ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9982 HOUSE RESOURCES

continued popularity because it has brought back to abundance numerous game animals. The NRA is gratified to see lawmakers working to insure that the Trust Fund is well managed and continues to benefit wildlife conservation. I am looking forward to working with Congress to get H.R. 3671 passed into law."

Since 1939, the Pittman-Robertson Trust Fund has imposed excise taxes on firearms, ammunition, and, later on, archery equipment. The revenue collected is made available to state wildlife agencies for wildlife restoration projects, hunter safety training, and range construction -- all projects which benefit sportsmen who bear the brunt of the tax. Over 3.5 billion dollars have been collected and dispersed by Pittman-Robertson to state agencies for wildlife restoration projects.

The federal law authorizing Pittman-Robertson allows for money to be set aside to pay overhead costs incurred by the USFWS in administering the fund. However, until last year, the USFWS had never undergone a full-scale audit of its use of the administrative fund. NRA, one of the top national organizations representing sportsmen, has called for several years for a review of how the administrative funds were being used.

-- nra --

Subject: [Fwd: 2/16/00 Bill Introduced To Stop Waste Of Fish & Wildlife Funds]
Date: Wed, 16 Feb 2000 13:41:54 -0900
From: Jeff Logan <Jeff_Logan@legis.state.ak.us>
Organization: Alaska State Legislature
To: Eddie Grasser <Eddie_Grasser@legis.state.ak.us>

FYI

Subject: 2/16/00 Bill Introduced To Stop Waste Of Fish & Wildlife Funds
Date: Wed, 16 Feb 2000 17:27:43 -0500
From: "Hansen, Steve" <Steve.Hansen@mail.house.gov>

NEWS Committee on Resources
U.S. Rep. Don Young (R-Alaska), Chairman
U.S. House of Representatives - Website address:
http://www.house.gov/resources
Contact: Steve Hansen (Communications Director)
(202) 225-7749 or Arturo Silva (202) 225-4063

To: National Desk/Environmental Reporter
February 16, 2000

Bi-Partisan Legislation To Stop Waste & Mismanagement
Of Wildlife & Sport Fish Funds Introduced In U.S. House;
New Bill Caps Administrative Spending & Increases Funding To States

Washington, D.C. - Legislation proposed by U.S. Rep. Don Young (R-Alaska) to stop wasteful spending and mismanagement of wildlife and sport fish restoration funds was introduced in the U.S. House of Representatives today.

The legislation - "The Wildlife and Sport Fish Restoration Programs Improvement Act of 2000" - (H.R. 3671) was introduced by Rep. Young, the Chairman of the House Committee on Resources, and U.S. Reps. John Dingell (D-MI), Tom DeLay (R-TX), Owen Pickett (D-VA), John Duncan (R-TN), Richard Pombo (R-CA), Helen Chenoweth-Hage (R-ID), George Radanovich (R-CA), Mac Thornberry (R-TX), Bob Schaffer (R-CO), Robin Hayes (R-NC), Michael Simpson (R-ID), Tom Tancredo (R-CO), John Peterson (R-PA), Barbara Cubin (R-WY), and Rick Hill (R-MT).

"One Of The Worst Managed Programs We Have Encountered"
- General Accounting Office

During three Congressional oversight hearings in 1999, the Resources Committee uncovered numerous spending improprieties involving wildlife and sport fish administrative funds by the Fish and Wildlife Service's Division of Federal Aid. Officials from the non-partisan General Accounting Office were critical of the management of administrative funds by the Division of Federal Aid, stating that "the combined experience of the audit team that did this work represents about 160 years worth of audit experience. To our knowledge, this is, if not the worst, one of the worst managed programs we have encountered."

"The primary goal of this bi-partisan legislation is to prevent tax dollars paid by sportsmen and sportswomen from being wasted, mismanaged and spent in ways that do not help conservation," Young said. "This bill will guarantee the proper use of this money, making additional funding available to each of the 50 states for conservation projects.

"This bi-partisan legislation will amend the Pittman-Robertson and the Dingell-Johnson Acts and put an end to recent practices not authorized

under the Acts - spending conservation dollars on liquor, trips to Japan, slush funds and unauthorized programs and projects, as pointed out by the GAO."

"The administrative funds to run the programs authorized under these Acts were not established to provide a source of extra spending money. If the money wasn't used for administrative purposes, it was supposed to go back to the States."

Summary Of New Legislation

The following is a summary of the new legislation:

* Caps the amount of administrative dollars for true administration needs to implement the conservation programs. The caps are $5 million for Wildlife and $5 million for Sport Fish, for a total of $10 million a year, for true administration expenses.

* Defines how administrative funds can be spent, for example: Personnel costs of employees who directly administer the programs under the Pittman-Robertson and Dingell-Johnson ActsS

* Costs to evaluate, approve, disapprove, and advise concerning grant projects to states

* Overhead costs directly attributable to administration of the programs under the Pittman-Robertson and Dingell-Johnson Acts

* Auditing costs of each state program on a five year cycle

* Auditing costs of the funds used for administration

* Training of Federal and state full-time employees to improve administration and management

* Costs of travel to the States and territories related to administration of the programs under the Pittman-Robertson and Dingell-Johnson Acts

* Use of funds for a cost to administer the Act shall not be authorized because the cost is not expressly prohibited by the Act and only costs that are specifically authorized are allowed

* No funds may be used to supplement any function for which general appropriations are made

* Establishes a Firearm and Bow Hunter Education and Safety Program Grants to enable States to improve hunter, sporting firearm, bow hunting and archery safety programs and build or improve shooting and archery ranges

* Authorizes a multi-state conservation grant program to fund wildlife and sport fish conservation projects or programs that will benefit a majority of the states regionally or nationally

* Establishes an Assistant Director for Wildlife and Sport Fish Restoration Programs whose sole responsibility will be the management, administration and oversight of the Wildlife and Sport Fish Restoration Programs

(For a more comprehensive summary of the legislation, contact Steve Hansen at (202) 225-7749.)

Background Information On Federal Aid Program

The Division of Federal Aid of the Fish and Wildlife Service reallocates funds collected though federal excise taxes on guns, ammo, archery equipment and fishing equipment to the States for wildlife and sport fish conservation projects. Of the total collected, Federal Aid is allowed to take up to 8% of the funds reallocated under the Pittman-Robertson Act and up to 6% of the funds reallocated under the Dingell-Johnson Act to "administer and execute" the Acts - to pass the money to the States through grants. The amounts withheld have escalated with the 8% and 6% caps being reached during the last two years. Funds not used to "administer and execute" the Acts are to go to the States for additional wildlife and sport fish restoration projects.

Chairman Young initiated an oversight review of the "administration and execution" expenditures by the Fish and Wildlife Service through its Division of Federal Aid in December 1998 (through GAO) and in March 1999 (through committee investigative staff). GAO and Committee staff encountered a lack of documentation explaining where and how the administrative funds were spent.

The Committee on Resources held three oversight hearings to examine this issue. During the hearings it was revealed that funds withheld by the Fish and Wildlife Service to administer and execute the Pittman-Robertson and Dingell-Johnson Acts were used for expenses not related to the administration or execution of the Acts and funds that were spent on "true administration" were not spent responsibly. In each area where administrative funds were used, there were problems. These include ineffective management oversight, inadequate internal controls, and inadequate policies and procedures for reviewing and approving administrative expenditures. As a result, some of the administrative funds were spent unnecessarily and ineffectively. GAO testified at both hearings that the these conditions have spawned a culture of permissive spending that raises significant questions about whether Federal Aid is meeting its management responsibilities.

For more information, please check the House Committee on Resources Home Page at http://www.house.gov/resources/

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Committee on Resources

Witness Statement

James M. Beers
Retired Wildlife Biologist,
US Special Agent, and
Refuge Manager
US Fish & Wildlife Service

Testimony before US House of Representatives
Committee on Resources
20 July 1999

I am testifying today as a recently retired US Fish and Wildlife Service employee of 31 years. I worked for the Utah Fish and Game while getting my wildlife degree from Utah State University, the best University I could afford in those days. After a stint on a US Navy cargo ship and then on Adak Naval Station as an Officer, I went to work for the US Fish and Wildlife Service as a GS-5 wetland biologist at Devils Lake, North Dakota. I purposely chose the USFWS because I knew the potential for conserving our wildlife heritage for my children and their children was greatest at the Federal level. The pride I felt and the satisfaction I knew during those early years defies description.

My purpose here is to address the use of Federal Aid funds in todayÕs US Fish and Wildlife Service, so let me fast forward to the 80Õs when I was the Chief of Refuge Operations at the Main Interior Building here in Washington. I was deeply involved in Service budget matters, so that was a frequent topic of conversation both at work and in carpools. Frequent mention was made in those days about the occasional use of Federal Aid funds to buy furniture for the Director and to infrequently pick up odd expenses that the Director had to disguise or for which he did not have other funds available. So far as I knew in those days, the uses of the funds for the Director were neither large (over $100K) or frequent.

In the early 90Õs, I was given the opportunity to replace the wildlife biologist in the Federal Aid Washington Office who dealt with the states and all of their larger and shared wildlife issues. Although it was a lateral transfer for me, I looked on it then and now as the greatest job that the FWS had to offer. I was paid entirely out of Pittman-Robertson funds.

Two year later, I was asked to coordinate the efforts of the State Fish and Wildlife Agencies with the State Department and the US Office of Trade Representatives to deal with the European Community regarding their threatened ban of all US fur if we didnÕt ban leg hold traps. I became a member of the International Standards Organization (ISO) Technical Advisory Group on Humane Trapping Standards. It was a difficult challenge, but one that was worthwhile, necessary, and right for the State Fish and Wildlife Agencies and the trappers, furriers, and even hunters and fisherman who were also threatened by the animal rights activists who were driving the European fur ban.

During this period, I began to see indications of USFWS developing duplicity on this matter. While USFWS assured the State Agencies and their constituents of support, I was hearing from long-time co-workers that there were secret meetings between USFWS and animal rights representatives to agree to strategies to undercut our efforts with the Europeans and ISO. Whenever I asked about this I was greeted only with smiles and statements that there was nothing to it.

One of my other main jobs was annually reviewing applications for Pittman-Robertson (P-R) administrative funds. I would then be the Project Officer for 90% of the approved projects.

Two years ago, I received an application from an anti-hunting and anti-State Fish and Wildlife Agency group that wanted to put together and distribute anti-hunting literature. My hunter-education counterpart received a similar application to compose an anti-hunting education program. Both would have been funded with P-R funds intended to fund State management programs. I found the one I reviewed ineligible on four points from the Federal Register; one was sufficient to bar it from funding. I was badgered and intimidated to change that finding. On one occasion I told a manager to fund it if he wanted to, I would not change my recommendation as the regulations required.

It became clear that USFWS was more and more viewing Federal Aid funding as an Achilles heel of the State management programs benefiting hunters and trappers.

In October of that year, it became evident that our negotiations with the Europeans (and Canadians and Russians) were going to shortly result in an agreement favorable to the United States, the State governments, trappers, and furriers. New and workable humane trapping standards and humane research were the cornerstones of this agreement. In November, the roof fell in on me. I was curtly told I would be moved to a non-existent, lower graded job in Massachusetts! No responsible person in USFWS would openly even greet me, much less offer me any explanation or help. Even State representatives, while personally supportive, were concerned about currying USFWS disfavor since their control of the P-R funds was getting more difficult each year. I was locked out of my office, the police came to the building to keep me from entering, and I was threatened in an unmarked envelope left in my front door on a Sunday morning with the loss of my retirement for five years and the loss of my health coverage forever if I did not retire immediately.

I am currently retired, but I spent my last eight months at home with no work from or communication with USFWS. Newspaper articles and the National Wilderness Institute focussed public attention on my dilemma and irregularities at USFWS. I was very fortunate to have obtained a very able lawyer who represented my interest impeccably. The resolution of my status was due to the help of many concerned people.

During my years in Federal Aid, I witnessed a growing disdain for any responsibility for how they spent P-R funds withheld to administer the Act. What years ago had bought furniture for the Director, began to be used to pay for personnel in other programs such as Fisheries when funds were short from Congress and to hide public affairs personnel when Congress directed the numbers to be maintained. Right up to two years ago, Public Affairs personnel who were not engaged in anything to do with administering the Act were paid entirely out of Federal Aid funds. The regulations at this time forbid THE STATES from two things law enforcement and public relations (unless approved by a USFWS regional director). Solicitors told USFWS that those admonitions did NOT apply to USFWS use of administrative funds.

Coincident with the growing culture of no holds barred use of P-R administrative funds, USFWS decentralized. No longer did any one Division Chief in Washington oversee funding of each budget category. It only took a year or so for Regional Directors to mimic the Washington use of FA slush funds. Soon Special Projects, new offices, and new ecosystem managers and offices were receiving varying amounts of P-R life support. That is where we find ourselves today.

I fought the USFWS openly for over a year regarding the forced transfer. I still take blood pressure medicine. The sleepless nights and helpless feelings that I experienced will always be with me. I told the story I have told here to lawyers, auditors, investigative agencies, and anyone else who would listen. Let

me tell you, there are lots of people in government and in private organizations who are aware of these abuses and outraged by them. Those in government are rightly fearful. Those in State agencies likewise must depend on their unfaithful USFWS partners. Those in private organizations write and talk about their outrage at the misuse of these funds and their use to undercut State management programs.

Only Congress can do something real. To quote a State representative familiar with this business, ItÕs so rotten, the only way to fix it is to start over. I recommend that administration of the Act (and the Sport Fish Restoration Act and any non-game management Act that might emerge) be given to an office or agency that does not duplicate the work of the State Agencies. For instance, if someone as far afield as say Agriculture or Treasury were to utilize P-R funds for their own purposes, it would be much more apparent as a diversion from the Congressional intent for State management programs.

The Agency, or office, that administers the Act should only take the funds necessary to apportion the funds to each state, approve projects, audit routinely each state, and provide such coordination and national efforts as needed AND REQUESTED by the states through their International Association of Fish and Wildlife Agencies. All remaining funds should go to the States.

Today the Service uses 8% of the available funds annually. Years ago, the legislative history mentions how the first amount considered for administration was 10%. Some Congressmen thought 5% would be more than enough since similar programs used less than 4%. They wanted the sort of premiere program that was Federal Aid for many years so they settled on 8%. Until recently, administration was only a 3-4% thing and this program was hailed far and wide as a model for other countries. User pays never worked better. Three to four percent should be the limit available for administering the Acts. Any more should only be at the request of the States for specific multi-state problems.

While discussing these Federal problems, we should not forget to consider legislative remedies for the problems State agencies face today. The same groups that are working surreptitiously at the Federal level are working at the State level to eliminate management programs funded by P-R dollars. In order to maintain the integrity of the Federal Aid program and active management of wildlife, I would submit the following for your consideration.

First, with the recent spate of ballot initiatives to ban cougar hunting, trapping of furbearers, etc., the question arises should P-R money be used to manage these species where States have elected to remove the citizensÕ ability to harvest those species? The law should recognize the right of States to ban such legitimate harvests by hunters or trappers but also forbid the use of P-R funds to manage or control such species in those States after they take such actions.

Second, future non-game or OCS funding should not be matched by States with any sport license money unless and until all available P-R and D-J apportionmentÕs are matched. Non-game efforts should not be made with the funds generated by species which are utilized directly by men and women and children in so many direct ways.

Last, the P-R law should define wildlife restoration projects like the D-J law does. That is to say, sport animals, like sport fish and their habitats, should be the focus of such projects. If States wish to do more worthwhile non-game projects, they should be done with money from their supporters and not by using Federal Aid money generated by sports men and women who have the reasonable expectation that such moneys will be returned to maintain their pursuits and the habitats which support them.

I dedicated my professional career to wildlife conservation. I am appalled at the way I see conservation funds being looted and used to fund government and private efforts to undercut hunting, fishing, trapping,

and the State agencies that manage them. TodayÕs USFWS is fostering an agency-wide climate that promotes these diversions and abuses. The Division of Federal Aid is currently filling the two-year vacant Hunter Education job in Washington. It is described strictly as an education job with no State, hunting, or fishing experience necessary. Imagine the mischief that will generate. The Refuge Division acquires new refuges and eliminates beneficial consumptive uses without reason or justification. The Law Enforcement Division promises State administrators and trappers that they will not license or tax individual trappers exporting furs to Canada; then, when they do tax them, they claim its a mistake and they will change it; then, after about a year, they say Congress made them do it and it canÕt be changed. The migratory bird managers are proposing to spend millions of recently ÓfoundÓ migratory bird funds, not on waterfowl habitat, but to buy a Pacific Island. In my opinion, they are changing the historic and legislative-based mission of the Service without benefit of Congressional or citizen knowledge or input.

The sense of duty and purpose that I brought to USFWS back in Devils Lake is still alive. I retired on 3 June, but I didnÕt leave the USFWS; they left me. I ask your help to get them back on track. They had a very important mission and some pretty outstanding employees.

Thank you.

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HJR

60

Alaska State Legislature
House Resources Committee

Co-Chair Beverly Masek
(907) 465-3715
FAX (907) 465-4822

Capitol Building, Room 124
Juneau, Alaska 99801

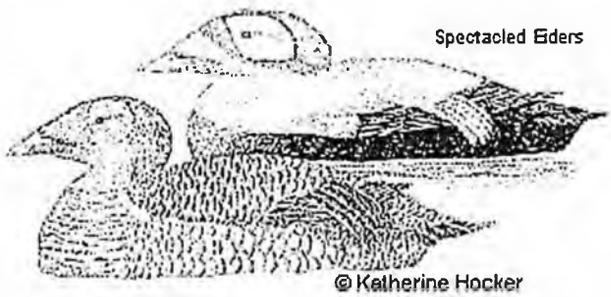
Co-Chair Bill Hudson
(907) 465-6890
FAX (907) 465-2273

Committee Meetings:
M/W/F 1 - 3 p.m.

