

subject to annual establishment and public review and because the season is closed unless opened. This rule establishes regulations for reorganization of the regional areas, harvest seasons, a list of subsistence species, emergency closure authority, and methods and means related to taking of migratory birds for subsistence uses in Alaska during the spring/summer of 2003. We have also made nonsubstantive changes to 50 CFR parts 20 and 21 that were necessitated by the creation of 50 CFR part 92.

How Did the Service Meet the International Aspects of the Migratory Bird Treaties?

The Service's authority arises from the four international treaties implemented by the Migratory Bird Treaty Act. Formerly, the 1916 Convention between the United States and Great Britain on behalf of Canada and the 1936 treaty with the United Mexican States contained language that precluded most spring/summer subsistence harvest of migratory birds in Alaska. Both of these treaties have now been amended to allow the U.S. government to implement subsistence harvests during the closed season by indigenous inhabitants of identified subsistence harvest areas in Alaska. Specifically, the Protocol with Canada, Article II of the Treaty was revised to allow migratory birds and their eggs to be harvested by the indigenous inhabitants of the State of Alaska, regardless of the closed season provisions in Article II.

Although the Protocol with the United Mexican States was amended to allow for the taking of wild ducks by indigenous inhabitants of Alaska, the hunting season limitation specified in Article II Part C was not altered. Therefore, the length of the Alaskan spring/summer subsistence harvest of migratory birds cannot exceed the period specified within the Mexican convention, which is 4 months. Historically, we have interpreted this restriction as 124 days. Therefore, to be consistent with the Mexican Treaty, subsistence harvest between March 11 and September 1 must be limited to 124 days. The above interpretation of season length came late in this initial regulatory process. The Co-management Council had developed season recommendations without being aware of a 124-day season limitation; therefore, the Service has elected to open the season as soon as this rule is published and allow the "Closed Season Policy" (53 FR 16877, May 12, 1988) to remain in effect until this rule takes effect. Under the "Closed Season

Policy," the emphasis is to protect those species for which there is greatest conservation concern. Following publication of this rule, the "Closed Season Policy" will no longer be in effect. Certain provisions in this final rule will govern the spring/summer subsistence harvest from the effective date of this rule through August 31, 2003. The regulations in 50 CFR part 20 will apply to all migratory bird harvests by all people in Alaska from September 1, 2003, to March 11, 2004.

The 1974 Migratory Bird Treaty with Japan provides for "taking of migratory birds by Eskimos, Indians, and Indigenous peoples of the Trust Territory of the Pacific Islands for their own food and clothing." The Japan Treaty further stipulates that "Open seasons for harvesting migratory birds may be decided by each Contracting Party respectively. Such harvesting seasons shall be set so as to avoid their principal nesting seasons and to maintain their populations in optimum numbers." In conformance with this provision, the Service developed a provision that would allow the traditional subsistence harvesting of eggs while also providing protection during the most critical part of the production period. Using ducks and geese as the initial model (with applications later considered for seabirds), a 30-day closed period targets the last 2 weeks of the incubation period and the first 2 weeks of the brood-rearing period. This concept still permits an opportunity for traditional egg harvesting during the early period after egg laying, but protects the later developing eggs and newly hatched young. To determine the best protective closure periods for their harvest regions based on mean nest initiation and egg laying dates, regional management bodies within the Co-management Council worked with the Service's Division of Migratory Bird Management in Anchorage, Alaska. Closures in some regions were geographically subdivided to provide the best protection, while other regions were provided separate closures for waterfowl and seabirds (primarily murres).

In this rule, the Yukon-Kuskokwim Delta region requested flexibility to set and announce the annual mid-season principal nesting closure period, based on local information, such as timing of snow melt and initiation of nesting. Thus, the closure period in the Yukon-Kuskokwim Delta region will be announced by the Alaska Regional Director or his or her designee, after consultation with biologists in the field, local subsistence users, and the region's Waterfowl Conservation Committee. A

press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.

How Will the Service Ensure That This New Legalized Subsistence Harvest Will Not Raise Overall Migratory Bird Harvest?

The Preamble of the Protocol amending the Canada Treaty states one of its goals is to allow a traditional subsistence hunt while also improving conservation of migratory birds through effective regulation of this hunt. In addition, the Preamble notes that, by sanctioning a traditional subsistence hunt, the Parties do not intend to cause significant increases in the take of migratory birds, relative to their continental population sizes, compared to the take that is presently occurring. Any such increase in take as a result of the types of hunting provided for in the Protocol would be inconsistent with the Convention. If the new subsistence harvest regulations result in increased harvest, management strategies will be implemented to ensure maintenance of continental populations.

Eligibility to harvest under these new regulations is limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, and in areas north and west of the Alaska Range (50 CFR 92.5). These geographical restrictions open the initial spring/summer subsistence migratory bird harvest to only about 13% of Alaska residents. High-population areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs; the Kenai Peninsula roaded area; the Gulf of Alaska roaded area; and Southeast Alaska are currently excluded from the eligible subsistence harvest areas. The eligible subsistence harvest areas were determined by a history of customary and traditional use of migratory birds during the spring and summer as provided in the Protocol amending the Canada Treaty. Adoption of annual harvest regulations will legalize the spring/summer subsistence harvest, but is not intended to initiate or somehow increase it, since subsistence harvest has a long history of prior use in these regions. In addition, some regions, such as Bristol Bay and the Northwest Arctic, indicated that local interest in harvesting birds is declining due to increased commercial availability of alternative foods.

Alaska Natives have longstanding conservation ethics and traditions that are passed from generation to generation through the teachings of elders. These