Bering Sea ecosystem caused by contamination or other factors. There is currently no documentation of a link between changes in the marine environment in Alaska and a contraction of the breeding range of Steller's eiders in Alaska.

It has recently been shown that lead shot, used for hunting waterfowl for many decades on the Y-K Delta, is being ingested by spectacled eiders with potentially serious effects upon adult survival (Margaret Petersen, pers.

comm., 1994). Although nontoxic shot is now legally required for waterfowl hunting, illegal use of lead shot on the delta continues. Furthermore, it appears that lead shot may remain in tundra wetland areas for many years, possibly decades, after deposition (Margaret Petersen, pers. comm., 1994). There is no evidence indicating that ingestion of lead shot caused the extirpation of Steller's eiders on the Y-K Delta but the ingestion of lead shot may have affected the species in some heavily hunted areas. Furthermore, residual lead shot could potentially impair recovery of the species if Steller's eiders ingest lead shot which remains in areas that Steller's eiders recolonize. The Alaska Department of Fish and Game and U.S. Fish and Wildlife Service are implementing educational programs, to be followed by increasing enforcement, aimed at eliminating the use of lead shot.

Steller's eiders that nest on Alaska's North Slope are the only remaining breeding population within the jurisdiction of the United States. As a result of their low numbers and restricted breeding range, the Alaska breeding population is at risk from natural and human-caused factors. Major storms, predation or disturbance could severely deplete Steller's eiders numbers on the North Slope and lead to extirpation of this remnant population. The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this final rule. Based on this evaluation, the preferred action is to list the Alaska breeding population of the Steller's eider as threatened. While probably not in immediate danger of extinction, Steller's eiders that breed in Alaska could become endangered in the foreseeable future if the population declines further.

Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Alaska breeding population of Steller's eiders at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the identification of critical habitat can be expected to increase the

degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Section 7(a)(2) and regulations codified at 50 CFR Part 402 require Federal agencies to ensure, in consultation with the Service, that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify their habitat. The current nesting range of the Steller's eiders on the North Slope is largely contained within the NPR-A. Upon this rule taking effect, oil and gas exploration and other activities that may affect the continued existence of the Alaska breeding population of Steller's eider will be addressed through the section 7 consultation process to ensure that these activities do not jeopardize the survival and recovery of the species. In addition, wetland filling and other activities subject to Federal authorization will undergo consultation to avoid detrimental impacts. In the fall, winter, and spring, the eiders disperse to marine areas in southern Alaska also used by large numbers of other waterfowl and birds. Most of these areas, including Y-K Delta where the Steller's eider historically nested, have been designated as National Wildlife Refuges and are currently managed to ensure that Federal and other activities do not deleteriously affect these bird concentrations. The Service believes that Federal involvement in both the nesting and wintering areas where the species may occur can be identified and addressed without the designation of critical habitat. Therefore, the Service finds that designation of critical habitat is not prudent at this time because it would result in no known benefit to the species not already afforded by the Act. Protection of this species' habitat will also be addressed through the section 7 and recovery processes and, as appropriate, through the section 10 habitat conservation planning process.

Available Conservation Measures

Conservation measures provided for species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State and local governments and private organizations, groups and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies

and the prohibitions against taking and harm are discussed below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its designated critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of endangered or threatened species or to destroy or adversely modify its critical habitat. If an action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service anticipates consultation with the U.S. Army Corps of Engineers and the U.S. Department of Transportation to avoid impacts to Steller's eiders from wetland fill permitting and other activities on the North Slope. Consultations to identify potential effects on Steller's eiders are also expected with the U.S. Bureau of Land Management for NPR-A lands issues, the Minerals Management Service for outer continental shelf oil and gas lease sales, and the National Marine Fisheries Service for commercial fishing regulations.

The Service will initiate development of a recovery plan for the Steller's eider promptly upon listing. This recovery plan, prepared in cooperation with the affected agencies and communities, will establish recovery goals and set recovery task priorities. An educational program to gain public support for the protection of Steller's eiders has already been initiated and will be expanded cooperatively with affected communities.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign

commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are in 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. The Service believes that the following actions will not result in a violation of section 9, provided the activities are carried out in accordance with any existing regulations and permit requirements:

(1) Unintentional flushing or disturbing of Steller's eiders on the species' Alaska nesting or wintering grounds.

(2) Federally approved projects that involve activities such as, drilling, discharge of fill material, draining, ditching, or alteration of surface or ground water into or out of a wetland (i.e., due to roads, impoundments, discharge pipes, etc.) when such activity is conducted in accordance with any reasonable and prudent measures given by the Service in accordance with section 7 of the Act.

(3) Hunting endangered and threatened species for subsistence purposes is permissible under the Endangered Species Act under certain circumstances (section 10(e) of the Act, see further discussion below); however, all hunting of Steller's eiders remains prohibited under other provisions of law.