Members: Vice Chair John Cowdery, Representatives: Ramona Barnes, John Harris, Carl Morgan, Jim Whitaker, Reggie Joule, and Mary Kapsner

Sponsor Statement for HJR 60, Critical Habitat for Eiders

The US Fish and Wildlife (USFWS) has listed both the Spectacled Eider and the Steller's Eider as threatened species under the Endangered Species Act. At the time of listing, the USFWS determined that it was not prudent to designate critical habitat because there was no demonstrable benefit that could be shown at that time. In other words, access to suitable habitat could not be shown as a contributing factor to the decline of these species.


Spectacled Eiders
© Katherine Hocker

On March 10, 1999, two environmental organizations filed a lawsuit in Federal District Court in California against the Dept. of Interior for failure to designate critical habitat for five California species and Alaska's Spectacled and Steller's eiders.

In September of 1999, the Department of Interior entered into an agreement to re-evaluate its critical habitat determinations. The Department took this action because over the last few years a series of court decisions have overturned previous USFWS determinations that critical habitat was not prudent. The decision whether to designate critical habitat for the Eider's was reversed.

On February 8, 2000, the FWS published a proposed rule to designate large marine and land areas of Alaska as critical habitat for the Spectacled Eider and has announced it will be proposing a similar designation for Steller's Eider. The total acreage is something in the order of 74,000 square miles, including approximately 22,558 square miles on the North Slope.

HJR 60 contends that the designation of critical habitat

- was determined by a decision from the Department of Interior that the lawsuit was not winnable rather than any new information pointing to habitat concerns;
- fails to identify areas that are truly necessary for recovery and long-term survival of these species;
- may have unnecessary negative effects on resource development, subsistence, and commercial fishing; and
- may mislead the public into believing that Alaska has done an inadequate job of protecting the environment while developing its resources.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HJR 60

Revision Date:
Title: Opposing the designation of millions of acreas of Alaska as critical habitat for the Spectacled Eider and the Steller's Eider
Sponsor: House Resources Committee
Requester:

Dept. Affected NA
BRU NA
Component NA
Component Serial No. NA

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 01	FY 02	FY 03	FY 04	FY 05	FY 06
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES [ ]	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY00) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

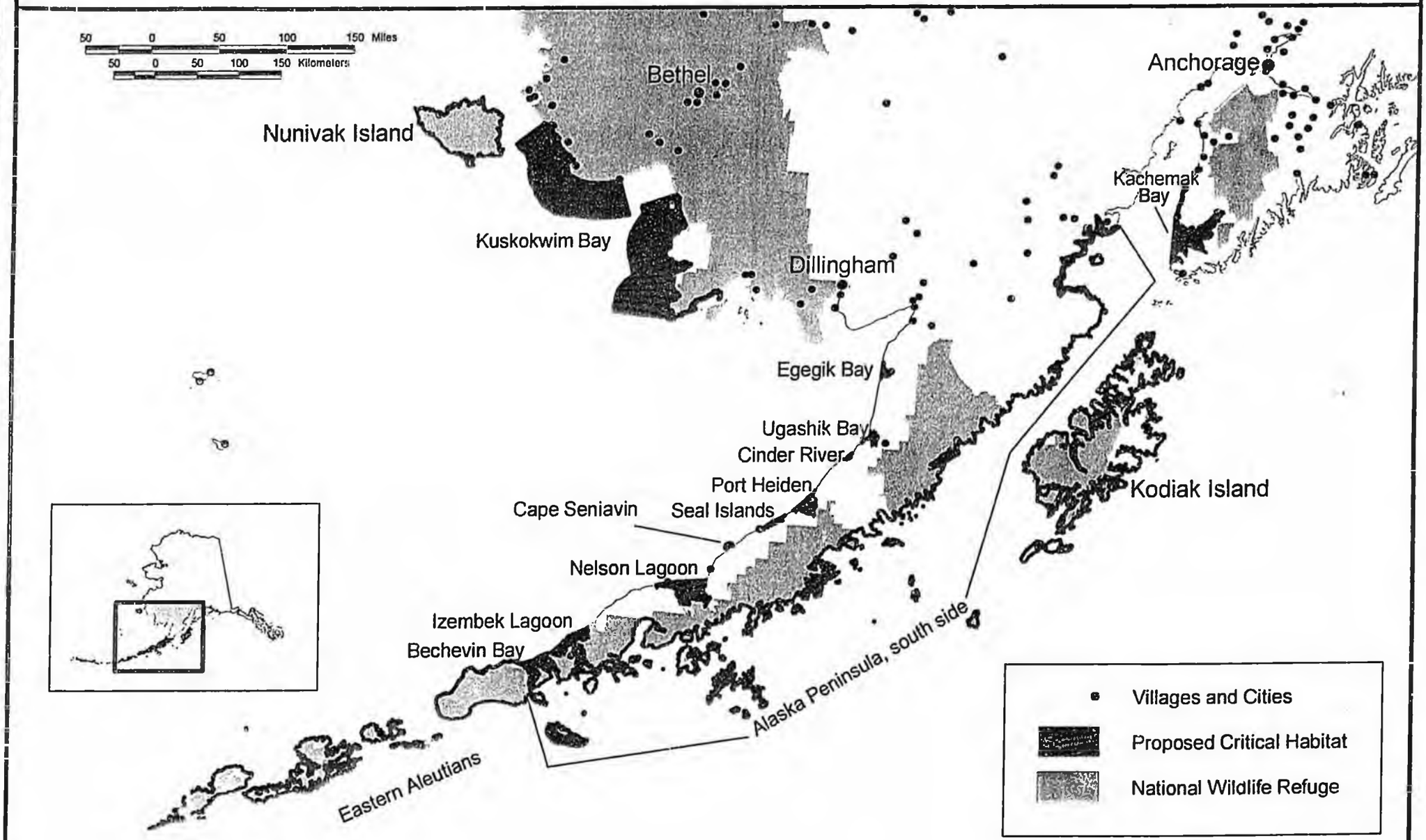
No fiscal impact.

Prepared by Liz Cabrera — Phone 465-6890

House Resources Committee — Phone 465-6890

Date 4/3/00

Steller's Eider Proposed Critical Habitat
Marine Units



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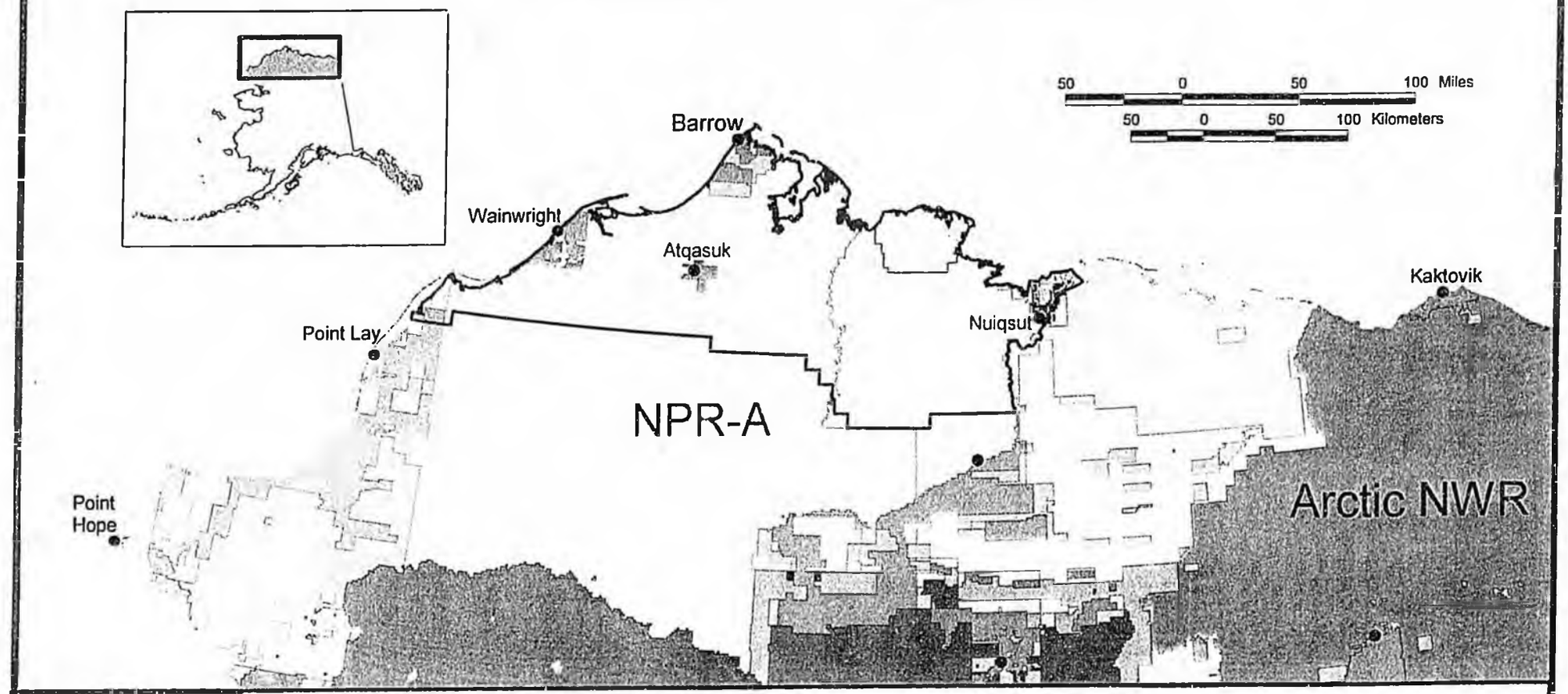
Steller's Eider Critical Habitat and Land Status

North Slope Breeding Habitat



Land Status

- Proposed Critical Habitat Boundary
- Villages
- National Petroleum Reserve-Alaska (NPR-A)
- Northeast Planning Area (NPR-A)
- Teshekpuk Lake Surface Protection Area
- Bureau of Land Management (non-NPRA)
- National Park
- National Wildlife Refuge
- Native Patented
- Native Interim Conveyed
- Joint Native/State
- State Patented
- State Tentatively Approved
- Private/Non-Native
- Military

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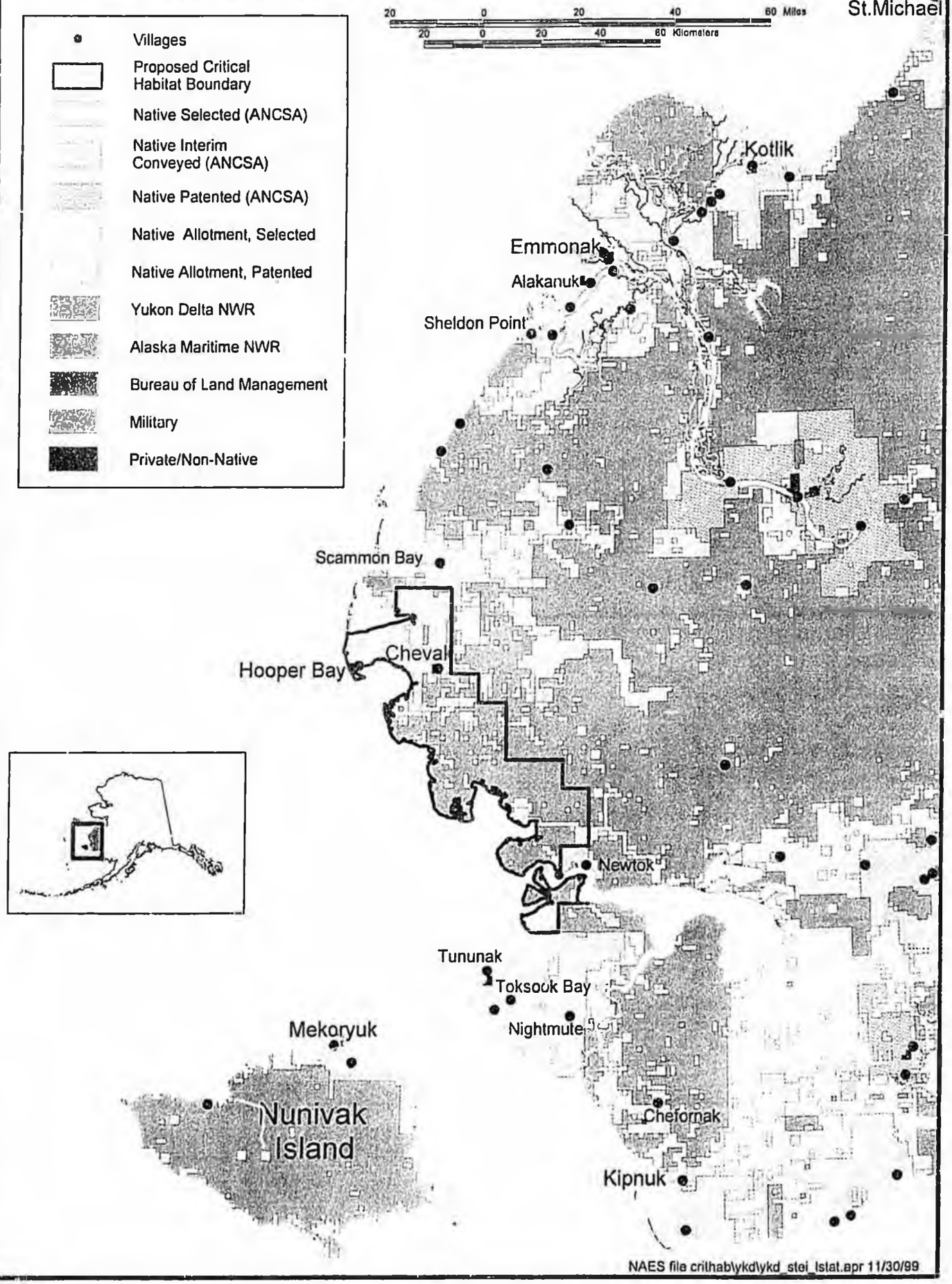
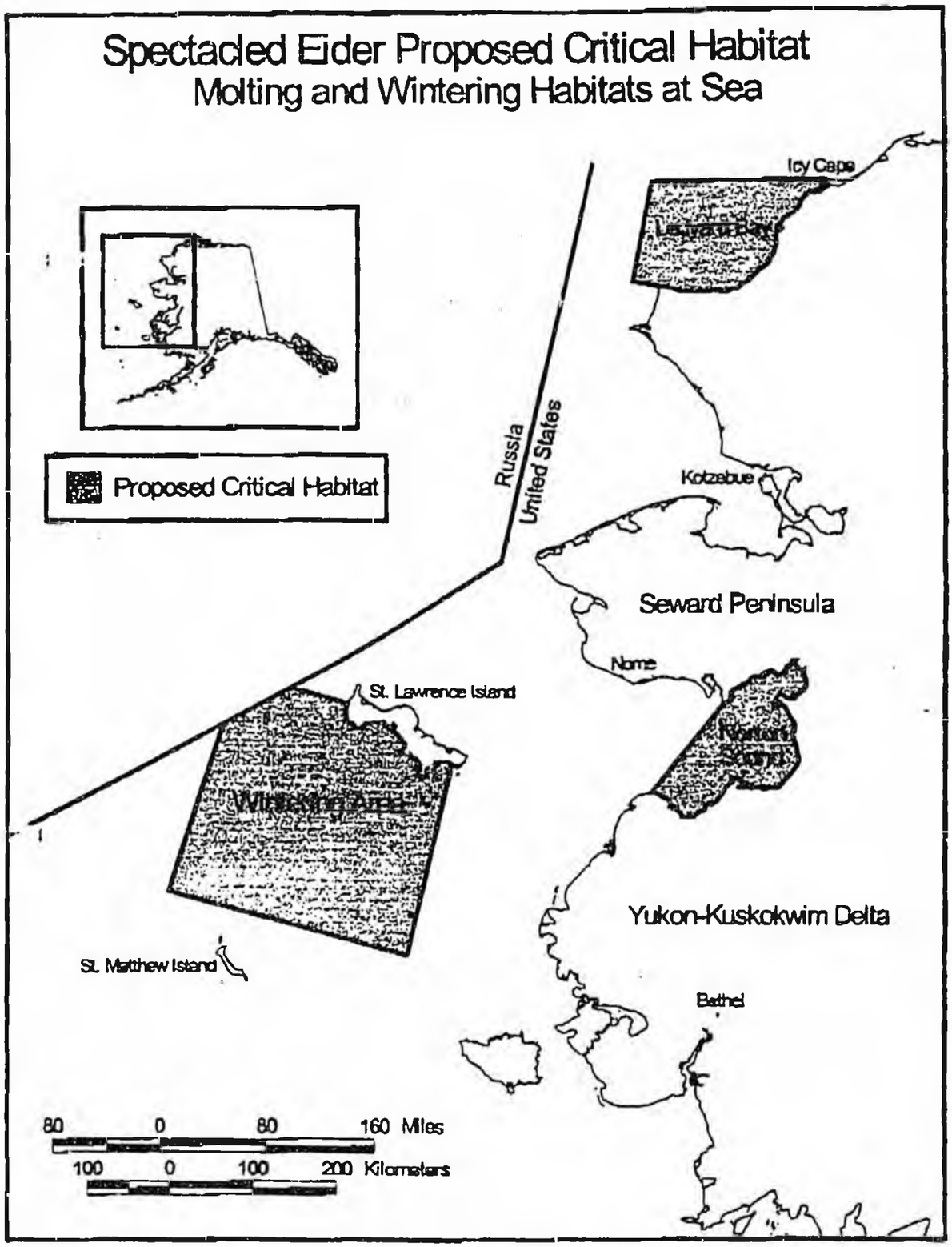
Steller's Eider Critical Habitat and Land Status
Yukon-Kuskokwim Delta Breeding Habitat





