

50 CFR Part 17

RIN 1018-AB75

Endangered and Threatened Wildlife and Plants; Proposed Rule to List Spectacled Eider as Threatened and Notice of 12-Month Finding for a Petition to List Two Alaskan Eiders as Endangered**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule and notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month finding on a petition to add two eider species that nest and winter in Alaska and Siberia to the list of Endangered and Threatened Wildlife. After a review of available scientific and commercial information on these species, the Service finds that the petition to list the spectacled eider (*Somateria fischeri*) is warranted. The Service is proposing to list the spectacled eider as threatened pursuant to the Endangered Species Act of 1973, as amended. Critical habitat is not currently being proposed. The Service finds that the petition to list the Steller's eider (*Polysticta stelleri*) is warranted but the listing action is precluded by listing actions of higher priority. The Service seeks data and comments from the public on this proposed rule.

DATES: The finding announced in this notice was made on February 12, 1992. Comments from all interested parties relating to this proposal must be received by September 8, 1992. Public hearing requests relating to the proposed rule must be received by June 22, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Ecological Services Anchorage Field Office, U.S. Fish and Wildlife Service, 605 West 4th Avenue, room G-62, Anchorage, Alaska, 99501. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David E. McGillivray, Field Supervisor (see ADDRESSES above) (907/271-2888 or FTS 868-2888).

SUPPLEMENTARY INFORMATION:**Petition Process Background**

On December 10, 1990, the Service received a petition from Mr. James G. King of Juneau, Alaska, dated December 1, 1990, to list the Steller's eider and spectacled eider as endangered species and to designate critical habitat for these species on the Yukon Delta National Wildlife Refuge and the National Petroleum Reserve in Alaska. Section 4(b)(3)(A) of the Act requires that, to the maximum extent practicable, within 90 days of receipt of a petition to list, delist, or reclassify a species, the Service determine whether or not substantial information has been presented indicating that the requested action may be warranted. The 90-day finding that the petition had presented substantial information indicating that the requested action may be warranted was published in the *Federal Register* on April 25, 1991 (56 FR 19073).

The 1-year status review for Steller's and spectacled eiders has now been completed. Information sources for the review include published and unpublished studies and reports, file data, letters, and personal contact with agencies, organizations, and individuals that have knowledge of eiders or their habitats. This proposed rule to list the spectacled eider as a threatened species constitutes the final 12-month finding that the petitioned action is warranted in accordance with section 4(b)(3)(B) of the Act. For the Steller's eider, the Service has determined that listing is warranted but precluded by listing actions for higher priority species.

Steller's Eider

The breeding range of Steller's eiders formerly extended discontinuously from the eastern Aleutian Islands around the west and northern coasts of Alaska to the Yukon border, and along the arctic coast of Siberia from the Chukotski Peninsula west to the Kheta River (Murie 1959, American Ornithologist's Union [AOU] 1983, Kertell 1991). In Alaska, they now breed exclusively on the western North Slope. Most of the world's Steller's eiders winter along the Alaska Peninsula from the eastern Aleutian Islands to Kodiak Island, with far lesser numbers wintering in the Commander Islands of Russia and in Norway (Kertell 1991).

Survey data from the Alaska Peninsula show that the worldwide population of Steller's eiders may have declined by 50 to 75 percent in the last 25 years. Steller's eiders apparently no longer nest on the Yukon-Kuskokwim Delta and elsewhere in western Alaska. The Service currently estimates that between 70,000 and 100,000 Steller's

eiders return from Alaskan wintering grounds to nest in Siberia while approximately 2,000 continue to nest in northern Alaska. Causes for the reduction in Alaskan breeding range and apparent decline in worldwide population are not known.

Based on this information, the Service has determined that the listing priority for Steller's eider is lower than other species that have been identified for listing actions in the immediate future. Present information does not indicate that the Steller's eider is in any immediate danger of becoming endangered, as defined under the Act. Therefore, listing action for this species is precluded by work on higher priority species. The Steller's eider is elevated to Category-1 status on the candidate species list and studies are underway to further document and monitor its status.

