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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

[Docket No. FWS-R7-MB-2020-0008; FXMB1261070000-201-FF07M01000]

RIN 1018-BE24

Migratory Bird Subsistence Harvest in Alaska; Region-Specific Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, are adopting as a final rule an interim rule that went into effect on April 2, 2020, establishing migratory bird subsistence harvest regulations in Alaska for the 2020 season and beyond. These regulations, which are subject to annual review, allow for the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. For the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

DATES: The effective date for the interim rule that published April 2, 2020, at 85 FR 18455, is affirmed as April 2, 2020.

ADDRESSES: Documents pertaining to this rulemaking action are available on the internet at the Federal eRulemaking Portal: <http://www.regulations.gov> at Docket No.

FWS-R7-MB-2020-0008.

FOR FURTHER INFORMATION CONTACT: Eric J. Taylor, U.S. Fish and Wildlife Service, 1011 E Tudor Road, Mail Stop 201, Anchorage, AK 99503; (907) 903-7210.

SUPPLEMENTARY INFORMATION:

Background

On April 2, 2020, we, the U.S. Fish and Wildlife Service, published an interim rule in the *Federal Register* revising regulations in title 50 of the Code of Federal Regulations (CFR) in part 92 (85 FR 18455). These regulations pertain to the take of migratory birds in Alaska for subsistence uses during the spring and summer, when sport hunting of migratory birds is not allowed. Prior to the interim rule, the regulations in 50 CFR part 92, subpart D, were last amended April 3, 2019 (84 FR 12946).

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918 (MBTA), at 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to issue regulations to ensure that “the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.” Per the MBTA, the normal season for the subsistence harvest of migratory birds in Alaska begins on April 2 each year.

The provisions of the interim rule were the current regulations at § 92.31, with one change. These provisions were also set forth in rules issued in 2017, 2018, and 2019. In response to those rulemaking actions, no significant controversy was raised during the public comment periods.

Public Comments

We solicited public comments on the interim rule until April 13, 2020. By the close of the comment period, we received two comments. One comment was outside the scope of this

rulemaking action, and the other comment expressed opposition to the rule because it allows the killing of birds.

Service Response: For centuries, indigenous inhabitants of Alaska have harvested migratory birds for subsistence purposes during the spring and summer months. The U.S. treaties with Canada and Mexico were amended for the express purpose of allowing subsistence hunting for migratory birds during these months. Consequently, as discussed above, the MBTA also provides for the issuance of regulations to allow such hunting; see 16 U.S.C. 712(1). Therefore, this rule furthers a legitimate purpose as set forth in international treaties and U.S. law.

Related Rulemaking

As stated in the interim rule, the migratory bird subsistence harvest regulations are developed cooperatively. The Alaska Migratory Bird Co-Management Council consists of the U.S. Fish and Wildlife Service, the Alaska Department of Fish and Game, and representatives of Alaska's Native population. The Council's primary purpose is to develop recommendations pertaining to the subsistence harvest of migratory birds.

The Council recommended changes to the subsistence harvest regulations in 2018 and 2019. Therefore, in a related rulemaking action (RIN 1018–BF12, Docket No. FWS–R7–MB–2020–0022), we are taking action to revise § 92.31 as recommended by the Council.

Required Determinations

We hereby affirm our responses to the following determinations required of the Federal rulemaking process as published in the April 2, 2020, interim rule (85 FR 18455):

- Executive Orders 12630, 12866, 12988, 13132, 13175, 13211, 13563, and 13771
- Regulatory Flexibility Act and Small Business Regulatory
- Enforcement Fairness Act (5 U.S.C. 601 et seq. and 804(2))

- Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)
- Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)
- National Environmental Policy Act (42 U.S.C. 4321 et seq.)
- Government-to-Government Relations with Native American Tribal Governments (59 FR 22951, and 512 DM 2)

List of Subjects in 50 CFR Part 92

Hunting, Treaties, Wildlife.

Affirmation of Interim Rule

Accordingly, the Department of the Interior affirms as a final rule, without change, the interim rule amending 50 CFR part 92 that was published at 85 FR 18455 on April 2, 2020.

Authority: 16 U.S.C. 703–712.

George Wallace

Assistant Secretary for Fish and Wildlife and Parks.

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