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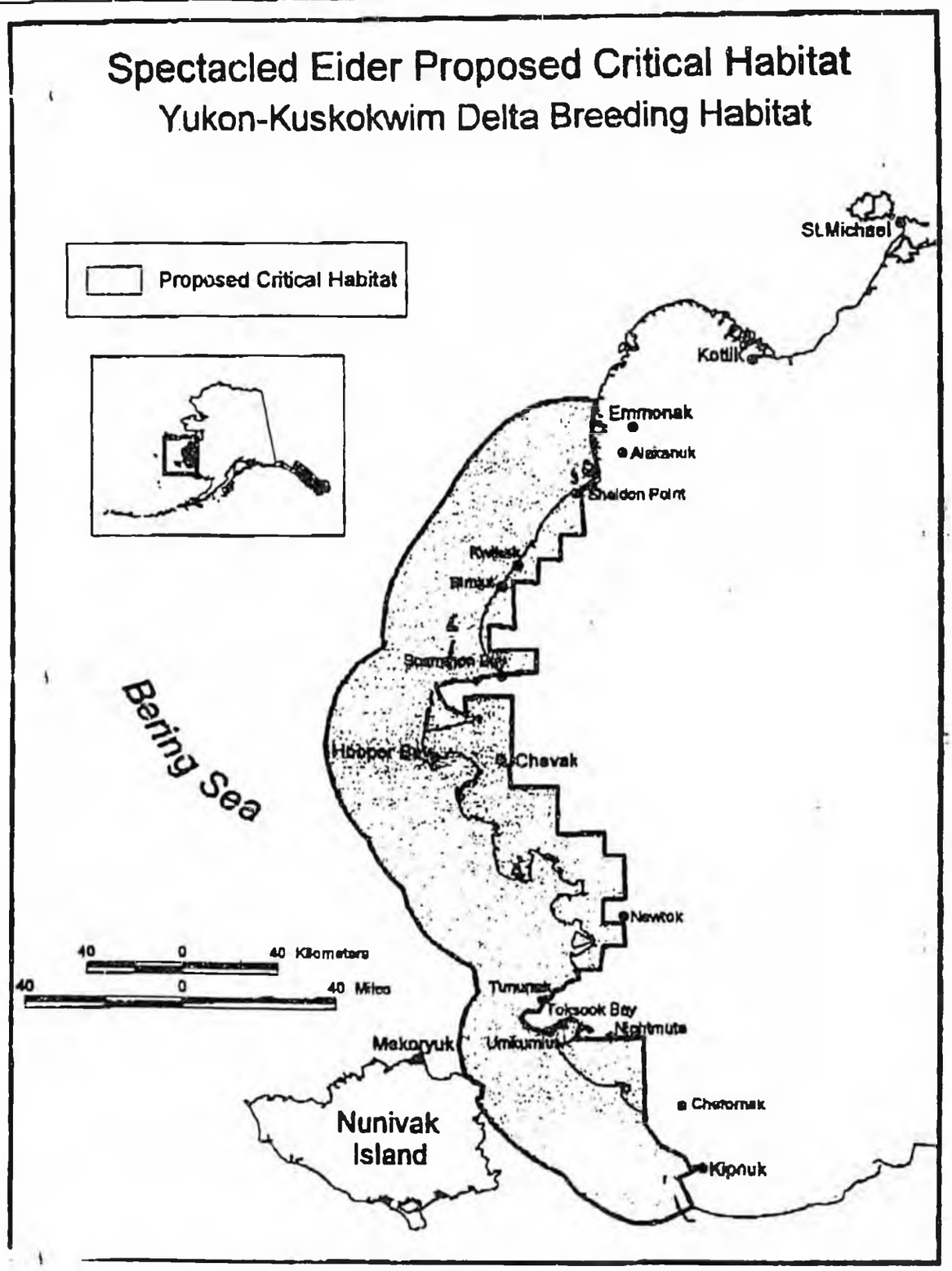

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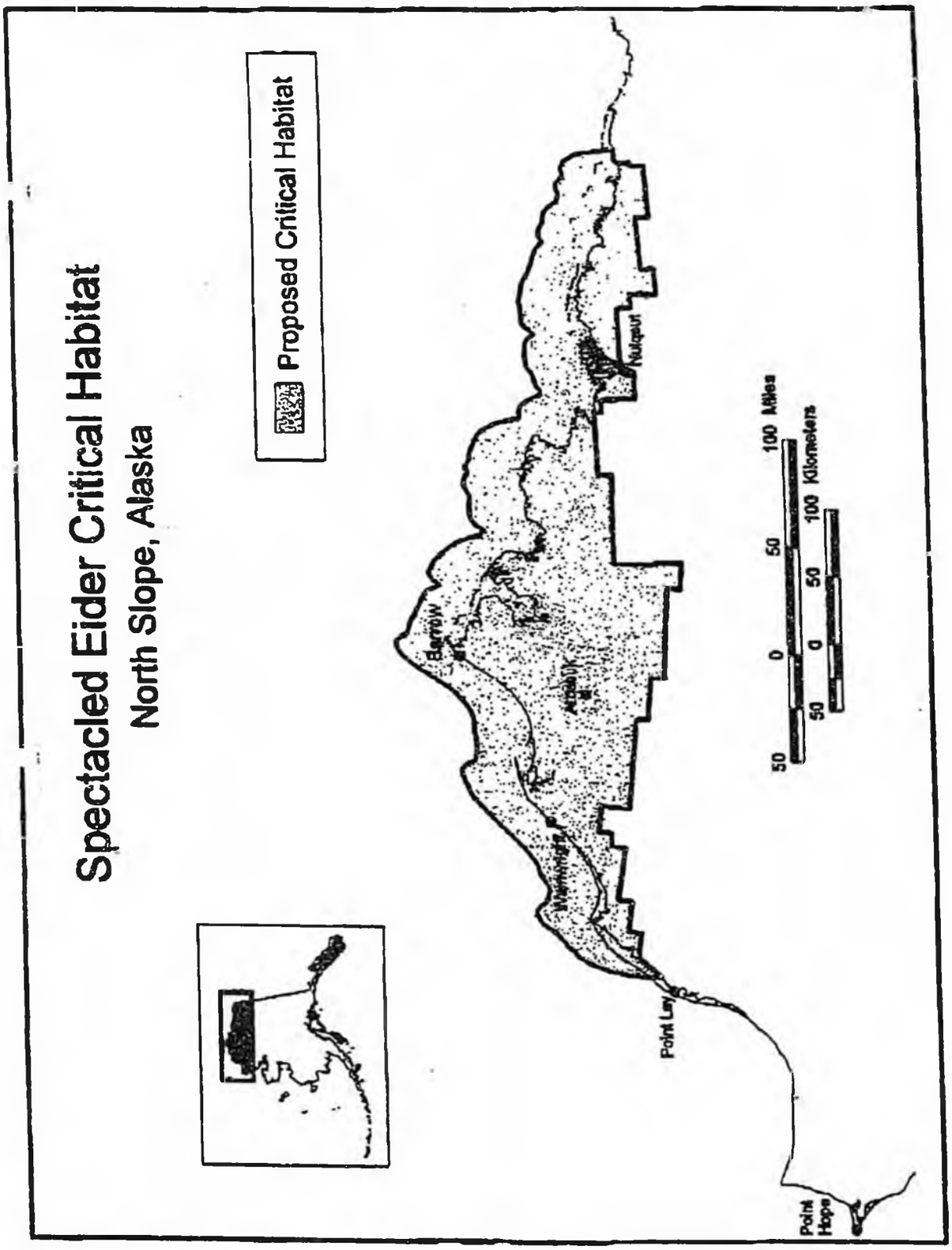


BILLING CODE 4310-55-C

STELLAR'S EIDER

U.S. Fish & Wildlife Service

Proposed Critical Habitat For The Steller's Eider In Alaska

U.S. Fish & Wildlife Service

Threatened and Endangered Species

Steller's eider *(Polysticta stelleri)*

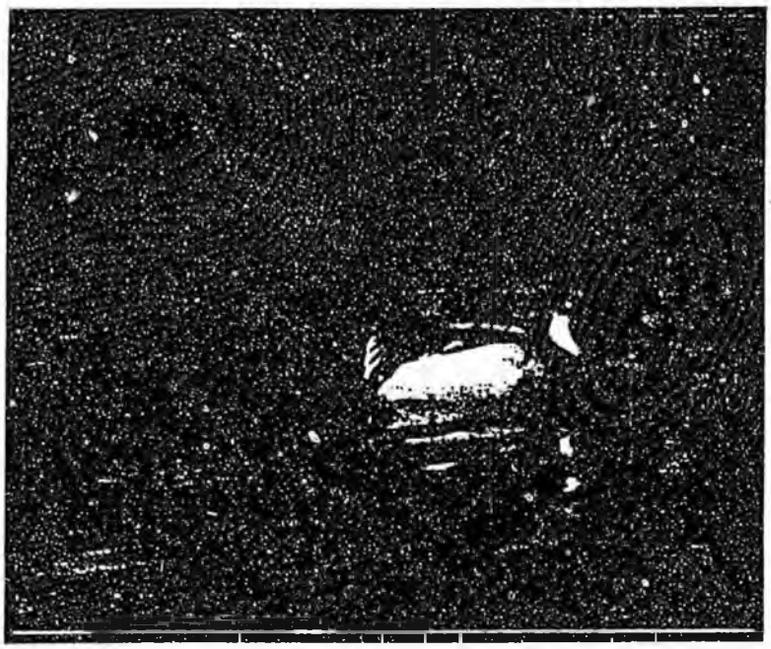
Other names: Iginikkauktuk (Inupiaq)
Anarnissaguq (Yup'ik)

Status

Threatened - Alaska breeding population (*Federal Register*, June 11, 1997)

Description

Steller's eiders are the smallest of the four eider species, averaging 43-47 centimeters long (17-18.5 inches). In the winter, spring, and early summer adult males are in breeding plumage with a black back, white shoulders, chestnut breast and belly, a white head with a greenish tuft, and small black eye patches. During the late summer and fall, males are entirely mottled dark brown. Females and juveniles are mottled dark brown year-round. Adults of both sexes have a blue patch with a white border on the upper wing, similar to a mallard.



Named after Georg Steller, who first described the species to western science, Steller's eiders are the smallest of the four eider species. An adult female is on the left, and an adult male is on the right. Photo by Michele M. Johnson.

Range and Population Size

Three breeding populations of Steller's eiders are recognized, two in Arctic Russia and one in Alaska. The Russian Atlantic population breeds in western Russia and winters in the north Atlantic Ocean while the Russian Pacific population nests in eastern Russia and winters in the southern Bering Sea, including southwest Alaska. Neither Russia-breeding population is classified as endangered or threatened; only Steller's eiders that nest in Alaska are considered threatened under the Endangered Species Act.

The Alaska-breeding population historically nested in western and northern Alaska. In western Alaska, they were formerly considered locally common in portions of the Yukon-Kuskokwim Delta and were recorded nesting on Saint Lawrence Island, the Seward Peninsula, the Alaska Peninsula, and Aleutian Islands. Today, however, they are extremely scarce on the Yukon-Kuskokwim Delta and have not been found breeding elsewhere in western Alaska for several decades. The species' current breeding range in Alaska is primarily confined to the Arctic Coastal Plain between Wainwright and Prudhoe Bay, with a notable concentration near Barrow. After nesting, Alaska's Steller's eiders move into the nearshore marine waters of southwest Alaska where they mix with the much more numerous Russian Pacific population. Adults undergo a flightless molt in autumn; most molt in the protected bays and lagoons on the north side of the Alaska Peninsula, most notably Izembek and Nelson lagoons. Although some remain in molting areas throughout winter, others disperse into the coastal waters of the eastern Aleutian Islands, south side of the Alaska Peninsula, Kodiak Archipelago, and southern Cook Inlet. During spring migration, Steller's eiders concentrate in Kuskokwim and Bristol bays to await the retreat of sea ice and opening of overwater migratory routes.

Population sizes are only imprecisely known. The Russian Atlantic population is believed to contain 30- 50,000 individuals, and the Russian Atlantic population likely numbers 100-150,000. The threatened Alaska-breeding population is thought to include hundreds or low thousands on the Arctic Coastal Plain, and possibly tens or hundreds on the Yukon-Kuskokwim Delta.

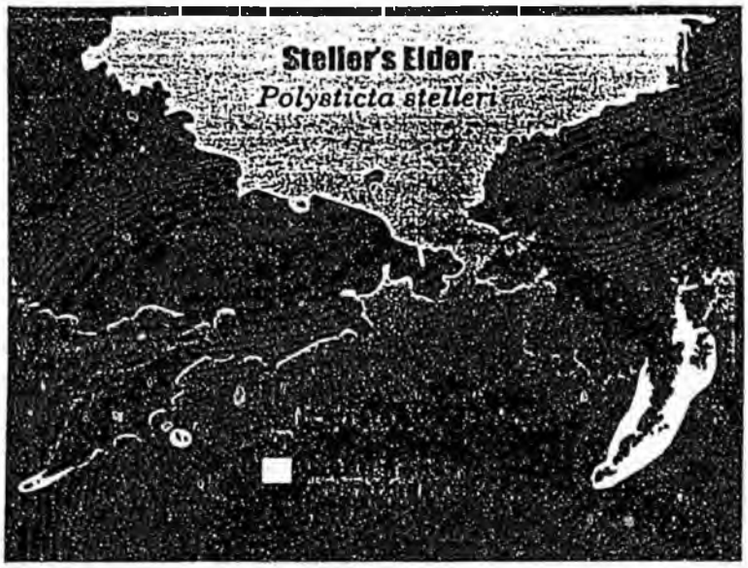
Habitat and Habits

Steller's eiders are diving ducks that spend most of the year in shallow, near-shore marine waters. Molting and wintering flocks congregate in protected lagoons and bays, as well as along rocky headlands and islets. They feed by diving and dabbling for molluscs and crustaceans in shallow water. In summer, they nest in tundra adjacent to small ponds or within drained lake basins. During the breeding season they feed on aquatic insects and plants in freshwater ponds and streams.

Reasons for Current Status

Causes of the decline are unknown but several potential threats have been

identified. Lead poisoning, caused by eiders ingesting spent lead shot as they feed, may have affected Steller's eiders on the Yukon-Kuskokwim Delta. Predation by ravens, large gulls, and foxes on the breeding grounds may be increasing in areas where populations of these predators are enhanced by food and shelter provided by human activities and garbage dumps. Shipping and fishing poses the risk of oil spills and disturbance of feeding flocks in marine waters. Other possible threats include marine contaminants and changes in the Bering Sea ecosystem affecting food availability.



Distribution of Steller's eiders in Alaska and Russia.

Management and Protection

To protect Steller's eiders and their breeding, molting, and wintering habitat, the U.S. Fish & Wildlife Service recommends the guidelines below for projects and activities within the range of Steller's eiders. Adherence to these guidelines will help avoid the illegal take of Steller's eiders, and reduce the potential for adverse effects to the species. If these guidelines cannot be followed, consultation with the U.S. Fish & Wildlife Service is required for federal actions. Under federal law, all federal agencies must consult with the U.S. Fish & Wildlife Service on any project they authorize, fund, or carry out that may affect Steller's eiders or other listed species.

For projects within the breeding range of Steller's eiders:

■ Assess whether Steller's eiders are likely to use the project area for nesting or brood-rearing. Contact the U.S. Fish & Wildlife Service, Ecological Services Fairbanks Field Office for assistance. For projects conducted during the breeding season, a Service-approved survey for Steller's eiders should be conducted in the year of construction, prior to initiation of activities.

■ If Steller's eider nests are in the project area, the following activities require special permits within 200 meters (656 feet) of nest sites:

Vehicle and foot traffic from May 20 through August 1, except on existing roads.

Construction of permanent facilities, placement of fill, or alteration of habitat.

Introduction of high noise levels from May 20 through August 1, including but not limited to noise from airports, blasting, and compressor stations.

Eiders are present on breeding grounds from mid-May through mid-September, but activities any time of year may affect them through habitat modification

For projects in coastal marine waters around the Alaska Peninsula, Kodiak Island, lower Cook Inlet, and Nunivak Island, contact the U.S. Fish & Wildlife Service, Ecological Services Anchorage Field Office for guidelines and recommendations.

Hunting of eiders is regulated under the Migratory Bird Treaty Act. In Russia, hunting of Steller's eiders has been closed since 1981, but subsistence harvest occurs in Siberia at an unknown level. In Alaska, reported subsistence harvest on the Yukon-Kuskokwim Delta has averaged 34 Steller's eiders over the past six years. Sport hunting of Steller's eiders in Alaska has been closed since 1991. Non-toxic shot must be used for all waterfowl hunting. Use of lead shot for waterfowl hunting has been prohibited throughout the United States since 1991.

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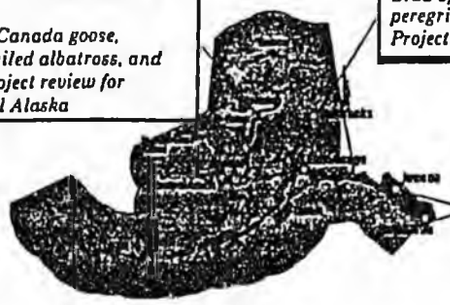
Petersen, M. 1981. Populations, feeding ecology and molt of Steller's eiders. Condor 83:256-262.

For more information on this and other threatened and endangered species, contact the U.S. Fish & Wildlife Service, Ecological Services Field Office near you.

Ecological Services Anchorage Field Office
Phone (907)271-2888
Lead office for Aleutian Canada goose, spectacled eider, short-tailed albatross, and Aleutian shield-fern. Project review for western and southcentral Alaska

Ecological Services Fairbanks Field Office
Phone (907)456-0203
Lead office for Steller's eider, American peregrine falcon, and Eskimo curlew Project review for northern Alaska



Juneau Fish and Wildlife Service Office
Phone (907)586-7240
Ketchikan Sub-office, phone (907)225-9691
Status review for old-growth forest species in southeast Alaska

U.S. Fish & Wildlife Service
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February 2000

BRIEFING PAPER

CRITICAL HABITAT FOR STELLER'S EIDERS
March 1, 2000

ISSUE

- The Fish and Wildlife Service is proposing to designate critical habitat for the Steller's eider. Proposed designation of critical habitat for the Steller's eider includes nesting areas on Alaska's North Slope and the Yukon-Kuskokwim Delta (YKD), and seven marine areas in southwest and southcoastal Alaska where the species molts, winters, and stages during spring migration. The proposed units encompass approximately 16,988 square miles on land, and 8500 square miles of marine waters along approximately 9000 miles of coastline.

BACKGROUND

- The Steller's eider is the smallest of four eider species. The adult male has a white head with a greenish tuft and a small black eye patch, a black back, white shoulders, and a chestnut breast and belly with a black spot on each side. Adult females and juveniles are mottled dark brown. Adults of both sexes have a blue wing speculum with a prominent white border on the anterior and posterior edges.