Spectacled Eider

The spectacled, or Fisher's, eider (also known as Quageq in Yupik and Quvaasuk in Inupiat) is a large-bodied diving duck and one of three eiders in the genus *Somateria*. It was first described by Brandt in 1847 as *Fuligula fischeri*, then later placed in the genera *Lampronetta* and *Arctonetta*, and finally under *Somateria* (AOU 1983). The adult male has a green head with a long, sloping "eider-like" forehead and a large, distinctive white eye patch, and a black chest and white back. Females are brown with a less distinct spectacle eye patch. They breed discontinuously along the arctic coast of Alaska from the Nushagak Peninsula north to Barrow and then east nearly to the Yukon border (Christian P. Dau, U.S. Fish and Wildlife Service, Cold Bay, Alaska, pers. comm., 1991, North 1990), and along the Arctic coast of Siberia from the Chukotski Peninsula west to the Yana Delta (AOU 1983). Only a few spectacled eiders have been documented in the winter in coastal Alaska and British Columbia. Their primary winter range is unknown but presumed to be the central and northwestern Bering Sea (Dau and Kistchinski 1977).

Spectacled eiders are marine ducks that have not been studied away from their breeding grounds. Dau and Kistchinski (1977) suggest that they feed primarily on benthic mollusks and crustaceans in shallow waters (< 30 meters). Kessel (1989) hypothesized that they may also forage on pelagic or free-floating amphipods that are concentrated along the sea water-pack ice interface, regardless of water depth. On their coastal breeding grounds these eiders feed on freshwater mollusks,

insects, plants, and other foods (Dau 1974). Their nests are built on shorelines, islands, and meadows in lowland, coastal tundra; predominately within 15 kilometers of the coast on the Yukon-Kuskokwim Delta (Dau 1974, Dau and Kistchinski 1977).

Dau and Kistchinski (1977) provide the only rangewide estimates for spectacled eider numbers, based principally on study sites on the Yukon-Kuskokwim Delta, Alaska and Indigirka Delta, Siberia. They estimate that 47,700 pairs nested on the Yukon-Kuskokwim Delta in average years before 1972, plus another 3,000 pairs elsewhere in Alaska and 30,000–40,000 pairs in Siberia. The Service presently estimates that 2,700 pairs nest on the Yukon-Kuskokwim Delta (Robert Stehn, U.S. Fish and Wildlife Service, Anchorage, Alaska, pers. comm., 1991 [revision from 2,400 pairs cited in Stehn 1991]) and between 300 and a few thousand pairs nest on Alaska's North Slope (data on file at the Migratory Bird Management Office, Fairbanks, Alaska and this finding). No recent population estimates are available for Siberia.

A Yukon-Kuskokwim population of 2,700 pairs represents a 94 percent decline from 47,700 pairs in the early 1970s, although the original population estimate may be high due to overestimating the geographic extent of high breeding densities (Christian P. Dau, pers. comm., 1991). Further evidence that the decline in spectacled eiders on their primary breeding range is substantial and unabated comes from aerial waterfowl surveys and nest plot studies.

Since 1957, the number of eiders observed on standardized waterfowl breeding pair surveys flown in western Alaska has decreased by 87 percent, from approximately 65,000 to less than 9,000 adult birds (based on five-year averages) (Conant and Dau 1991, data on file at the Migratory Bird Management Office, Juneau, Alaska). This figure includes Steller's and common eiders (*S. mollissima*); however, spectacled eiders are and were historically the most abundant and widely distributed eider in this region. Based on random plots sampled on the central Yukon-Kuskokwim coast (2,264 km²) from 1988 to 1991, the average rate of decline in nest densities is 19 percent per year (Stehn 1991). This trend data is corroborated by a 14 percent per year decline since 1988 in the density of spectacled and common eiders observed on the intensified Yukon-Kuskokwim aerial survey (data on file at the Migratory Bird Management Office, Anchorage, Alaska; analysis by William

