

Section 20.132 Subsistence Use in Alaska

One commenter suggested that removal of this section eliminates authorized fall and winter harvests of snowy owls and cormorants for food or clothing that have been in place for many years. The commenter did not believe there had been adequate public notice of this proposed action; it has not been substantively considered by the Co-management Council and was not part of the widely distributed package of recommended subsistence regulations. The commenter recommended that the Service retain § 20.132(b) until such time as fall and winter subsistence needs can be assessed and there is adequate involvement of the Alaska public and Co-management Council.

Service Response: The commenter has identified an oversight potentially restricting the winter subsistence harvest of snowy owls and cormorants in Alaska with this action. We modified the section to retain subsection (b) while making it effective only from September 1 through April 1 in the final rule.

Section 92.5 Who Is Eligible To Participate?

Five respondents, all representing separate Kodiak area organizations, expressed an urgent need to close the Kodiak road system starting in the 2003 season. The primary and most common concern expressed was the likelihood of overharvesting, primarily by user groups that do not demonstrate customary and traditional uses of migratory birds and will have easy access to this resource. Other concerns brought up were the potential conflicts between consumptive and nonconsumptive users that could negatively affect the local tourism industry, and subsistence harvesting posing a public safety concern in regard to hunting within a populated area.

Service Response: On the basis of public testimony and written comments received, we are closing to harvest a buffer zone around the Kodiak Island road system under § 92.33(e). The conservation concern is the nontraditional access posed by the road system in a region where the migratory bird hunting is traditionally done by boat in marine waters. Acts of civil disobedience with respect to other hunting regulations and road access have been documented. Closing the road system to the spring and summer subsistence migratory bird harvest will help ensure no local increases in harvest occur in implementation of the new regulations. Offshore islands and waters will remain open to harvest.

One commenter requested that all road systems, such as Kodiak and Nome, should be closed to subsistence harvests, with the primary concern being the conflicts between consumptive and nonconsumptive users along roads frequented by tourists, birdwatchers, and others. The issue of the Nome road system was only brought up by one commenter, and has not been supported by the regional management body, nor mentioned in any other public comments.

Service Response: We are taking no action on restricting harvest along the Nome road system for the 2003 regulations; however, the issue may be revisited by petition for a rule change in the future, should the need arise.

One respondent requested exclusion of the community of Tok, most of whose residents have no customary and traditional history of bird harvesting in the spring/summer. The respondent explained that legalizing the harvest will significantly increase the level of take of waterfowl and owls in the Upper Tanana Valley, especially if no harvest limits are imposed.

Service Response: There is a petition process to exclude a community from subsistence bird harvesting. Petitions are accepted annually and acted upon by the Co-management Council and subsequently by the Service Regulations Committee for the upcoming season. In addition, we added an emergency closure provision in § 92.21, so that if a significant increase is documented for waterfowl and owls in this or any other region, an emergency closure can be requested and implemented.

Five respondents questioned the definition of "indigenous inhabitant" used in the regulations. One of the commenters stated that the current definition is erroneous, immoral, and unjust and could result in an increased harvest of birds during the spring and summer. The second commenter stated that the regulations should only apply to residents of the proposed area whose families have a tradition of harvesting migratory birds in the area. The third commenter charged that this loophole, which includes populations of recent rural immigrants and their invited relatives, will cast suspicion on the whole program, and that the Native community should define the term "indigenous." The commenter added that the Service should consider the impact of immigrants into the included villages when stating that it is not the intent of these regulations to increase the harvest. Also, the Native community itself is increasing, adding many new hunters to increase the take. Another individual commented that the phrase

"permanent inhabitants" is not defined, thus allowing participation by anyone with a rural ZIP Code, regardless of cultural heritage, local tenure, annual income, or subsistence need. Still another commenter added that if hunting pressure needs to be limited, the harvest should be returned to its original intent.

Service Response: The term "indigenous inhabitant" was defined in Congress' ratification of the Treaty amendments, which are binding on the Service. Defining the term as the commenters requests would misconstrue Congress' explicit intent in ratifying the Treaty amendments.

One respondent expressed strong concern that the Secretary of the Interior lacks the legal authority to open the spring/summer hunt to non-Native village residents, despite Alaska's former U.S. Senator's desire for this to be accomplished through amendments to the Canada and Mexico Migratory Bird Treaties.

Service Response: Same as above.

Section 92.20 Methods and Means

Two commenters requested that subsistence hunters age 16 and younger should be required to be accompanied by an adult both in the interest of safety and to avoid abuse of the subsistence privilege. In addition, they suggested that young hunters should be encouraged to obtain a firearms safety certificate before being allowed to hunt.

Service Response: We intend to encourage participation in the State's hunter safety program by subsistence hunters of all ages through our program's long-term education and outreach efforts.

Two individuals expressed concern because rifles, especially .22 caliber, are not a currently prohibited method. One of the commenters explained that allowing these types of weapons creates a situation in which male youths with .22 caliber rifles can have an open season on all birds with little regard for salvage of edible meat. The commenter added that people lacking identification skills will likely shoot anything that flies, and that lack of identification and marksman skills could cause wounding losses from rifle use to be substantial.

Service Response: The issue of use of small caliber rifles was discussed by the Co-management Council, and it was recommended that we do not prohibit their use. It was also stated that small caliber rifles are traditional tools for subsistence use and that they are most commonly used to dispatch wounded or crippled birds. Outreach and educational efforts of the Co-management Council will be focusing