- Steller's eiders are diving ducks that spend most of the year in shallow marine waters where they primarily feed on bottom-dwelling molluscs and crustaceans. The breeding range of the Steller's eider in Alaska formerly extended discontinuously from the eastern Aleutian Islands around the western and northern coasts of Alaska to the Canada border. They now breed on the North Slope and in extremely low numbers on the Yukon-Kuskokwim Delta.

- Steller's eiders occur in marine habitats except during the breeding season. In fall, they congregate primarily in lagoons, bays, and estuaries on the north side of the Alaska Peninsula to molt. Densities can be extremely high; tens of thousands may concentrate in a few square miles in Izembek and Nelson lagoons during the peak of molt in August and September, although use of these areas can vary considerably among years. After molt, many disperse to the Aleutian Islands, the south side of the Alaska Peninsula, Kodiak Island, and as far east as Kachemak Bay, although thousands may remain in the lagoons in which they molt unless freezing conditions force them to move to warmer or more protected areas. In March or April, Steller's eiders begin to gradually move northward, again congregating on the north side of the Alaska Peninsula and in Bristol and Kuskokwim bays. Nearly 140,000 have been counted in this region during spring migration.

- The Steller's eider occurs at such low densities in Alaska during the breeding season that precisely estimating population size is currently impossible, but it is thought that hundreds or low thousands occupy the North Slope. Population size on the Yukon-Kuskokwim Delta is also difficult to estimate, but so few nests have been found in recent decades that it is believed that the species is extremely scarce there. Historical population size and distribution are poorly understood, but it is thought that the species' abundance

and range have decreased considerably in Alaska in the last century. Causes of the decline are unknown.

LISTING AND LITIGATION HISTORY

- In December 1990, the Service received a petition from James G. King to list the Steller's eider as an endangered species. In May 1992, the Service determined that listing was warranted but precluded by higher listing priorities. In 1993, a status review of the species concluded that listing of the Alaska breeding population as threatened was warranted, although the available information did not support listing the species worldwide. A proposed rule was published on July 14, 1994. A final determination on whether listing was warranted was delayed by a national moratorium on listing implemented in April 1995; that moratorium was lifted in April 1996. In June 1997, the Service published a final rule listing the Alaska breeding population of Steller's eiders as threatened without critical habitat (62 FR 31748).

- On March 10, 1999, the Southwest Center for Biological Diversity and the Christians Caring for Creation filed a lawsuit in Federal District Court in the Northern District of California against the Secretary of the Department of the Interior for failure to designate critical habitat for five California species and Alaska's Steller's and spectacled eiders.

- In September 1999, the plaintiffs and the Departments of Justice and Interior entered into an agreement in which Interior agreed to re-evaluate its critical habitat determinations for spectacled and Steller's eiders. The government took this action because over the last few years, a series of court decisions have overturned previous Service determinations regarding a variety of species that designation of critical habitat was not prudent (e.g., Natural Resources Defense Council v. U.S. Department of the Interior 113 F. 3d 1121 (9th Cir. 1997); Conservation Council for Hawaii v. Babbitt, 2 F. Supp. 2d 1280 (D. Hawaii 1998)).

- The agreement stipulates that if a "prudent" determination is made, proposals for critical habitat for spectacled eiders and Steller's eiders would be finalized by February 1, 2000, and March 1, 2000, respectively. Final rules designating critical habitat would subsequently be finalized by December 1, 2000, for spectacled eiders and January 5, 2001, for Steller's eiders. Final "not prudent" determinations, if appropriate, would be finalized by August 1, 2000, for spectacled eider and September 1, 2000, for Steller's eider.

PROPOSED CRITICAL HABITAT: NESTING AREAS

- Nesting areas on the YKD and North Slope are proposed as critical habitat. Identification of critical habitat for nesting is based on the known distribution of Steller's eiders from aerial survey information or historical records and presence of nesting habitat with primary constituent elements.

- Proposed critical habitat on the YKD and North Slope is delineated by township.

North Slope Nesting Unit (~15,800 mi^2)

- The proposed North Slope unit extends across the North Slope of Alaska, from the

mouth of the Ututok River on the Chukchi Sea coast, to the Colville River delta, on the Beaufort Sea coast. Primary constituent elements of Steller's eider nesting habitat on the North Slope are described as follows: small ponds and shallow water habitats particularly those with emergent vegetation, moist tundra within 100m of permanent surface waters including lakes, ponds, and pools, the associated aquatic invertebrate fauna, and adjacent nesting habitats. Area: ~15,800 mi^2 or 10,098,348 acres.

<u>Yukon-Kuskokwim Delta (YKD) Nesting Unit (~1201 mi^2)</u>

- The proposed Yukon-Kuskokwim Delta Nesting Unit is located within 30 km of the coast, bounded by Kokechik Bay and the Askinuk Mountains to the north, and extending south to include Kigigak Island and the north end of Nelson Island. Primary constituent elements of Steller's eider nesting habitat on the YKD are similar to those described for the North Slope: small ponds and shallow water habitats particularly those with emergent vegetation, moist tundra within 100m of permanent surface waters including lakes, ponds, and pools, the associated aquatic invertebrate fauna, and adjacent nesting habitats. Area: ~1201 mi^2 or 769,158 acres.

PROPOSED CRITICAL HABITAT: MOLTING, MIGRATION STAGING, AND WINTERING AREAS

- Proposed critical habitat for molting and wintering is based on known distribution of Steller's eiders.

- Proposed critical habitat at sea is described by geographic coordinates, geographic features, and shoreline.

- Primary constituent elements of this habitat include the marine waters up to 10 m (30 ft) deep and the underlying substrate, the associated invertebrate fauna in the water column and in and on the underlying substrate, and, where present, eelgrass beds and associated flora and fauna.

- Areas proposed for designation as critical habitat include: the coastal waters around Nunivak Island; the north side of Kuskokwim Bay; selected lagoons and bays along the north side of the Alaska Peninsula; and nearshore marine waters along the coast of the eastern Aleutian islands, the south side of the Alaska Peninsula, a portion of Kachemak Bay and marine waters in the vicinity of Ninilchik, and waters of the Kodiak archipelago. Area: ~8500 mi^2 or 5,440,000 acres and 9000 miles of coastline.

NEXT STEPS

- The proposed rule was finalized by the March 1, 2000, Settlement Agreement date. A 60-day public comment period will open when proposed rule is published. Public comments will be accepted during this period and scientific peer review will be sought on the proposal. Requests for public hearings will be accepted.

- The Service will initiate and publish for public comment an analysis of the potential economic effects of the proposal to designated critical habitat for the spectacled eider.

- After considering all comments on the proposal and any economic effects, the Service must complete a final rule designating critical habitat by January 5, 2001.

CONTACT

- David B. Allen, Regional Director, (907) 786-3542, or LaVerne Smith, Assistant Regional Director for Fisheries, Ecological Services, and Marine Mammals (907) 786-3411.

U.S. Fish & Wildlife Service

Questions and Answers About Critical Habitat for the Steller's Eider

Q. What is critical habitat?

A. Critical habitat is a term used in the Endangered Species Act. It refers to specific geographic areas that are essential for the conservation of a threatened or endangered species and that may require special management considerations. These areas do not necessarily have to be occupied by the species at the time of designation.

Q. Do listed species in critical habitat areas receive more protection?

A. Designation of an area as critical habitat provides a means by which an endangered or threatened species' habitat can be protected from adverse changes or destruction resulting from Federal activities or projects. In most cases, critical habitat designation duplicates the protection provided by section 7 of the Endangered Species Act. It does not create a nature preserve or refuge, and does not affect ownership of land in the area. It does not allow Federal or public access to private lands, and does not change the rights of private landowners. It does not limit private, local or State actions unless Federal funding or authorization is involved. Listed species and their habitats are protected by the Endangered Species Act whether or not they are in an area designated as critical habitat.

Q. What protection does the Steller's eider currently receive as a listed species?

A. The Endangered Species Act forbids the import, export, or interstate or foreign sale of protected animals and plants without a special permit. It also makes "take" illegal – forbidding the killing, harming, harassing, possessing, or removing of protected animals from the wild. Federal agencies must also consult with the Service to conserve listed species on their lands and to ensure that any activity they fund, authorize, or carry out will not jeopardize the survival of a listed species.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species for scientific purposes, to enhance the propagation or survival of the species, or for incidental take in the course of certain otherwise lawful activities.

In addition, the Endangered Species Act requires Federal agencies to pursue actions to recover species to the point where they no longer require protection and can be delisted.

Q. What is the purpose of designating critical habitat?

A. The purpose of designating critical habitat is to require Federal agencies to consult with the Service on actions they carry out, fund, or authorize that might destroy or adversely modify critical habitat.

Critical habitat designation has no effect on situations in which no Federal agency is involved-for example, a landowner undertaking a project on private land that involves no Federal funding or permit.

Q. Do Federal agencies have to consult with the Service outside critical habitat areas?

A. Yes. Even when there is no critical habitat designation, Federal agencies must consult with the Service to ensure any action they carry out, fund, or authorize is not likely to jeopardize the continued existence of a listed species.

Q. What is the impact of a critical habitat designation on economic development?

A. The vast majority of human activities that require

a consultation with the U.S. Fish and Wildlife Service proceed with little or no modification.

Q. Does the Act require an economic analysis as part of designating critical habitat?

A. Yes. The Service must take into account the economic impact of specifying any particular area as critical habitat. The Service may exclude any area from critical habitat if it determines that the benefits of such exclusion outweigh the benefits of specifying the area as part of critical habitat unless it determines, based on the best scientific and commercial data available, that the failure to designate the area as critical habitat will result in the extinction of the species.

Q. Does this economic analysis have any effect on the decision to list a species?

A. No. Under the Act, a decision to list a species is made solely on the basis of scientific data and analysis.

Q. For how many species has the Service designated critical habitat?

A. To date, the Service has designated critical habitat for 116 of the 1,206 species listed as threatened or endangered.

Q. Why hasn't the Service designated critical habitat for more species?

A. After a Congressional moratorium on listing new species ended in 1996, the Service faced a huge backlog of proposed species listings. At that point, the Service assigned a relatively low priority to designating critical habitat because it believed that a more effective use of limited resources was to place imperiled species on the threatened and endangered species list. The ESA requires Federal agencies to consult with the Service whenever they carry out, fund, or authorize any activity that may jeopardize a listed species; potential impacts to listed species, including those caused by habitat loss, are considered during the consultation process.

Recent court decisions, however, have required the Service to designate critical habitat for an increasing number of listed species.

Q. Why is critical habitat for the Steller's eider being proposed?

A. At the time Steller's eiders were listed as threatened in 1997, we did not believe that the species would benefit from having critical habitat designated. In 1999, we were sued for failure to designated critical habitat and we agreed to reanalyze the benefit. This proposal is the result of this reanalysis.

Q. How does the Service determine what areas to designate?

A. Biologists consider physical or biological habitat features needed by the species. These include, but are not limited to:

- space for individual and population growth and for normal behavior;
- food, water, air, light, minerals, or other nutritional or physiological requirements;
- cover or shelter;
- sites for breeding and rearing offspring;
- habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Q. Are all areas within critical habitat boundaries considered critical habitat?

A. No. Only areas that contain the primary constituent elements required by the species are considered critical habitat. Primary constituent elements are those physical and biological features of a landscape that a species needs to survive. There are many areas within Steller's eider critical habitat boundaries that do not contain the constituent elements and are not considered critical habitat. For example, marine waters deeper than 10 meters (30 feet), certain dry uplands, and existing structures such as buildings, roads, oil platforms, and docks are not considered critical habitat.

Q. Are all Steller's eiders protected by the Endangered Species Act?

A. No. There are three populations of Steller's eiders. Two breed in Russia and one breeds in Alaska. Only the Alaska-breeding population is classified as threatened under the Endangered Species Act.

Q. Where does the Alaska-breeding population of Steller's eiders occur?

A. The Alaska-breeding population of Steller's eiders

nests in two general areas: on the North Slope where hundreds or low thousands occur; and on the Yukon-Kuskokwim Delta, where an extremely small but unknown number remain. After nesting, Steller's eiders move from their terrestrial nesting areas to shallow, nearshore marine waters, where they spend the remainder of the year.

The range of the Alaska-breeding population during the non-nesting season remains poorly understood. Over a hundred thousand Steller's eiders that nest in Russia move to Alaska and winter in a huge area including the north and south sides of the Alaska Peninsula, the eastern Aleutian Islands, and southcoastal Alaska including the Kodiak Archipelago and parts of southern Cook Inlet. It is believed that the threatened Alaska-breeding population likely also occurs within this area during winter, but it is not known whether they occur in specific portions or throughout this broad range.

Q. Where do Steller's eiders molt?

A. Like other waterfowl, Steller's eiders undergo a several-week long flightless period in which they "molt", or replace their wing and tail feathers. Steller's eiders molt in a number of locations on the Bering Sea coast, but most concentrate in a few bays and lagoons on the north side of the Alaska Peninsula. The most important molting areas are Nelson and Izembek lagoons, where up to a hundred thousand molt in some years. Banding information shows that at least some Alaska-breeding Steller's eiders molt in these two lagoons.

Q. Why have Alaska-breeding Steller's eiders declined?

A. The Alaska-breeding population of Steller's eiders was listed as threatened because its range in Alaska contracted substantially and its population size declined, increasing the vulnerability of the remaining population to extirpation. Causes of the decline remain unknown but possible contributing factors include over-hunting, lead-poisoning from ingesting spent lead shot while feeding, changes in the number or diet of predators, and changes in the marine ecosystems where Steller's eiders molt and winter.

Q. Will the public have an opportunity to comment on the critical habitat designation?

A. Yes. The U.S. Fish and Wildlife Service will be accepting public comment for 60 days following the publication of this proposal in the Federal Register.

More questions?

Call or write:

U.S. Fish and Wildlife Service
Ecological Services Fairbanks Field Office
101 12 th Ave. Box 19, Room 110
Fairbanks, AK 99701

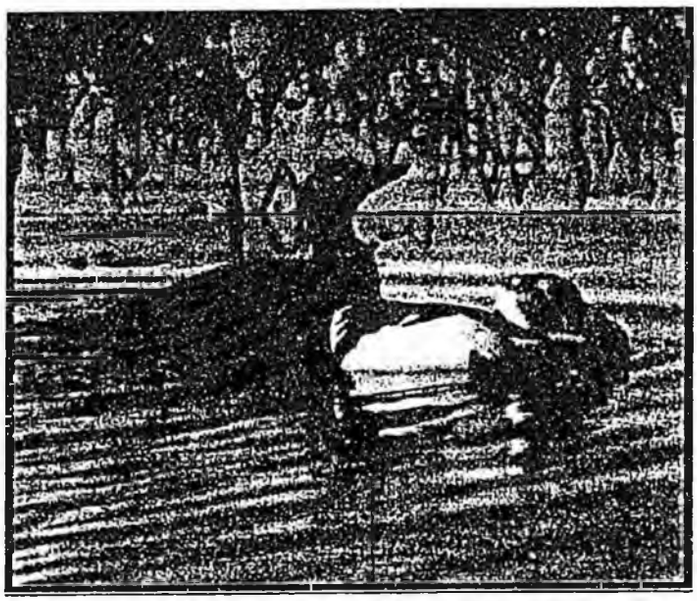
(907) 456-0203

U.S. Fish & Wildlife Service

Threatened and Endangered Species
Fact Sheet
Steller's eider
(Polysticta stelleri)

Status
Threatened - Alaska breeding population (*Federal Register*, June 11, 1997)

Description
Steller's eiders are the smallest of the four eider species, averaging 43-47 centimeters long (17-18.5 inches). In the winter and spring, adult males are in breeding plumage with a black back, white shoulders, chestnut breast and belly, a white head with a greenish tuft, and small black eye patches. During the late summer and fall, males are entirely mottled dark brown. Females and juveniles are mottled dark brown year-round. Adults of both sexes have a blue patch with a white border on the upper wing, similar to a mallard.



Named after Georg Steller, who first described the species to western science, Steller's eiders are the smallest of the four eider species. An adult female is on the left, and an adult male is on the right. Photo by Michele M. Johnson.

Range and Population Level
Steller's eiders breed in northern Russia and northern and western Alaska. Although formerly considered locally common at a few sites on both the Yukon-Kuskokwim Delta and the arctic coastal plain of Alaska, they have nearly disappeared from most nesting areas in Alaska. Single nests of Steller's eiders were found on the Yukon-Kuskokwim Delta in 1994, 1996, and 1997, suggesting existence of a very small remnant population. Historical reports of nesting Steller's eiders on the Aleutian Islands and Alaska Peninsula are unconfirmed and not substantiated by recent observations. Evidence of nesting by Steller's eiders has not been reported on the Seward Peninsula since the late 1800's, or on St. Lawrence Island since 1954. Current primary nesting range in Alaska consists of a portion of the central arctic coastal plain between Wainwright and Prudhoe Bay, primarily near Barrow. In Russia, Steller's eiders nest along the arctic coast from the Chukotski Peninsula west to the Taimyr, Gaydan, and Yamal peninsulas. Biologists estimate that the world population of Steller's eiders is around 220,000 birds, the majority of which nest in Russia. The number of pairs nesting on Alaska's arctic coastal plain is very roughly estimated at 1,000. Approximately 4,000 pairs of Steller's eiders may have nested on the Yukon-Kuskokwim Delta prior to the 1960's. Overall, the worldwide population of Steller's eiders may have decreased by as much as 50% over the last 30 years. Most Steller's eiders breeding in Alaska and Russia migrate south after breeding to molt along the coast of Alaska from Nunivak Island to Cold Bay, primarily in Izembek Lagoon, Nelson Lagoon, and near the Seal Islands. At least 150,000 Steller's eiders, the majority of the world population, winter in Alaska from the eastern Aleutian Islands to Lower Cook Inlet. About 30,000 birds winter in eastern Russia in the Commander and Kuril islands, and an estimated 40,000 winter in northeastern Europe along the coasts of Estonia, Lithuania, Latvia, Finland, Norway, and Sweden. During their northward spring migration from wintering areas in Alaska, Steller's eiders can be found in large flocks close to shore from northern Bristol Bay to Hooper Bay.