Activities that the Service believes could potentially result in "take" of the Alaska breeding population of Steller's eiders include, but are not limited to, the following activities:

(1) Unauthorized trapping, capturing, or collecting of the Alaska breeding population of Steller's eiders. Research activities, where birds are trapped or captured will require a permit under section 10(a)(1)(A) of the Endangered Species Act.

(2) Intentional or accidental shooting or Steller's eiders during the sport hunting season. This take will be addressed in the annual section 7 consultation conducted on the migratory bird sport hunting season. Wanton killing or injury of Steller's eiders is illegal under both the Endangered Species Act, MBTA, and other Federal and State laws.

Other activities not identified in the above two paragraphs will be reviewed on a case-by-case basis to determine if a violation of section 9 of the Act may be likely to result from such activity. Questions regarding any specific activities should be directed to the Field Supervisor of the Service's Fairbanks Field Office (see **ADDRESSES** section).

Section 10(e) of the Act exempts any Indian, Aleut, or Eskimo who is an Alaska Native who resides in Alaska, or any nonnative permanent resident of an Alaska Native village, from prohibitions on taking any endangered or threatened species if such taking is primarily for subsistence purposes. Regulations prohibiting or limiting subsistence harvest may be established pursuant to section 10(e)(4) of the Act if the Secretary determines that such taking materially and negatively affects the threatened or endangered species. The Service is not considering special regulations under section 10(e)(4) of the Act at this time, because all hunting of Steller's eiders is currently restricted under provisions of other Federal and State laws.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of

Management and Budget under Executive Order 12866.

References Cited

A complete list of all the references cited herein, as well as others, is available upon request from the Fairbanks Ecological Services Field Office (see ADDRESSES section).

Authors: The primary author of this document is Ted Swem (see ADDRESSES section). Lori Quakenbush, U.S. Fish and Wildlife Service, contributed data and editorial assistance. Bill Larned and Rod King, U.S. Fish and Wildlife Service, contributed survey data.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* BIRDS	*	*	*	*	*		*
Eider, Steller's	<i>Polysticta stelleri</i> ..	U.S.A. (AK), Russia.	U.S.A. (AK breeding population only)	T	616	NA	NA
*	*	*	*	*	*		*

Dated: March 21, 1997.

John G. Rogers,

Acting Director, Fish and Wildlife Service.
[FR Doc. 97–15244 Filed 6–10–97; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD52

Endangered and Threatened Wildlife and Plants; Threatened Status for the Guajón

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines the guajón (*Eleutherodactylus cooki*) to be a threatened species pursuant to the Endangered Species Act (Act) of 1973, as amended. The guajón is endemic to Puerto Rico and is restricted to the Pandura mountain range in the southeastern part of the island. It is threatened in this area by agricultural, rural, and industrial development and the associated infrastructure. This final rule will implement the Federal protection and recovery provisions afforded by the Act for *E. cooki*.

EFFECTIVE DATE: July 11, 1997.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Boquerón Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622, and at the Service's Southeast Regional Office, 1875 Century Boulevard, Atlanta, Georgia 30345.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (787/851–7297) or Ms. Gloria Bell at the Atlanta Regional Office address (404/679–7100).

SUPPLEMENTARY INFORMATION:

Background

Eleutherodactylus is the largest vertebrate genus with over 400 described species. Two major centers of species diversity occur: northwestern South America and the West Indies. Almost all species share two characteristics—“T-shaped” terminal phalanges, probably an adaptation for climbing, and direct development, allowing for reproduction away from water. In the West Indies, *Eleutherodactylus* species are a dominant amphibian group. No single species is naturally found on more than one of the four Greater Antilles, and most are restricted to small areas within an island (Hedges 1989). Seventeen species of this genus are known from Puerto Rico and, collectively, they are

commonly known as “coquíes” (Rivero 1978, Moreno 1991).

The guajón (*Eleutherodactylus cooki*), also known commonly as “demon of Puerto Rico” or “demonio de Puerto Rico,” is a relatively large frog, approximately 8.5 centimeters (3.3 inches) in length. It is solid brown in color, although attending and calling males may have a yellow throat. The guajón may be the only species of *Eleutherodactylus* in Puerto Rico that exhibits sexual dimorphism in color (Joglar *et al.* 1996). In both sexes, the frogs have large, white-rimmed eyes, giving the species a specter or phantom-like appearance. The species is characterized by having large truncate discs and by a peculiar, melodious and low voice which is completely different from any other species of *Eleutherodactylus* in Puerto Rico (Rivero 1978). Rivero (1978) states that its peculiar calling and phantom-like appearance made many local people fearful of the species, believing that the mere sight of an animal would be fatal.

The guajón, first collected by Chapman Grant in 1932, is known only from the Pandura range in southeastern Puerto Rico and west to Patillas/San Lorenzo where it lives in crevices and grottoes in and among boulders (Joglar *et al.* 1996). Such grottoes are commonly referred to as guajonales. It is from the grottoes or guajonales where the species lives that the frog derives its name, the guajón. The species is