

For Subsistence Hunting of Migratory Birds



Why Is The Fish and Wildlife Service Proposing To Establish Regulations For Subsistence Hunting Of Migratory Birds?

The Fish and Wildlife Service proposes to establish subsistence hunting regulations in order to: 1) establish a regulatory framework to govern subsistence hunting of migratory birds in Alaska; 2) allow residents of rural areas in Alaska to continue to hunt migratory birds in order to meet subsistence needs; and 3) provide a mechanism for controlling harvest as necessary to ensure the con-

tinued availability of these birds for the benefit of all people who use and enjoy them. The proposal is stimulated by a 1986 ruling by the U.S. District Court for Alaska. However, concern about subsistence hunting of migratory birds goes back well beyond 1986 and is best understood by knowing about some of the events that occurred before the court decision. These events are described below.

In 1916, the United States signed a migratory bird treaty with Canada. The Canadian Treaty was prompted by concern in both countries about declines in populations of migratory birds and lack of protection for these birds during the nesting season. The Canadian Treaty eliminated spring hunting; it generally prohibits hunting between March 10 and September 1 when most birds are nesting. An exception is made for Indians to take scoters and Indians and Eskimos to take certain seabirds and their eggs for food, but hunting other waterfowl and other migratory birds during spring and summer—even for subsistence—is illegal under terms of the Canadian Treaty.

In 1925, Congress passed the Alaska Game Act. The Game Act guided management of all hunting in the Territory of Alaska until Alaska became a state. Among other things the Game Act allowed Alaskan Natives, prospectors and travelers to take fish and wildlife, including migratory birds, during closed seasons when they were in need of food and other sufficient food was not available. The provisions of the Game Act thus differ from those in the Canadian Treaty in regard to subsistence hunting.

In 1936, the U.S. concluded a treaty with Mexico for conservation of migratory birds and other wildlife. The Mexican Treaty does not mention subsistence hunting, but it specifically prohibits taking of ducks between March 10 and September 1.

In 1959, when Alaska became a state, it was thought that the 1925 Alaska Game Act as it applied to migratory bird hunting was repealed. In the absence of the Game Act it was believed that the provisions of the Canadian Treaty, which made most hunting of waterfowl during spring and summer illegal, had to be followed. Subsistence hunters, who customarily took migratory birds for food during the closed season, were thereby placed in the position of being unwilling violators of the law. In an effort to resolve the problem, the Fish and Wildlife Service undertook a study of subsistence hunting. The study report recommended that actions be taken to better accommodate subsistence hunting. Efforts to find a means to accommodate subsistence hunting in the 1960's were unsuccessful.

In the 1970's, the Fish and Wildlife Service undertook a renewed effort to establish a legal basis for subsistence hunting of migratory birds and a means for its regulation. Migratory bird treaties with Japan in 1972 and with the Soviet Union in 1976 contained expanded provisions for subsistence hunting.

In 1978, the Congress passed the Fish and Wildlife Improvement Act. It authorized the Secretary of the Interior to issue regulations to allow subsistence hunting of migratory birds in Alaska as described in the Soviet Treaty. In passing the Improvement Act, Congress expressed its intent that the provisions of the Soviet Treaty should be the standard for regulating

subsistence hunting of migratory birds. The subsistence hunting provisions of the Canadian and Soviet Treaties differ markedly. In order to resolve these differences an amendment to the Canadian Treaty was proposed, and subsequently was developed by the Fish and Wildlife Service and the Canadian Wildlife Service.

In 1979, representatives of the United States and Canadian governments signed a protocol in which the governments agreed to amend the subsistence hunting provisions of the Canadian Treaty. In essence, the amendment provides that migratory birds may be taken for nutritional and other essential needs in accordance with seasons set by the federal authorities in each country. For the United States, the authority is the Secretary of the Interior. The essential needs must be determined by the authorities in each country, and any seasons that may be set must provide for the preservation and maintenance of the stocks of migratory birds. The amendment contained in the protocol has not yet been ratified by the United States Senate because of controversy over how the amendment would be applied. The reason for the controversy is a concern that spring and summer hunting will not be adequately controlled and, if permitted, will have serious adverse effects on populations of migratory birds. It was agreed that the United States and Canada should address and resolve these concerns. Discussions continue with Canada to reach agreement on how each nation will apply the amendment. It is anticipated that the current public process to develop regulations will give further direction to how subsistence hunting of migratory birds should be managed in Alaska.

In 1984, an agreement to manage geese that nest on the Yukon-Kuskokwim Delta was signed at Hooper Bay, Alaska. This agreement was expanded in 1985 and called the Yukon-Kuskokwim Delta Goose Management Plan. The 1984 agreement covered three species of geese, all of which were known to have undergone severe declines. These species were cackling Canada geese, Pacific Flyway white-fronted geese, and Pacific brant. In 1985 the emperor goose was added. The purpose of the plan was to reduce harvest of these geese throughout their ranges, to develop better biological information to improve management, and to focus attention on the need to protect habitat. The plan was developed cooperatively by the Fish and Wildlife Service, the Alaska Department of Fish and Game, the Association of Village Council Presidents, residents of the Yukon-Kuskokwim Delta, the California Waterfowl Association and the Waterfowl Habitat Owners Alliance. In 1984, this cooperatively developed plan was challenged in court on the grounds that since it recognized and accepted some hunting during the period between March 10 and September 1, it violated the closed season required by the Canadian Treaty.

In 1986, the U.S. District Court for Alaska ruled that, until regulations are adopted under the Fish and Wildlife Improvement Act, Alaska Natives may take migratory waterfowl under the Alaska Game Act when they or members of their family are in need of food and other sufficient food is not available. This ruling is currently under appeal.

Under the U.S. District Court ruling subsistence hunting is permitted, but only when there is a need for food and only when no other sufficient food is available. This is a strict standard and it is not known how much of the subsistence hunting that presently occurs would be valid under this standard. In addition, the Act does not provide an adequate basis for conservation of migratory birds. Taking can be prohibited only when a population of birds is in danger of extermination. Thus, the Game Act does not provide for management actions, such as restric-

tions on harvest, that would help prevent depletion of populations before they reached the danger point. In contrast, the Fish and Wildlife Improvement Act specifically directs that the populations of migratory birds should be maintained, and provides greater flexibility to regulate the harvest of migratory birds for nutritional purposes. Given this situation, it seems advisable to follow the direction indicated by the court to establish regulations under the Fish and Wildlife Improvement Act of 1978.