Habitat and Habits
Steller's eiders are diving ducks that spend most of the year in shallow, near-shore marine waters. Molting and wintering flocks congregate in protected lagoons and bays, as well as along rocky headlands and islets. They feed by diving and dabbling for molluscs and crustaceans in shallow water. In summer, they nest on coastal tundra adjacent to small ponds or within drained lake basins. During the breeding season they feed on aquatic insects and plants in freshwater ponds and streams.

Reasons for Current Status
Causes of the decline world-wide and in Alaska are not known. Lead poisoning, caused by eiders ingesting spent lead shot as they feed, may have affected Steller's eiders on the Yukon-Kuskokwim Delta. Predation by ravens, large gulls, and foxes on the breeding grounds may be

SPECTACLED EIDER

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MEMORANDUM

TO: Ted Popely
Ron Somerville

FROM: Bill Horn BH
Beth Quevli

VIA TELEFAX

DATE: February 14, 2000

RE: **Proposed Designation of Critical Habitat for the Spectacled Eider**

On Thursday, February 8, 2000, the U.S. Fish and Wildlife Service (FWS) published in the Federal Register (65 FR 6114-6131) a proposed rule to designate critical habitat for the spectacled eider, which is presently listed as endangered under ESA. The proposed designation of critical habitat includes a total of 74,539 square miles. The areas include the North Slope and adjacent marine waters; the Yukon-Kuskokwim Delta and adjacent marine waters, Norton Sound, Ledyard Bay, and the Bering Sea between St. Lawrence and St. Matthew Islands. FWS believes that all of these areas meet the definition of critical habitat because they contain physical or biological elements essential for the conservation of the species and may require special management considerations or protection.

If this designation is approved, it could require federal "consultation" under the ESA regarding a broad range of activities on the designated lands. Senator Murkowski and Rep. Young have already come out against the proposal and are urging public participation in the process.

FWS is accepting comments on all aspects of the proposal, including data on the economic and other impacts of the designation, until May 8, 2000. The public may also request public hearings by March 24, 2000, and notice of any such hearings will be published in the Federal Register and local newspapers. Comments should be sent to Ann G. Rappoport, Field Supervisor, Anchorage Field Office, U.S. Fish and Wildlife Service, 605 West 4th Avenue, Room G-61, Anchorage, AK 99501.

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Documents detailing the proposed areas are attached. Further information on the proposal can be find on the FWS web site at: http://www.r7.fws.gov.

Attachments

U.S. FISH AND WILDLIFE SERVICE

Region 7 - Alaska
1011 East Tudor Road
Anchorage, Alaska 99503

News

For Immediate Release
February 1, 2000

17,704,960 Marres

Contact LaVerne Smith
(907)786-3411 or
Greg Balogh (907)271-2778

Service Proposes Critical Habitat for the Spectacled Eider

The U.S. Fish and Wildlife Service will publish a proposal in the next few days to designate critical habitat for the spectacled eider, a threatened sea duck that nests only in Alaska and Russia. Critical habitat is a term used in the Endangered Species Act that refers to a specific geographic area that is important for the conservation of a threatened or endangered species and may require special management considerations.

Although critical habitat does not set up a preserve or refuge, nor does it affect private activities, federal agencies must consult with the Service before taking actions, issuing permits or providing funding for activities that may affect critical habitat. Where consultation is deemed necessary, a site-specific evaluation of the proposed project and its potential impact on critical habitat will occur.

Today's proposal covers about 74,539 square miles of nesting habitat on the Yukon Delta and the North Slope, molting areas in eastern Norton Sound and Ledyard Bay, and the species' only known wintering area in the central Bering Sea between St. Lawrence and St. Matthew Islands. The spectacled eider is dependent on those habitats within this area that have the specific characteristics that it requires to support its biological needs for nesting, brood rearing, feeding, molting and wintering.

Biologists estimate that there are about 8,000 breeding spectacled eiders left on the Yukon Delta, and about 10,000 birds left on the North Slope. They believe that the main threats to this sea duck on its breeding grounds include: lead poisoning from eating spent lead shot; predation by foxes, gulls and jaegers, and hunting and other human disturbances. They are not certain what threats the eider faces at sea, but believe threats could possibly be linked to factors that are causing the decline of other Bering Sea species such as the Steller sea lion.

"Since the spectacled eider is currently listed for protection as a threatened species, this species is protected no matter where it is," said David B. Allen, Regional Director for Alaska. "Designated critical habitat only affects federal lands and activities funded, permitted or carried out by the federal government. A designation would have no effect on a private landowner engaged in private activities that don't require federal permits or funding."

According to Allen, the vast majority of human activities that require a consultation with the U.S. Fish and Wildlife Service proceed with little or no modification. — Maybe 20 years later.

More

"This proposal to designate critical habitat in Alaska highlights the biological fact that all species require healthy habitat to survive, but this is not expected to affect the lives or livelihoods of rural and Native Alaskans," he added.

The proposal comes in response to an out-of-court settlement stemming from a lawsuit filed by the Southwest Center for Biological Diversity and the Christians Caring for Creation. The Service did not designate critical habitat for the species when it was originally listed as threatened in 1993 because at that time, loss of habitat was not considered to be the cause of its decline, and it was believed that designation of critical habitat would not benefit the species. In addition, biologists have learned a lot more about the species since it was listed, and they feel more confident in their ability to delineate important eider habitat.

The Service expects to publish its proposal soon in the *Federal Register*. The public may provide written comments on the proposal throughout the 90-day comment period. Comments should submitted to Greg Balogh at the U.S. Fish and Wildlife Service, Ecological Services, 605 West 4th Avenue, Room G-62, Anchorage, Alaska 99501.

The U.S. Fish and Wildlife Service is the principal federal agency responsible for conserving, protecting, and enhancing fish, wildlife and plants and their habitats for the continuing benefit of the American people. The Service manages the 93-million-acre National Wildlife Refuge System comprised of more than 500 national wildlife refuges, thousands of small wetlands, and other special management areas. It also operates 66 national fish hatcheries, 64 fish and wildlife management assistance offices and 78 ecological services field stations. The agency enforces federal wildlife laws, administers the Endangered Species Act, manages migratory bird populations, restores nationally significant fisheries, conserves and restores wildlife habitat such as wetlands, and helps foreign governments with their conservation efforts. It also oversees the Federal Aid program that distributes hundreds of millions of dollars in excise taxes on fishing and hunting equipment to state fish and wildlife agencies.

You can subscribe to the U.S. Fish and Wildlife Service, Alaska region listserver, to have our press releases sent to your e-mail address automatically by sending an e-mail message to: listserver@www.fws.gov. Please indicate that you would like to subscribe to FWS-Alaska news and give your name in the body of the message.

FWS

BRIEFING PAPER

CRITICAL HABITAT FOR SPECTACLED EIDERS

February 1, 2000

ISSUE

The Fish and Wildlife Service is proposing to designate critical habitat for the spectacled eider. Proposed designation of critical habitat for the spectacled eider includes nesting areas on Alaska's North Slope and the Yukon-Kuskokwim Delta (YKD) and adjacent marine waters; molting areas on Norton Sound and Ledyard Bay; and the only known wintering area in the Bering Sea between St. Lawrence and St. Matthew Islands. These areas total 74,539 square miles or 47,704,500 acres.

BACKGROUND

Spectacled eiders are diving ducks that spend most of the year in marine waters where they primarily feed on bottom-dwelling molluscs and crustaceans. In the United States, spectacled eiders historically nested from the Nushagak Peninsula of southwestern Alaska north to Barrow and east nearly to the Canadian border. Today two breeding populations remain in Alaska. The remainder of the species breeds in Arctic Russia.

Between the 1970s and 1990s, spectacled eiders on the YKD declined by 96 percent, from 48,000 pairs to fewer than 2,500 pairs in 1992. Based upon surveys conducted during the past few years, the YKD breeding population is estimated to be about 4,000 pairs. The most recent population estimate on the North Slope is currently 9,488 (+/- 1,814 birds). North Slope eiders have no clear population trend.

LISTING AND LITIGATION HISTORY

On December 10, 1990, the Service received a petition from James G. King to list the spectacled eider as an endangered species and to designate critical habitat on the Yukon Delta National Wildlife Refuge and the National Petroleum Reserve-Alaska. On April 25, 1991, the Service published a 90-day finding, that the petition had presented substantial information indicating that listing may be warranted (56 FR 19073). On February 12, 1992, a 12-month finding was signed, determining that listing was warranted. On May 8, 1992, a proposed rule to list the spectacled eider as a threatened species throughout its range was published (57 FR 19852). The Service determined that it was not prudent to designate critical habitat for the spectacled eider because there was no demonstrable benefit that could be shown at that time. Comments were solicited from all interested parties during an extended comment period (160 days). After a review of all comments received in response to the proposed rule, the final rule listing the spectacled eider as threatened without critical habitat was published on May 10, 1993 (58 FR 27474).

On March 10, 1999, the Southwest Center for Biological Diversity and the Christians Caring for Creation filed a lawsuit in Federal District Court in the Northern District of California against the Secretary of the Department of the Interior for failure to designate critical habitat for five California species and Alaska's spectacled and Steller's eiders.

- In September 1999, the plaintiffs and the Departments of Justice and Interior entered into an agreement in which Interior agreed to re-evaluate its critical habitat determinations for spectacled and Steller's eiders. The government took this action because over the last few years, a series of court decisions have overturned previous Service determinations regarding a variety of species that designation of critical habitat was not prudent (e.g., Natural Resources Defense Council v. U.S. Department of the Interior 113 F. 3d 1121 (9th Cir. 1997); Conservation Council for Hawaii v. Babbitt, 2 F. Supp. 2d 1280 (D. Hawaii 1998)).

- The agreement stipulates that if a "prudent" determination is made, proposals for critical habitat for spectacled eiders and Steller's eiders would be finalized by February 1, 2000, and March 1, 2000, respectively. Final rules designating critical habitat would subsequently be finalized by December 1, 2000, for spectacled eiders and January 5, 2001, for Steller's eiders. Final "not prudent" determinations would be finalized by August 1, 2000, for spectacled eider and September 1, 2000, for Steller's eider.

PROPOSED CRITICAL HABITAT: NESTING AREAS

- Nesting areas on the YKD and North Slope are proposed as critical habitat. Identification of critical habitat for nesting is based on the known distribution of spectacled eiders from aerial survey information and presence of nesting habitat with primary constituent elements.

- Proposed critical habitat on the YKD and North Slope is delineated by township.

North Slope Nesting Unit (~22,558 mi^2)

- Primary constituent elements of spectacled eider nesting habitat on the North Slope are described as follows: all deep water bodies; all water bodies that are part of basin wetland complexes; all permanently flooded wetlands and waterbodies containing either *Carex aquatilis*, *Arctophila fulva*, or both; all habitat immediately adjacent to these habitat types; and all marine waters out to 25 miles from shore, its associated aquatic flora and fauna in the water column, and the underlying benthic community. Area: ~22,558 mi^2 or 14,436,800 acres.

Yukon-Kuskokwim Delta (YKD) Nesting Unit (~8302 mi^2)

- Primary constituent elements of spectacled eider nesting habitat on the YKD are described as follows: spectacled eiders occupy YKD coastal fringe habitat, and a swath along the YKD coast. Within the coastal fringe, spectacled eiders use open water, low wet sedge, grass marsh, dwarf shrub/graminoid meadow, high and intermediate graminoid meadow, mixed high graminoid meadow/dwarf shrub uplands, and areas adjacent to open water, low wet sedge and grass marsh. The habitat also includes all marine waters out to 25 miles from shore, its associated aquatic flora and fauna in the water column, and the underlying benthic community. Area: ~8302 mi^2 or 5,313,500 acres.

PROPOSED CRITICAL HABITAT: MOLTING AND WINTERING AREAS

- Proposed critical habitat for molting and wintering is based on known distribution of spectacled eiders and adequate marine habitat around these documented spectacled eider distributions to allow for seasonal shifts in bird distribution resulting from factors such as weather and changing prey abundance.

- Proposed critical habitat at sea is described by geographic coordinates, shoreline, and the international boundary with Russia.

Norton Sound (~6758 mi^2)

- Norton Sound is located along the western coast of Alaska between the YKD and the Seward Peninsula. It is the principal molting and staging area for females nesting on the YKD, probably the most imperiled of the three breeding populations. As many as 4,030 spectacled eiders have been observed in one portion of eastern Norton Sound at one time. Spectacled eiders arrive in eastern Norton Sound at the end of July and depart in mid-October. Primary constituent elements of this habitat include the marine waters, associated marine aquatic flora and fauna in the water column, and the underlying marine benthic community. Area: ~6758 mi^2 or 4,324,800 acres.

Ledyard Bay (~8374 mi^2)

- Ledyard Bay is located along the western coast of Alaska between Cape Lisburne and Point Lay. It is one of the primary molting grounds for female spectacled eiders breeding on the North Slope. Aerial surveys in September 1995 found 33,192 spectacled eiders using Ledyard Bay. Most were concentrated in a 37-km (23-mi) diameter circle with their distribution centered 67 km (42 mi) southwest of Point Lay and 41 km (25 mi) offshore. Primary constituent elements of this habitat include the marine waters, associated marine aquatic flora and fauna in the water column, and the underlying marine benthic community. Area: ~8374 mi^2 or 5,359,200 acres.

Wintering Area (~28,547 mi^2)

- During winter, spectacled eiders congregate in exceedingly large and dense flocks in openings in the pack ice in the central Bering Sea between St. Lawrence and St. Matthew Islands. Spectacled eiders from all three known breeding populations use this wintering area; no other wintering areas are currently known. Scientists have estimated the entire wintering population, and perhaps the worldwide population, of spectacled eiders at 374,792 birds. Because nearly all individuals of this species may spend each winter occupying an area of ocean less than 50 km (31 mi) in diameter, they may be particularly vulnerable to chance events during this time. Primary constituent elements of this habitat include the marine waters, associated marine aquatic flora and fauna in the water column, and the underlying marine benthic community. Area: ~28,547 mi^2 or 18,270,200 acres.

NEXT STEPS

- The proposed rule was finalized by the February 1, 2000, Settlement Agreement date. A 90-day public comment period will open when proposed rule is published. Public comments will be accepted during this period and scientific peer review will be sought on the proposal. Requests for public hearings will be accepted.

The Service will initiate and publish for public comment an analysis of the potential economic effects of the proposal to designated critical habitat for the spectacled eider.

After considering all comments on the proposal and any economic effects, the Service must complete a final rule designating critical habitat by December 1, 2000.

CONTACT

David B. Allen, Regional Director, (907) 786-3542, or LaVerne Smith, Assistant Regional Director for Fisheries, Ecological Services, and Marine Mammals (907) 786-3411.

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USGS
Alaska Biological Science Center

Modeling Populations of Spectacled Eiders

RESEARCH | STUDY AREAS | THE MODEL | DOWNLOAD | BIBLIOGRAPHY | CONTACTS

BACKGROUND

The spectacled eider population on the Yukon-Kuskokwim Delta (Y-K Delta) in western Alaska declined rapidly through the 1980's (Stehn et al. 1993), and was listed as threatened worldwide by the U. S. Fish and Wildlife Service (USFWS) in 1993 (Federal Register 1993). There is a total of between 200,000 and 300,000 spectacled eiders in the world population, but less than 10% of them breed in North America. In North America, about 5000 pairs nest on the North Slope of Alaska and about 2000 breeding pairs nest on the Y-K Delta. The remainder of the world population breeds in Arctic Russia. The entire world population, males and females, appears to winter in a relatively small region of the north central Bering Sea.

The population on the Y-K Delta, about which we have the most information, has been declining for at least 20 years at a rate of approximately 9% per year. The population on the North Slope may also be declining at a slower rate. We do not know the status of spectacled eider populations in Arctic Russia.

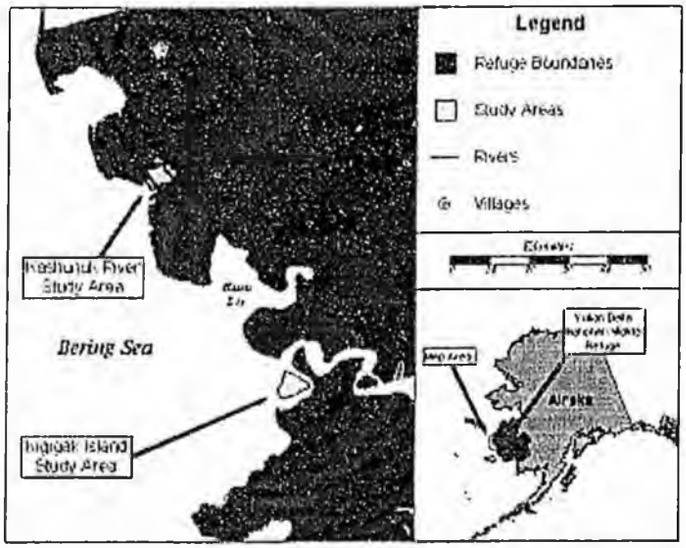
The Spectacled Eider Recovery Plan developed by the Recovery Team and published by the USFWS in 1996 describes the status of the population, identifies important information needs, suggests causes for the decline in the Y-K Delta population, and recommends possible management actions. Recent studies have focused on the Y-K Delta population of spectacled eiders because it appears to be declining so rapidly.

RESEARCH PROGRAM

Scientists from the Alaska Biological Science Center (ABSC) and the USFWS have been studying key demographic parameters of spectacled eider populations since 1991. The Recovery Team identified low adult female survival as the likely cause of the population decline. However, estimates of adult female survival and many other demographic parameters were unavailable at the time the plan was developed. Recent research has focused on post breeding movements, nesting ecology, brood rearing ecology, and the survival of ducklings and adult females.

