

regions. Eleven regional bodies have elected to participate in the statewide management body at this time. Out of all of the regions represented in the statewide management body, only eight regions actually represent included areas (50 CFR part 92.5). These eight eligible regions submitted proposals to open harvest in 2003.

In April 2000, we met with the Alaska Department of Fish and Game and the Native Migratory Bird Working Group to discuss bylaws for the statewide management body. At that meeting, participants decided to name the statewide management body the "Alaska Migratory Bird Co-management Council." On October 30, 2000, the Co-management Council convened for the first time to establish organizational guidelines and to begin preparation for the development of recommendations for regulations. On December 17, 2001, the Co-management Council met to refine organizational procedures and to discuss Alaska Frameworks/Guidelines for development of regulations for the first harvest season.

Over the winter of 2001/2002, the regional management bodies submitted recommendations for regulating the harvest within their regions. Recommendations were received only from the eight regions with communities included in the 2003 proposed harvest. The other four regions did not send in recommendations. On May 14, 2002, the Co-management Council met to make final recommendations on harvest dates and methods and means of harvest for the 2003 season as necessary to protect the migratory bird resource. The Co-management Council recommendations were sent to the four Flyway Councils for comments, and presentations were made at July 2002 meetings of the Pacific and Central Flyway Councils. The Co-management Council's harvest recommendations were initially presented to the Service Regulations Committee (SRC) on August 31, 2002, with final SRC action on October 24, 2002.

On April 8, 2002, we published in the **Federal Register** (67 FR 16709) a proposed rule to establish procedures for implementing a spring/summer migratory bird subsistence harvest in Alaska. The proposed rule provided for a public comment period of 46 days. We mailed copies of the proposed rule to more than 1,200 individuals and organizations that were on the project mailing list. We conducted two public meetings in Anchorage where people could ask questions or provide formal comment.

By the close of the public comment period on May 24, 2002, we had received written responses from 11 entities. Four of the responses were from individuals, five from organizations, one from the Alaska Legislature, and one from the Alaska Department of Fish and Game. On August 16, 2002, we published in the **Federal Register** (67 FR 53511) a final rule, which established procedures for incorporating subsistence management into the continental migratory bird management program. These procedural regulations establish an annual procedure to develop harvest guidelines for implementation of a spring/summer migratory bird subsistence harvest.

This is the first year that we will prescribe annual frameworks, or outer limits, for dates when subsistence harvest of birds may occur, the list of species that may be taken, methods and means excluded from use, etc. The proposed frameworks are not intended to be a complete, all-inclusive set of regulations, but are intended to provide an initial framework to legalize customary and traditional subsistence uses of migratory birds in Alaska during the spring and summer. The proposed rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual establishment and public review, *i.e.*, the season is closed unless opened. This proposed rule introduces regulations for reorganization of the regional areas, harvest seasons, methods, and means related to taking of migratory birds for subsistence uses in Alaska during the spring/summer of 2003. The creation of part 92 also necessitates the need for nonsubstantive changes to parts 20 and 21, and we have proposed these changes in the rule portion of this document.

#### **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 on April 2, 2003, and allow the "Closed Season Policy" (53 FR 16877, May 12, 1988) to remain in effect through April 1. Under the "Closed Season Policy," the closed season is selectively enforced to protect those species for which there is greatest conservation concern. Following April 1, 2003, the "Closed Season Policy" will no longer be in effect. 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 two weeks of the incubation period and the first two weeks of the brood rearing period. This concept still permits an opportunity for traditional