- Studies of postbreeding movements using transmitters tracked via satellites have for the first time revealed the areas in the north central Bering Sea used in winter by spectacled eiders from the U.S. and Russia.
- Studies of nest success have demonstrated large annual variation, and the relative importance of avian nest predators.
- Studies of duckling survival, in radio-marked broods like the one pictured above demonstrate little variation in annual survival rates, but relatively good production.
- Studies of lead exposure indicates that in some areas over 30% of the breeding population experience lead poisoning caused by ingesting spent lead shot. The x-ray image at the left reveals a lead shot in the gizzard of a female eider captured from a nest on the lower Kashunuk River study area.
- Studies of adult female survival using females wearing colored nasal disks, like the female in the brood photo indicate that over 78% survive breeding and the harsh, Bering Sea winters each year. However, only 44% of females that ingest lead shot survive to return and nest the following year. Thus, in areas where lead exposure rates are high average survival rates are relatively low.

STUDY AREAS

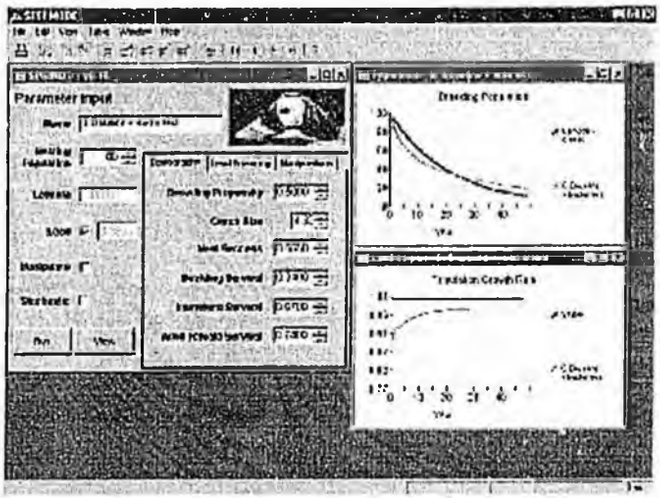


On the Y-K Delta, nesting spectacled eiders are patchily distributed across the central coast within 15 km of the Bering Sea. This area is without doubt one of the most important in the world for waterfowl production. Two relatively large concentrations of spectacled eiders (>100 nesting females) occur at Kigigak Island and the lower Kashunuk River (Hock Slough). Since 1991, research by ABSC and USFWS focused on these key breeding areas. The programs of intensive research on marked populations provided a vast amount of information on spectacled eiders and several other species of waterfowl breeding in the Y-K Delta.

In recent years, the research program has expanded to include other parts of the Y-K Delta, the North Slope of Alaska, wintering areas in the Bering Sea, and the Indigirka River Delta in Siberia.

THE MODEL AND THE PROGRAM

In a collaborative effort with the American Museum of Natural History and U. S. Fish and Wildlife Service, ABSC biologists synthesized the results of these studies using a population model. The model, in its most basic form, has been developed into a stand-alone program, SPEI Model, for use by researchers, educators, and managers interested in the factors that influence the growth rate of spectacled eiders populations.



The user provides estimates of demographic parameters such as the size of the nesting population, breeding propensity, nest success, duckling survival, clutch size, and adult survival. The program uses those values to calculate the expected population growth rate and project the size of the population for 50 years. In addition to demonstrating the effects of variation in demographic parameters, the program simulates the effects of lead poisoning and manipulations of the population (i.e., the addition or removal of nests or breeding females) on population size and growth. The program also introduces the effects of environmental variation (stochasticity) on animal populations. It is not intended as a tool for research, but as a tool to be used by managers and students exploring the relative influence of factors affecting spectacled eider populations. The algorithms in the program are based on a standard pre-breeding census, birth pulse, stage projection (Leslie matrix) model.

The tutorial parameter sets provided with SPEI Model demonstrate the relative importance of each of the demographic parameters on the growth rate of spectacled eider populations. The structure of the program makes it easy to create, edit, and save new or existing parameter sets. The graphic output illustrates changes in population size, population growth rate, and potential problems with population viability.

DOWNLOAD

- System Requirements:
  - Win 95
  - 16 MB RAM
  - 20 MB disk space available during installation
- Click here to download the program SPEI Model (8 MB)
  - Extract the setup files to a temporary directory by running ***speimod.exe***
  - Run ***setup.exe*** from the temporary directory.
  - Delete the files in the temporary directory.
- Click here to download the upgrade (<1 MB)
  - Use the update only if you have a working version of the program on your computer.
  - Extract the update files to the directory where SPEI Model exists by running ***update.exe***
- To uninstall the program:
  - From the Win 95 Control Panel, select Add/Remove Programs; select SPEI Model; click on remove program.

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U.S. Fish & Wildlife Service

Threatened and Endangered Species
Fact Sheet
Spectacled eider
(Somateria fischeri)

Status
Threatened throughout its range (*Federal Register*, May 10, 1993)

Description
Spectacled eiders are large sea ducks, 52-56 centimeters long (20-22 inches). In the winter and spring, adult males are in breeding plumage with a black chest, white back, and pale green head with a long, sloping forehead and white spectacle-like patches around the eyes. During the late summer and fall, males are entirely mottled brown. Females and juveniles are mottled brown year-round with pale brown eye patches.

As their name suggests, male spectacled eiders in breeding plumage have distinctive patches around the eye which resemble eyeglasses, or spectacles. Female spectacled eiders, like the bird on the left, are mottled brown with faint eye patches. Reprinted with permission from an original painting by Joseph Hautman.

Range and Population Level
Historically, spectacled eiders nested along much of the coast of Alaska, from the Nushagak Peninsula in the southwest, north to Barrow, and east nearly to the Canadian border. They also nested along much of the arctic coast of Russia. Today, three primary nesting grounds remain; the central coast of the Yukon-Kuskokwim Delta, the arctic coastal plain of Alaska, and the arctic coastal plain of Russia. A few pairs nest on St. Lawrence Island as well. Their fall and winter distribution was virtually unknown until satellite telemetry lead to the discovery of spectacled eiders at sea in 1993. Important late summer and fall molting areas have been identified in eastern Norton Sound and Ledyard Bay in Alaska, and in Mechigmenskiy Bay and an area offshore between the Kolyma and Indigirka river deltas in Russia. Wintering flocks of spectacled eiders have been observed in the Bering Sea between St. Lawrence and St. Matthew islands.

Between the 1970's and the 1990's, the breeding population on the Yukon-Kuskokwim Delta declined by over 96%, and only about 4,000 pairs nest there today. Historical data for other nesting areas are scarce, but recent data and observations by native elders suggest populations may have also declined on the arctic coastal plain of Alaska. Biologists estimate that about 9,000 pairs currently nest on Alaska's arctic coastal plain, and at least 40,000 pairs nest in arctic Russia. The current worldwide population estimate is 360,000 birds, which is derived from winter surveys in the Bering Sea and includes non-breeding birds.

Habitat and Habits
Spectacled eiders are diving ducks that spend most of the year in marine waters where they probably feed on bottom-dwelling molluscs and crustaceans. Around the time of spring break-up, breeding pairs move to nesting areas on wet coastal tundra. They establish nests near shallow ponds or lakes, usually within 3 meters(10 feet) of water. During this season they feed by diving and dabbling in ponds and wetlands, eating aquatic insects, crustaceans, and vegetation. Soon after eggs are laid, males leave the nesting grounds for offshore molting areas, usually by the end of June. Females whose nests failed leave the nesting area to molt at sea by mid-August. Breeding females and their young remain on the nesting grounds until early September. Molting flocks congregate in relatively shallow coastal water, usually less than 36 meters (120 Feet) deep. While moving between nesting and molting areas, spectacled eiders travel along the coast up to 50 kilometers (31 miles) offshore. During the winter months of October through March, they move far offshore to waters up to 65 meters (213 feet) deep, where they sometimes gather in dense flocks in openings of nearly continuous sea ice.

Reasons for Current Status
Causes of the decline of spectacled eiders are not well understood. Lead poisoning, caused by eiders ingesting spent lead shot as they feed, has been documented in spectacled eiders on the Yukon-Kuskokwim Delta. Hunting also poses a threat to spectacled eiders.

Predation by foxes, large gulls, and ravens on the breeding grounds may be increasing in areas where populations of these predators are enhanced by the year-round food and shelter provided by human activities and garbage dumps.

U.S. Fish & Wildlife Service

Threatened and Endangered Species

Protecting Spectacled Eiders At Sea

Spectacled eiders (*Somateria fischeri*) were listed as threatened in 1993 under the U.S. Endangered Species Act (*Federal Register*, May 10, 1993) after the breeding population on the Yukon-Kuskokwim Delta, Alaska, declined 96% between the 1970's and the early 1990's. Since spectacled eiders spend most of their lives at sea, minimizing harm in marine habitats is crucial to the species survival and recovery.

USFWS photo by Bill Larned

Wintering flocks of spectacled eiders, such as this flock of over 80,000 birds, gather in the pack ice southwest of St. Lawrence Island.

At Sea Distribution and Ecology

Until recently, little was known about the habits of spectacled eiders outside their summer breeding areas. Researchers are using satellite telemetry and aerial surveys to find the birds at sea, from coastal fall molting areas to offshore wintering areas in the central Bering Sea.

In the late summer and fall after breeding in northern and western Alaska and arctic Russia, spectacled eiders gather in flocks in coastal waters to molt. During molt, the birds become flightless as their old, worn feathers are replaced with new ones.

Four principle molting areas have been identified. Two molting areas on the coast of Alaska are eastern Norton Sound and Ledyard Bay, between Cape Lisburne and Point Lay. On the coast of Russia, eiders molt in Mechigmenskiy Bay on the Chukotka Peninsula and an area between the Indigirka and Kolyma river deltas. Molting areas are typically less than 36 meters deep.

Eastern Norton Sound appears to be the primary molting area for females nesting on the Yukon-Kuskokwim Delta in Alaska, while females nesting in northern Alaska migrate to either Ledyard Bay or Mechigmenskiy Bay to molt. Males from all three breeding areas have been found molting in Ledyard Bay, Mechigmenskiy Bay, and in the area between the Indigirka and Kolyma river deltas.

Males reach molting areas first, beginning in late June, and may remain through mid-October. Females that did not breed or whose breeding efforts failed begin arriving in late July. Successfully breeding females reach molting areas in late August or September, and may remain through October. Consequently, flightless eiders are present in molting areas from July to October.

By late October, spectacled eiders follow coastal and offshore migration corridors through the Bering and Chukchi seas to offshore wintering areas. The primary wintering area is in the central Bering Sea south and southwest of St. Lawrence Island. Additional wintering areas have not yet been identified.

In early winter, spectacled eiders have been seen within 50 kilometers of St. Lawrence Island, moving farther offshore as winter progresses. Their late winter location appears to move with annual ice coverage as the birds

While in breeding plumage (October to June), adult male spectacled eiders have a black chest, white back, pale green head with a long sloping forehead, and white spectacle-like patches around the eyes. From July to September, males are entirely mottled brown. Females and juveniles are mottled brown year-round with pale brown eye patches. One of the largest sea ducks, spectacled eiders average 52-56 centimeters (20-22 inches) in length.

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Memorandum

TO: Ron Somerville

FROM: Bill Horn BH

VIA TELEFAX

DATE: March 24, 2000

RE: Critical Habitat/ESA "Horror Stories"

Stephens' Kangaroo Rat

The Stephens' kangaroo rat was added to the list of threatened and endangered species under the Endangered Species Act in 1988. Since then, citizens who own land within the range of this animal have faced significant adverse effects of the listing. A telling example is the story of a family who, in 1990, had 1,600 acres of their ranch in California in a reserve "study area" as part of a Habitat Conservation Plan for the Stephens' kangaroo rat. This family has faced nothing but personal and professional frustration and hardship since the U.S. Fish and Wildlife Service invaded their private property under the guise of protecting this "endangered" animal.

As a result of their property being included in this Habitat Conservation Plan, this hard-working family was forced to quit farming their property, with significant economic impacts. The family lost over $75,000 in income for each of the three years the were unable to grow grain on their land. They also spent over $175,000 on legal fees, biological surveys, and other related costs. Their total costs in lost income and direct costs as a result of the Endangered Species Act were over $400,000. This outrageous sum does not include the thousands of dollars in damages to their property and equipment that occurred during a disastrous fire in 1993 that was blamed by many on the ESA.

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Ferruginous Pygmy Owl

The Ferruginous pygmy owl is a 2-ounce, 7-inch tall bird that is so rare that fewer than 12 were spotted in the state of Arizona in 1998. However, this tiny animal caused developers in the area huge headaches. Northwest of Tuscon, developers wanted to build a new high school on a 73-acre piece of land. However, development of the high school was halted and adjacent property values were driven down because environmentalists sued the U.S. Fish and Wildlife Service to designate as critical habitat for the owl, the school site and adjacent land.

As a result of the controversy, one landowner in the area said he was offered $32,000 an acre for his property a few years before the issue erupted, but later learned that he could only get between $8,000 and $10,000 an acre because of pending critical habitat designation. Further, in order to avoid the lengthy and costly process it would require to develop on the land deemed critical habitat, the school developers were forced to acquire 17 acres of land elsewhere and move their new school away from the owl habitat.

Golden-Cheeked Warbler

The golden-cheeked warbler was listed under the ESA in 1990, but the real problems did not start until 1994, at least for the State of Texas. In early 1994, the Department of the Interior and the FWS announced plans to examine a critical habitat designation for the songbird in 33 Central Texas counties. The plans caused an uproar among lawmakers and landowners in the area. The State of Texas went as far as to file a lawsuit against FWS accusing it of overstepping its authority in enforcing the ESA. The suit contended that the agency was usurping the power of the state to govern itself. As a result of the public and political outcry, the agency called off study for designation, citing public concerns.

Unfortunately, the mere threat of a critical habitat designation was enough to cause significant problems for landowners in the study area. One landowner has attested that, in 1990, her land valued at $830,000. After announcement of the golden-cheeked warbler designation, she claimed that the value of her property plunged over 25 percent.

Tipton Kangaroo Rat

A bamboo farmer in California was accused of plowing under critical habitat belonging to three endangered species and of killing five Tipton kangaroo rats. The federal government sued the farmer, but agreed to drop the case after spending over a

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year in court. In the settlement, the farmer was allowed to continue to farm his land if he waited six months and got state and federal permits allowing him to do so. He also had to promise to donate $5,000 in the name of endangered species protection in the local county.

CORPORATE TAKE OVER OF EARTH DAY BOYCOTTED, PROTESTED

4/20/99

The Southwest Center, Sierra Club, Earth First!, Arizona League of Conservation Voters, the Arizona Green Party, and the Arizona Safe Energy Commission boycotted Tucson's Earth Day celebration after being told that participants are not permitted to criticize the event's sponsors, which just happened to include Raytheon Missile Systems, Waste Management, and HBP Copper. For $2,000, corporate polluters were not only able to buy a good greenwashing, they were able to ban public criticism.

The Earth Day organizers attempted to defend the assault on free speech by saying that Earth Day is "not supposed to be political forum." Shane Jimerfield, of the Southwest Center responded in the Arizona Daily Star saying Raytheon is "part of the war machine and we know what the war machine is doing to the planet. The military is one the largest global polluters." Earth First! later decided to participate, crashing the downtown parade with banner proclaiming "Raytheon Presents Kill The Earth Day."

ALASKA OIL DEVELOPMENT PROJECT DELAYED FOR UP TO A YEAR

4/20/99

Development of the first underwater oil pipeline in America's arctic came to a temporary halt this month when the U.S. Fish and Wildlife Service contested the Army Corps of Engineers' issuance of a permit for BP's Northstar project in Alaska. The Northstar project would develop a 145-million-barrel oil field off

Alaska's North Slope and involve a subsea pipeline snaking from an artificial island created 7 miles offshore. The project would severely impact habitat for the endangered bowhead whale and the threatened Steller's eider and spectacled eider. The Fish & Wildlife Service has proposed that BP choose a different pipeline route that would be less catastrophic in the event of a spill. BP had already begun building ice-roads to the site of the island construction. The agency's objections will likely delay the project for a year as BP can only build in winter when the Beaufort Sea is frozen solid.

The Southwest Center is currently suing the Fish & Wildlife Service to force the agency to designate critical habitat for the Steller's and spectacled eiders. Critical habitat for these sea ducks would likely encompass the Northstar project area, ensuring their habitat is protected from oil production.

FISHERMEN AND ENVIRONMENTALISTS WILL SUE TO PROTECT CALIFORNIA'S THREATENED STEELHEAD TROUT

4/20/99

On 4-14-99, the Southwest Center and a coalition of conservation and fishermen's groups formally notified the National Marine Fisheries Service (NMFS) of their intent to sue the federal agency for failing to protect California's threatened steelhead trout. Joining the Southwest Center were the Alameda Creek Alliance, the Pacific Coast Federation of Fishermen's Associations, the Northern California Federation of Flyfishers, the California Sportfishing Protection Alliance, the Turtle Island Restoration Network, the South Yuba River Citizen's League, and the Coastside Habitat Coalition.

AROUND THE STATE

Woman sentenced for animal cruelty

KENAI – A Soldotna-area woman convicted of cruelty to animals has been sentenced to a year in jail for the crime, the maximum term.

Superior Court Judge Jonathan Link handed down his sentence for Miriam Mahan on Monday. He also put her on probation for 10 years and said she can't own more than one animal in that time – and the animal can't be a horse.

Mahan, 36, was convicted by a jury earlier this month. She was charged after Alaska State Troopers found more than 120 animals in poor condition last September at her home. Many had not been fed for some time.

Troopers found nine horses, 34 pigs, eight cows, 21 dogs, 10 cats, 18 sheep, two llamas, six turkeys, three chickens, five ducks, a goat, a cockatoo, a parrot, a chinchilla and a pheasant.

Mahan was a fugitive at the time. Her family called authorities because they were concerned about the condition of the animals.

The animals were parceled out to private citizens and the Alaska Equine Rescue Association. Judge Link also ruled Monday that Mahan had to forfeit all the animals. Mahan was already in prison, serving six years for two drug crimes.

Steller's eider wins protection

ANCHORAGE – The federal government wants to extend protection across a wide section of Alaska for the Steller's eider, a threatened sea duck. The move comes after the settlement of a lawsuit by environmentalists and a Christian group.

The U.S. Fish and Wildlife Service proposed Monday that more than 25,000 square miles from the North Slope to Kodiak be designated as critical habitat for the eider. Critical habitat means an important conservation area for a threatened or endangered species that may require special management.

The proposal would require federal agencies to consult with Fish and Wildlife officials before funding or authorizing projects that might affect the species.

The agency has selected about 17,000 square miles of land and 8,440 square miles of marine waters as proposed critical habitat, much of it on the North Slope and the Yukon-Kuskokwim Delta.

"Critical habitat doesn't create a national park or a nature preserve or a wildlife refuge. It does not change or limit the rights of private landowners," said Richard Hannan, chief of fisheries and ecological services for Fish and Wildlife's Alaska office.

But landowners and businesses are worried anyway. "It gives cause for pause because of the enormous amount of activity that occurs in this area," said Doug Donegan, vice president of Trident Seafoods.

Logging...

Continued from Page 1

cover, the soil is protected from track vehicles, he said.

The trees taken were eventually slated to come down, once a proposed extension of North Douglas Highway occurs, Goade said.

P.O. Box 129
Barrow, Alaska 99723
Phone: (907)852-8633 / 852-9459
Fax: (907)852-5733

Arctic Slope Regional Corporation

Fax

To: Co-Chair Bill Hudson
Co-Chair Beverly Masek

From: Tina Wolgemuth

Fax: 465-2273
465-4822

Date: April 5, 2000

Phone:

Pages: 11 including cover

Re: Testimony from Oliver Leavitt

CC:

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

Comments: Please see the attached testimony from Oliver Leavitt for today's hearing at 1:00pm. Feel free to call should you have any questions. Thank you.

Tina Wolgemuth

PEPARED TESTIMONY OF OLIVER LEAVITT

GOOD AFTERNOON. MY NAME IS OLIVER LEAVITT. I AM THE VICE PRESIDENT OF LANDS FOR THE ARCTIC SLOPE REGIONAL CORPORATION.

I AM HERE THIS AFTERNOON TO URGE THE STATE OF ALASKA TO JOIN WITH US IN OPPOSING THE DESIGNATION OF MUCH OF THE NORTH SLOPE AS CRITICAL HABITAT FOR SPECTACLED AND STELLER'S EIDERS. THE STAKES ARE HIGH. UNLESS WE RESPOND QUICKLY AND WITH ALL THE MEANS AT OUR DISPOSAL, THE EIDERS WILL DO FOR THE NORTH SLOPE WHAT THE SPOTTED OWL DID FOR THE ECONOMY OF THE PACIFIC NORTHWEST.

I BELIEVE ASRC AND THE STATE HAVE A COMMON INTEREST IN OPPOSING THIS LATEST EXAMPLE OF REGULATORY OVERREACHING. ASRC OWNS 5 MILLION ACRES OF LAND ON THE NORTH SLOPE. LESS THAN TEN YEARS AGO, ASRC ENTERED INTO AN HISTORIC AGREEMENT WITH THE STATE OF ALASKA IN WHICH WE MERGED OUR TITLES IN THE COLVILLE DELTA TO FACILITATE OIL AND GAS DEVELOPMENT.

THE WISDOM OF THAT POLICY IS APPARENT TODAY. THIS SUMMER, THE ALPINE FIELD WILL GO INTO PRODUCTION. THIS WILL BE THE FIRST COMMERCIAL DEVELOPMENT OF OIL ON ASRC'S LANDS. THE

ALPINE FIELD AND OTHER SMALL TO MEDIUM FIELDS IN THE PROCESS OF DEVELOPMENT WILL HELP THE STATE OF ALASKA TO OFFSET THE REVENUE DECLINE FROM PRUDHOE BAY.

YOU ARE WELL AWARE THAT EVERY ATTEMPT TO DEVELOP OIL AND GAS ON THE NORTH SLOPE IS MET WITH LITIGATION BY THE SELF APPOINTED ENVIRONMENTAL OMBUDSMEN. RECENTLY, FOR EXAMPLE, ASRC JOINED WITH THE STATE AND ARCO TO DEFEAT A COURT CHALLENGE THAT THREATENED TO STOP THE ALPINE PROJECT IN ITS TRACKS.

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HAVING SAID THIS, WE HAVE SEEN MORE THAN OUR SHARE OF POLITICALLY MOTIVATED SCIENCE. IN MY LIFETIME I HAVE WITNESSED AN ATTEMPT TO END THE WHALE HUNT BECAUSE SOME SCIENTISTS PREDICTED THAT THE BOWHEAD WERE NEARING EXTINCTION. IT TURNED OUT THAT THE INUPIAT HUNTERS KNEW A GOOD DEAL MORE ABOUT THE STATUS OF THE BOWHEAD STOCKS THAN BIOLOGISTS WHO HAVE NEVER LIVED IN THE ARCTIC.

I BELIEVE THAT THE PROPOSAL TO DESIGNATE MOST OF THE COASTAL PLAIN OF THE NORTH SLOPE AS CRITICAL HABITAT FOR TWO SPECIES OF EIDERS IS ANOTHER EXAMPLE OF POLITICALLY MOTIVATED SCIENCE. THE FISH AND WILDLIFE SERVICE ADMITS THAT DESIGNATING CRITICAL HABITAT WILL DO NOTHING TO HASTEN THE RECOVERY OF THE EIDERS. IT WILL, HOWEVER, PROVIDE A POWERFUL NEW LITIGATION TOOL FOR THOSE WHO WANT TO STOP DEVELOPMENT IN THE ARCTIC.

THE SPECTACLED EIDER WAS LISTED AS ENDANGERED LESS THAN TEN YEARS AGO. THE STELLER'S EIDER WAS ADDED TO THE THREATENED LIST ONLY THREE YEARS AGO. IN BOTH CASES, THE FISH AND WILDLIFE SERVICE CONCLUDED THAT IT WOULD NOT BE PRUDENT TO DESIGNATE CRITICAL HABITAT FOR A VERY SIMPLE REASON: THERE IS NO EVIDENCE WHATSOEVER THAT HABITAT DESTRUCTION OR SCARCITY HAS CONTRIBUTED TO DECLINE OF THE SPECIES.

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THE FISH AND WILDLIFE SERVICE IS TELLING EVERYONE NOT TO WORRY, THAT DESIGNATING CRITICAL HABITAT WILL NOT CHANGE THE ENDANGERED SPECIES ACT CONSULTATION REQUIREMENTS THAT ARE ALREADY IN EFFECT. THE ENVIRONMENTAL ORGANIZATIONS KNOW BETTER THAN THAT. WHY ELSE WOULD THEY GO TO THE TROUBLE AND EXPENSE OF SUING THE SERVICE? SETTLING THE LITIGATION WAS JUST A CONVENIENT EXCUSE FOR FURTHERING A COMMON AGENDA AND GIVING BOTH THE FISH AND WILDLIFE SERVICE AND THE ENVIRONMENTAL ORGANIZATIONS MORE CONTROL OVER OIL AND GAS DEVELOPMENT ON THE NORTH SLOPE.

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CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION

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EXERCISED IN MODERATION BY GROUPS LIKE THE TRUSTEES FOR ALASKA HAS NEVER TRIED TO DEVELOP LAND IN THE ARCTIC.

RECENTLY THE DEPARTMENT OF THE INTERIOR DECLARED APPROXIMATELY 700,000 ACRES OF PROSPECTIVE OIL AND GAS LANDS IN NPRA OFF LIMITS TO DEVELOPMENT AS SPECTACLED EIDER BREEDING RANGE. IF A CRITICAL HABITAT DESIGNATION IS TO BE MADE, IT SHOULD BE LIMITED TO THE AREA ALREADY IDENTIFIED AND SET ASIDE BY THE DEPARTMENT OF THE INTERIOR.

THANK YOU FOR PROVIDING THE OPPORTUNITY TO PRESENT MY VIEWS ON AN ISSUE OF CRITICAL IMPORTANCE TO BOTH ASRC AND THE STATE OF ALASKA.

United States Department of the Interior

OFFICE OF THE SOLICITOR
Alaska Region
4230 University Drive
Suite 300
Anchorage, Alaska 99508-4626

PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

November 29, 1999

MEMORANDUM

TO: Laverne Smith
Associate Regional Director, Fisheries & Ecological Services
U.S. Fish and Wildlife Service, Region 7

FROM: Lisa Del Compare
Attorney
Alaska Region

SUBJECT: Proposed Rule to Designate Critical Habitat for the Spectacled Eider

The attached proposed rule was submitted to this office on November 12, 1999 for our review. The proposed rule proposes to designate areas on the Alaska's North Slope, the Yukon-Kuskokwim Delta, Norton Sound, Ledyard Bay, and the central Bering Sea south of St. Lawrence Island as critical habitat areas for the spectacled eider. We are surnaming this proposed rule with the changes indicated on the draft. However prior to finalization of a rule designating critical habitat, the Service should consult with the Solicitor's office in addressing how the definition of critical habitat applies in circumstances in which potential habitat loss is not a factor affecting the recovery of a species, as appears to be the situation with regard to the spectacled eiders in their breeding grounds. Some preliminary thoughts are set forth below to providing a starting point for discussion.

Within those geographical areas currently occupied by a species, critical habitat is defined as areas containing those physical or biological features essential to the conservation of the species, and that may require special management considerations or protection. 16 U.S.C. § 1532(5)(A)(i); 50 C.F.R. § 424.02(d). The first part of this definition refers to the "conservation" of the species, not just the survival of the species. "Conservation" is defined by the Endangered Species Act (ESA) as "all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to [the ESA] are no longer necessary." 16 U.S.C. § 1532(3).

Given this focus in the ESA on the conservation of the species, this office believes it appropriate to consider the criteria for recovery in the Recovery Plan for the spectacled eider in the analysis

of the definition of critical habitat. The Recovery Plan states that spectacled eiders will be considered recovered when each of the three recognized populations: 1) is stable or increasing over 10 or more years and the minimum estimated population size is at least 6,000 breeding pairs, or 2) numbers at least 10,000 breeding pairs over 3 or more years, or 3) numbers at least 25,000 breeding pairs in one year.

The proposed rule proposes to designate all those geographic areas occupied by the spectacled eider as critical habitat. The Service appears to have taken the approach that those areas occupied by the spectacled eider contain physical or biological features such as food or water necessary for breeding or molting that are essential to the conservation of the species. While it is true that spectacled eiders could not survive without any habitat, let alone reach the level required for delisting, it is certainly possible that the spectacled eider could recover despite the loss of a portion of those geographic areas it currently occupies. Although the Service may not know how much of the occupied areas is necessary for recovery or which portion of the occupied areas is necessary for recovery, the Service has determined recovery goals for the spectacled eider. The Service could address whether potential threats to habitat in the occupied areas could potentially result in the loss of physical or biological elements of the habitat to such an extent that it would become difficult or impossible to reach the recovery goals.

In the draft proposed rule, the Service suggests that potential habitat loss on the Alaska breeding grounds would not have an impact on whether recovery goals are achieved in the foreseeable future. The proposed rule indicates that future oil development on the North Slope can be expected to cause less surface disturbance than was experienced at Prudhoe Bay, where gravel fill amounted to less than 0.25%. It also states that the potential for small amounts of future human development on the Y-K Delta and North Slope due to the increasing human population there is not a conservation issue in the foreseeable future. In addition, millions (or is billions?) of acres are being proposed as critical habitat in the breeding grounds alone, and a significant percentage of this acreage contains primary constituent elements. In contrast, during winter, nearly all individuals of spectacled eider tend to occupy an area of ocean less than 50 km in diameter, and the species is particularly vulnerable to habitat disturbances such as oil spills or environmental contaminants affecting these areas.

If in fact, the Service has determined that potential habitat loss on the breeding grounds is not a factor limiting the recovery of the spectacled eider in the foreseeable future, it might not be appropriate to consider the breeding grounds as having those physical and biological elements essential to the conservation of the spectacled eider. Otherwise all occupied areas will be areas essential to the conservation of the species, since presumably all occupied areas will contain at least one primary constituent element such as food or water or the area would not be an occupied area in the first place. As stated above, the definition of critical habitat in the ESA is explicit that critical habitat in occupied areas contain physical or biological elements essential to the conservation of the species, 16 U.S.C. § 1532(5)(A)(i), and conservation is defined in terms of recovery of the species, 16 U.S.C. § 1532(3).

Those situations where potential habitat loss is not a factor limiting the recovery of a listed species, also call into question whether there is any need for special management considerations or protection. In occupied areas, the definition of critical habitat requires that geographic areas designated as critical habitat need special management considerations or protection. We are unaware of any definitive guidance on what constitutes a need for special management considerations or protection. However, it could be argued that implicit in the definition of critical habitat is that the special management considerations or protections be to protect habitat, not merely the survival of the species. Thus habitat-related threats would be required in order for special management considerations or protections to be necessary. In occupied areas where potential habitat loss is not a factor limiting the future recovery of the species in the foreseeable future, it seems questionable whether there would ever be a need for special management considerations or protections to protect habitat.

These views are the preliminary views of the Alaska Region of the Office of the Solicitor. We expect additional viewpoints and discussion to be generated during the public comment period on the proposed rule. We recommend further discussions between the Service and the Solictor's office on this issue throughout and following the comment period.

I would be glad to discuss this proposed rule with you. Please do not hesitate to contact me if you have any questions regarding my comments. I can be reached at (503) 271-4131.

Sincerely,

Lisa Del Compare

Lisa Del Compare

cc: Pete Raynor, SOL DC Parks and Wildlife

SB

7

1-LS0072\S
Luckhaupt
2/5/00

HOUSE CS FOR CS FOR SENATE BILL NO. 7(RES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS TAYLOR, Tim Kelly, Donley, Wilken, Leman, Pearce, Mackie, Ward

REPRESENTATIVE Halcro

A BILL

FOR AN ACT ENTITLED

"An Act relating to the University of Alaska and university land and authorizing the University of Alaska to select additional state land."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

FINDINGS AND PURPOSE. The legislature finds that

(1) as the beneficiary under the provisions of the Acts of August 30, 1890, and March 4, 1907, designating the Alaska Agricultural College and School of Mines as beneficiary, and of March 4, 1915, 38 Stat. 1214, transferring certain land for its location and support, the University of Alaska is a land grant university;

(2) under the Acts of March 4, 1915, 38 Stat. 1214, and January 21, 1929, 45 Stat. 1091, the Congress of the United States granted to the Territory of Alaska certain federal land to be held in trust for the benefit of the predecessor of the University of Alaska;

(3) the Territory was unable to receive most of the land conveyed by the Act

of March 4, 1915, before repeal of that Act by Sec. 6(k) of the Alaska Statehood Act (P.L. 85-508, 72 Stat. 339);

(4) the Congress of the United States granted the State of Alaska the right to select 102,500,000 acres of federal land under Sec. 6(b) of the Alaska Statehood Act;

(5) the land selection rights embodied in the Alaska Statehood Act reflect in part congressional recognition that the state would need the land to support its government and programs, and the Congress assumed that the State of Alaska would in turn devote some of the land or the income from it for the use and benefit of the University of Alaska;

(6) most land grant colleges in the western United States have obtained a larger land grant from the federal government than the University of Alaska has received;

(7) an academically strong and financially secure state university system is a cornerstone to the long-term development of a stable population and to a healthy, diverse economy in the state;

(8) it is in the best interests of the state and the University of Alaska that the university take ownership of a significant and substantial portfolio of income producing land in order to provide income for the support of public higher education in the state; and

(9) renewable resources should be managed on a sustained yield basis, taking into account the total land grant.

* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE INTENT. It is the intent of the legislature that the University of Alaska

(1) receive land under this Act in an expeditious fashion; and

(2) encourage the development of in-state value-added industries to the maximum extent feasible when developing land conveyed under AS 14.40.365.

* **Sec. 3.** AS 14.40.170(a) is amended to read:

(a) The Board of Regents shall

(1) appoint the president of the university by a majority vote of the whole board, and the president may attend meetings of the board;

(2) fix the compensation of the president of the university, all heads of departments, professors, teachers, instructors, and other officers;

(3) confer such appropriate degrees as it may determine and prescribe;

(4) have the care, control, and management of

(A) all the real and personal property of the university; and

(B) land

(i) conveyed to the Board of Regents by the commissioner of natural resources in the settlement of the claim of the University of Alaska to land granted to the state in accordance with the Act of March 4, 1915 (38 Stat. 1214), as amended, and in accordance with the Act of January 21, 1929 (45 Stat. 1091), as amended; and

(ii) selected by the University of Alaska and conveyed to it by the commissioner of natural resources under AS 14.40.365, except as provided in AS 14.40.368(2);

(5) keep a correct and easily understood record of the minutes of every meeting and all acts done by it in pursuance of its duties;

(6) under procedures to be established by the commissioner of administration, and in accordance with existing procedures for other state agencies. have the care, control, and management of all money of the university and keep a complete record of all money received and disbursed;

(7) adopt reasonable rules for the prudent trust management and the long-term financial benefit to the university of the land of the university;

(8) provide public notice of sales, leases, exchanges, and transfers of the land of the university or of interests in land of the university.

* Sec. 4. AS 14.40.291 is amended to read:

Sec. 14.40.291. Land of the University of Alaska not public domain land. (a) Notwithstanding any other provision of law, university-grant land, state replacement land that becomes university-grant land on conveyance to the university, **land selected by and conveyed to the University of Alaska under AS 14.40.365,** and any other land owned by the University of Alaska is not and may not be treated as state public domain land. **Land conveyed to the University of Alaska under AS 14.40.365 shall be managed under AS 14.40.365 - 14.40.368 and policies of the Board of Regents of the University of Alaska.**

(b) Title to or interest in [TO] land described in (a) of this section may not be acquired by adverse possession, prescription, or in any other manner except by conveyance from the university.

(c) The land described in (a) of this section is subject to condemnation for public purpose in accordance with law.

* Sec. 5. AS 14.40 is amended by adding new sections to read:

Sec. 14.40.365. University land from Statehood Act land selection conveyances. (a) The University of Alaska may select and is entitled to receive the conveyance of not less than 250,000 and not more than 260,000 acres of land conveyed to the state under Sec. 6(b) of the Alaska Statehood Act (P.L. 85-508, 72 Stat. 339). The Board of Regents of the University of Alaska shall annually submit a list of selections to the commissioner of natural resources and, if the list of selections contains land within the boundaries of a municipality, the Board of Regents of the University of Alaska shall submit the list to the municipality. If there is disagreement between the university and the commissioner of natural resources about the land selected, the disagreement must be submitted to the governor, who shall make the final decision. The Board of Regents and the governor shall annually and jointly submit to the legislature, within 30 days of the beginning of a regular legislative session, a list of the selections of land proposed to be conveyed by the state to the University of Alaska under this section. If the list submitted to the legislature contains land within the boundaries of a municipality, the Board of Regents and the governor shall provide a copy of the list to the municipality. Each list must contain not more than 25 percent of the total acres of land to which the university is entitled after subtracting previous conveyances under this section, but not less than 25,000 acres or the remaining entitlement under this section, whichever is less. The legislature may by law approve or disapprove the list of selections submitted to it. A list of selections submitted shall, not be considered approved for conveyance to the University of Alaska unless if the legislature acts to approve does not disapprove the list during the legislative session during which the list was submitted. If the amount of land to be conveyed exceeds the balance due the university under this section, the university shall set out the land to be conveyed in priority order. Land may not be selected if, on the date of its selection by the

university, it

(1) has been reserved by law from the public domain;

(2) is located within a municipality that has not received at least 80 percent of its land entitlement under AS 29.65 and is not vacant, unappropriated, unreserved land; in this paragraph, "vacant, unappropriated, unreserved land" has the meaning given in AS 29.65.130;

(3) is land

(A) included in a five-year proposed oil and gas leasing program under AS 38.05.180(b); or

(B) leased under, or for which a lease application is pending under, AS 38.05.180(d) or 38.05.150;

(4) is subject to

(A) an oil, gas, or coal lease, or coal prospecting permit;

(B) a mining claim, offshore prospecting permit, a prospecting site, an upland mining lease, or a mining leasehold location;

(5) is necessary to carry out the purpose of an interagency land management agreement; or

(6) is subject to conveyance under a land exchange or land settlement agreement.

(b) Notwithstanding AS 38.05.125(a), the transfer of ownership and management of land from the Department of Natural Resources to the Board of Regents of the University of Alaska under this section includes the interest of the state in

(1) the coal, ores, minerals, fissionable materials, geothermal resources, and fossils that may be in or on the land; and

(2) the oil and gas that may be in or on the land, but only as to land that is selected by the University of Alaska under this section on and after the date that is the fifth anniversary of the effective date of this section.

(c) When the University of Alaska selects the land to which it is entitled under this section, selections must be made in parcels of 640 acres or larger unless the selection is an isolated tract or the commissioner of natural resources finds it is in the

best interest of the state to convey less. When the University of Alaska becomes entitled to land under this section, the commissioner of natural resources shall convey a document of interim conveyance under (j) of this section or a patent to land.

(d) Notwithstanding any other provision of law, for land selected under (a) of this section but not yet patented to the University of Alaska or for which a document of interim conveyance has not been issued to the University of Alaska under this section,

(1) the state is authorized to enter into contracts and grant leases, licenses, prospecting sites, claims, permits, rights-of-way, or easements and any interim conveyance or patent shall be subject to the contract, lease, license, prospecting site, claim, permit, right-of-way, or easement, except that the authority granted the state by this paragraph is the authority that the state otherwise would have had under existing laws and regulations had the land not been selected by the University of Alaska;

(2) income from and management of the land is subject to AS 14.40.368.

(e) Unless the governor provides otherwise under (a) of this section, the governor may not include on a list of selections of land submitted to the legislature a land selection made by the University of Alaska under this section if the commissioner of natural resources determines that the proposed selection

(1) includes land that the commissioner, in consultation with the commissioner of fish and game, determines has demonstrated value to the public as a habitat area that is especially critical to the perpetuation of fish or wildlife;

(2) includes land for which, at the time of its selection under this section, a municipality has made a selection under AS 29.65 unless the land selection is, at a later date, rejected by the commissioner of natural resources or relinquished by the municipality;

(3) includes land within the boundaries of a municipality, the municipality has a remaining entitlement under AS 29.65, and the municipality selects the land under AS 29.65 after its selection by the Board of Regents and before the Board of Regents and the governor jointly submit their list of land selections to the legislature; or

(4) includes land that, at the time of its selection under this section,

(A) is subject to an oil and gas exploration license; or

(B) the commissioner reasonably believes will be made part of an oil and gas exploration license issued under AS 38.05.131 - 38.05.134; the commissioner may not refuse to convey title to land to the University of Alaska under this subparagraph for more than three years after its first selection by the University of Alaska.

(f) When land is conveyed to the University of Alaska under this section, the University of Alaska takes the land subject to any possessory interest held by another person on the effective date of the conveyance.

(g) In conveying land to the University of Alaska under this section, the commissioner of natural resources shall give public notice that substantially complies with notice requirements under AS 38.05.945(b) and (c) and provide for access under AS 38.05.127, but other provisions of AS 38.04 and AS 38.05 do not apply.

(h) Land transferred or conveyed to the University of Alaska under this section

(1) is subject to

(A) Sec. 6(i) of the Alaska Statehood Act (P.L. 85-508, 72 Stat. 339);

(B) art. IX of the state constitution;

(C) AS 19.10.010;

(D) the payment requirements to the Alaska permanent fund under AS 37.13.010(a) and (b); and

(E) any easement, right-of-way, or other access claimed, reserved, occupied, or possessed by the state and any rights of the state under former 43 U.S.C. 932 (sec. 8, Act of July 26, 1866, 14 Stat. 253);

(2) excludes any interest transferred to the state by quitclaim deed dated June 30, 1959, under authority of the Alaska Omnibus Act, P.L. 86-70, 73 Stat. 141;

(3) based on a land selection filed by the University of Alaska on or after the effective date of this section and until the day before the day that is the fifth anniversary of the effective date of this section, is subject to reservation by the state in perpetuity of all oil and gas that may be in or on the land, together with the right

to explore the land for oil and gas and to remove from the land all oil and gas located in and on it.

(i) The University of Alaska shall bear all costs of selection, platting, surveying, and, except as provided in (k) of this section, conveyance of the land that it selects under this section and, subject to appropriation, shall reimburse the Department of Natural Resources for the reasonable costs incurred by that department relating to that selection, platting, surveying, and conveyance. As to land due the University of Alaska under (c) of this section,

(1) if the land has been surveyed, the boundaries of the land conveyed must conform to the public land subdivisions established by the approved survey;

(2) if the land is unsurveyed, the commissioner shall survey the exterior boundaries of the land to be conveyed without interior subdivision and shall issue patent in terms of the exterior boundary survey within one year of the later of the effective date of the approval by the legislature of the list containing the land or the adjournment of the legislative session during which the list containing the land was not disapproved by the legislature.

(j) For land due the University of Alaska under (c) of this section that is unsurveyed, pending the survey of exterior boundaries and issuance of patent, the commissioner of natural resources shall, within one year of the later of the effective date of the approval by the legislature of the list containing the land or the adjournment of the legislative session during which the list containing the land was not disapproved by the legislature, prepare and provide to the University of Alaska a document of interim conveyance for the land to be conveyed.

(k) Except as provided in AS 14.40.368(2), management of land conveyed to the University of Alaska by patent or by a document of interim conveyance vests with the University of Alaska from the date of recording of the patent or document of interim conveyance. The state shall pay the cost of recording all patents and documents of interim conveyance.

(l) The University of Alaska may not make a land selection under this section after December 31, 2010.

(m) The commissioner may not convey land under this section unless the

commissioner reserves easements, rights-of-way, and other forms of access

(1) required under the Constitution of the State of Alaska or other law; and

(2) sufficient to ensure all current access, and reasonably foreseeable future access, to adjacent public or private land or water.

Sec. 14.40.366. Management requirements for university land. (a) The Board of Regents shall, by policy, establish procedures for mineral entry or location and mineral leasing on university land selections made under AS 14.40.365 that are substantially similar to mineral entry, location, and leasing procedures for state land under AS 38.05.185 - 38.05.275.

(b) Notwithstanding other provisions of law, the University of Alaska shall seek public comment on proposals for development, exchange, or sale of university selections made under AS 14 40.365. The Board of Regents shall adopt policies that provide that the university shall prepare an annual plan for management and disposition of university land under this section and shall, not less than 60 days before scheduled approval by tl Board of Regents of the plan,

(1) make copies of the plan available at all legislative information offices and at other locations as the university may designate;

(2) publish a notice in newspapers of general circulation in the state that provides the public with information on the locations where the plan is available for public inspection;

(3) give notice to all legislators and to local governments with jurisdiction over the lana affected by the proposal; and

(4) seek public comment on the annual plan before action by the Board of Regents approving the plan.

(c) Subject to appropriation of the income, the Board of Regents shall use an amount up to 20 percent of the earnings derived from the management of university land conveyed to the university under AS 14.40.365 for programs and services supporting the development of natural resources within the region from which the earnings were derived. The earnings shall be used by the campus or campuses located within the region from which the earnings were derived if a municipality within which

the campus or campuses are located provides to the campus or campuses a match of the same amount. This subsection does not apply if the match is not made available by a municipality.

(d) Before the conveyance or the disposal of an interest in the land to a third party, land conveyed to the University of Alaska under AS 14.40.365 shall be managed in a manner that, to the maximum extent practicable, permits activities of the public that do not interfere with the use of the land by the university.

Sec. 14.40.367. Confidential records. Notwithstanding AS 09.25.100 - 09.25.220, on a determination that it is in the best interest of the University of Alaska or on the request of the person who has provided the information, the president of the university may keep the following confidential:

(1) the name of a person applying for the sale, lease, or other disposal of university land or an interest in university land;

(2) before the issuance of a notice of intent to award a contract relating to a sale, lease or disposal of university land or an interest in university land, the names of the participants and the terms of their offers;

(3) all geological, geophysical, engineering, architectural, sales, appraisal, gross receipts, net receipts, or other financial information relating to university land or an interest in university land and considered for or offered for disposal or currently subject to a contract;

(4) cost data and financial information submitted by an applicant in support of applications for bonds, leases, or other information in offerings and ongoing operations relating to management of university land;

(5) applications for rights-of-way or easements across university land; and

(6) requests for information about or applications by public agencies for university land that is being considered for use for a public purpose.

Sec. 14.40.368 Land subject to encumbrances and trespasses. Except as provided in AS 14.40.365(b), for the land selected by the University of Alaska under AS 14.40.365 that is subject to a lease, license, contract, prospecting site, claim, sale, permit, right-of-way, or easement, or to trespass,

(1) if the lease, license, contract, prospecting site, claim, sale, permit, right-of-way, easement, or trespass

(A) existed before the selection of the land by the University of Alaska, the state is entitled to receive the income obtained from the lease, license, contract, prospecting site, claim, sale, permit, right-of-way, easement, or trespass for the duration of the term of the lease, license, contract, prospecting site, claim, sale, permit, right-of-way, or easement, or of the trespass, and during any renewal of it that is authorized by the lease, license, contract, prospecting site, claim, sale permit, right-of-way, or easement, or by law;

(B) did not exist before the selection of the land by the University of Alaska,

(i) the state is entitled to receive the income obtained from the lease, license, contract, prospecting site, claim, sale, permit, right-of-way, or easement, or from trespass before the recording of the conveyance to the University of Alaska by the issuance of a document of interim conveyance or a patent;

(ii) the University of Alaska is entitled to receive the income obtained from the lease, license, contract, prospecting site, claim, sale, permit, right-of-way, or easement, or from trespass on the date of and after the recording of the conveyance to the University of Alaska by the issuance of a document of interim conveyance or a patent;

(2) the responsibility for the management of the land vests with the University of Alaska only upon conclusion of the term of the lease, license, contract, prospecting site, claim, sale, permit, right-of-way, or easement, and any renewal authorized by the lease, license, contract, prospecting site, claim, sale, permit, right-of-way, or easement, or by law, if the lease, license, contract, prospecting site, claim, sale, permit, right-of-way, or easement existed before the land's being selected by the university; if the lease, license, contract, prospecting site, claim, sale, permit, right-of-way, or easement was entered into after selection, then the responsibility for

management vests with the university on the date of recording of the conveyance of the land to the university by a document of interim conveyance or patent.

* **Sec. 6.** AS 14.40.400(a) is amended to read:

(a) The Board of Regents shall establish a separate endowment trust fund in which shall be held in trust in perpetuity **all**

(1) [ALL] net income derived from the sale or lease of the land granted under the Act of Congress approved January 21, 1929, as amended; [AND]

(2) **net income derived from the sale, lease, or management of the land selected by and conveyed to the University of Alaska under AS 14.40.365; and**

(3) [ALL] monetary gifts, bequests, or endowments made to the University of Alaska for the purpose of the fund.

* **Sec. 7.** AS 29.45.030(a) is amended to read:

(a) The following property is exempt from general taxation:

(1) municipal property, including property held by a public corporation of a municipality, [OR] state property, **property of the University of Alaska,** or land that is in the trust established by the Alaska Mental Health Enabling Act of 1956, P.L. 84-830, 70 Stat. 709, except that

(A) a private leasehold, contract, or other interest in the property is taxable to the extent of the interest;

(B) notwithstanding any other provision of law, property acquired by an agency, corporation, or other entity of the state through foreclosure or deed in lieu of foreclosure and retained as an investment of a state entity is taxable; this subparagraph does not apply to federal land granted to the University of Alaska under AS 14.40.380 or 14.40.390, [OR] to other land granted to the university by the state to replace land that had been granted under AS 14.40.380 or 14.40.390**, or to land conveyed by the state to the university under AS 14.40.365**;

(C) an ownership interest of a municipality in real property located outside the municipality acquired after December 31, 1990, is taxable by another municipality; however, a borough may not tax an interest in real

property located in the borough and owned by a city in that borough;

(2) household furniture and personal effects of members of a household;

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes;

(4) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of an auxiliary of that organization;

(5) money on deposit;

(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section;

(7) real property or an interest in real property that is exempt from taxation under 43 U.S.C. 1620(d), as amended;

(8) property of a political subdivision, agency, corporation, or other entity of the United States to the extent required by federal law; except that a private leasehold, contract, or other interest in the property is taxable to the extent of that interest;

(9) natural resources in place including coal, ore bodies, mineral deposits, and other proven and unproven deposits of valuable materials laid down by natural processes, unharvested aquatic plants and animals, and timber.

* Sec. 8. AS 41.17.115(b) is amended to read:

(b) The commissioner shall adopt regulations for the protection of riparian areas; the regulations may include higher standards of protection for fish and other public resources on land managed by the department **or owned by the University of Alaska** than on other public land or private land. The regulations may vary by region of the state and must take into consideration reasonable classification of water bodies and the economic feasibility of timber operations.

* Sec. 9. AS 41.17.118(a) is amended to read:

(a) The riparian standards for state land**, including land owned by the University of Alaska,** are as follows:

(1) on state forest land managed by the department **or owned by the University of Alaska** that is located north of the Alaska Range, harvest of timber may not be undertaken within 100 feet immediately adjacent to an anadromous or high value resident fish water body unless the division determines that adequate protection remains for the fish habitat;

(2) on state forest land managed by the department **or owned by the University of Alaska** that is located south of the Alaska Range,

(A) harvest of timber may not be undertaken within 100 feet immediately adjacent to an anadromous or high value resident fish water body;

(B) between 100 and 300 feet from the water body, timber harvest may occur but shall be consistent with the maintenance of important fish and wildlife habitat.

* **Sec. 10.** AS 41.17.950(11) is amended to read:

(11) "other public land" means state land managed by state agencies other than the department **or the University of Alaska and** [,] land owned by a municipality [, AND LAND OWNED BY THE UNIVERSITY OF ALASKA];

* **Sec. 11.** AS 41.17.950(13) is amended to read:

(13) "riparian area" means

(A) the areas specified in AS 41.17.116(a) on private land in the coastal forest of spruce or hemlock;

(B) the areas specified in regulations adopted by the commissioner under AS 41.17.116(b) on private land outside the coastal forest of spruce or hemlock;

(C) the area 100 feet from the shore or bank or an anadromous or high value resident fish water body on state land managed by the department **or owned by the University of Alaska** and on other public land;

TONY KNOWLES, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

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February 8, 2000

Honorable Bill Hudson
Co-Chair
House Resources Committee
Capitol Building, Room 108
Juneau, AK 99801

Honorable Beverly Masek
Co-Chair
House Resources Committee
Capitol Building, Room 128
Juneau, AK 99801

Dear Representatives Hudson and Masek:

The Department of Fish and Game would like to express its concerns regarding the following sections of HCS CSSB 7(RES) "An Act relating to the University of Alaska and university land, and authorizing the University of Alaska to select additional state land":

1. Section 5 (a) (1): The department is concerned that this provision does not adequately protect legislatively-designated areas such as wildlife refuges, wildlife sanctuaries, and critical habitat areas from selection, since these areas are not explicitly reserved by law from the public domain.

2. Section 5 (e) (1): The Department is very concerned that the bill will allow the University of Alaska to select lands that are currently designated as fish and wildlife habitat in state area plans. Further, since not all state lands have been classified under a state area plan, it is possible that lands that qualify for fish and wildlife habitat designations, but which have not yet been formally designated, may be selected.

3. Section 5 (h) (1) (E): The department expends considerable time and money on protecting public access to land and water. There is a provision in law that exempts University of Alaska lands from public access. If lands are transferred to the University of Alaska, then the department requests the opportunity to file for public access (i.e., easements) prior to conveyance. Further, since the University of Alaska may choose to dispose of the lands after they are selected, the department is concerned about ensuring that the transfer of reservations for easement and public access remain in effect on University of Alaska lands with any change in ownership.

Likewise, existing fish and wildlife protection measures on state lands, such as setbacks from rivers, may be lost with the transfer of land to the University.

Thank you for your consideration of the department's comments. If you have any questions, please do not hesitate to call me.

Sincerely,

Frank Rue
Commissioner

cc: Pat Pourchot
Commissioner Shively
Representative Mulder
Representative Therriault