I. Butler, Jr., U.S. Fish and Wildlife Service, Anchorage, Alaska, 1991).

Far less data are available on nesting eiders elsewhere in Alaska. Spectacled eiders were never abundant on the Seward Peninsula, where they are now rare breeders (Kessel 1989). The North Slope may have supported 3,000 pairs twenty years ago (Dau and Kistchinski 1977), although this estimate was based on little data (Christian P. Dau, pers. comm., 1991). Spectacled eiders are rarely detected on the North Slope coastal plain breeding pair surveys (data on file at the Migratory Bird Management Office, Fairbanks, Alaska). The 1991 survey showed a total of only 342 breeding pairs. Alternately, if densities observed at Prudhoe Bay in 1991 are typical of the coastal strip west to Barrow (Declan Troy, Troy Ecological Research Associates, Anchorage, Alaska, pers. comm., 1991, North 1990), then a few thousand pairs may be nesting on the North Slope.

Spectacled eider populations are not surveyed in Siberia, and no recent information is available on their status in Siberia (Pavel Tomkovich, Zoological Museum of Moscow University, *in litt.*, 1991). Dement'ev *et al.* (1967) reported that numbers were dwindling on the Indigirka Delta, the center of Siberian breeding range (Dau and Kistchinski 1977), but no recent studies have been conducted in that region. Spectacled eiders have not been nominated for the Red Data Book of Russia or regional rare species lists (Pavel Tomkovich, *in litt.*, 1991).

Summary of Factors Affecting the Species

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The destruction or modification of terrestrial habitat is not known to be a factor in the decline of the spectacled eider. Nesting habitat encompasses vast expanses of coastal tundra that remain predominantly unaltered. Marine habitat requirements of the spectacled eider are unknown.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Spectacled eiders have apparently been taken in low numbers for subsistence and minimally for sport use in recent years, but rangewide and local effects of this harvest are not documented. The current estimated subsistence harvest in Alaska is about 570 spectacled eiders per year, but numerous villages in eider migration and nesting range are not surveyed (Braund

et al. 1989, data on file at the Migratory Bird Management Office, Anchorage, Alaska, John Piatt, U.S. Fish and Wildlife Service, Anchorage, Alaska, pers. comm., 1991). While historic harvest data are unavailable, it is unlikely that traditional subsistence harvest had a significant effect on historically large populations. At the current population level, however, even low harvest levels may now be contributing to the population decline in combination with reduced reproductive success or increased mortality due to other factors.

Eiders have traditionally been harvested during migration, and birds and eggs have been taken on some nesting grounds for subsistence use by Alaska and Siberia Natives. Historically, eider skins and feathers were used for clothing and bones were used for household purposes (Klein 1966, Johnson 1971). Feathers have been applied to ceremonial fans and masks that are sold to tourists (Klein 1966).

Sport harvest of spectacled eiders in the United States has been limited primarily to a few taken annually by collectors on St. Lawrence Island until the U.S. sport hunting season was closed in 1991 (Robin West, U.S. Fish and Wildlife Service, Anchorage, Alaska, pers. comm., 1991). Some illegal harvest for the taxidermy trade has also been reported from Gambell, St. Lawrence Island, but the magnitude of take is unknown (Stephen A. Tuttle, U.S. Fish and Wildlife Service, Anchorage, Alaska, pers. comm., 1991). Information on harvest in Russia is lacking.

C. Disease or Predation

Eider eggs, young, and occasionally adults are preyed upon by mammalian and avian predators, particularly arctic fox (*Alopex lagopus*), glaucous gulls (*Larus hyperboreus*), and parasitic jaegers (*Stercorarius parasiticus*). Rangewide or long-term effects of predation on spectacled eider populations have not been documented.

Historically, eiders may have nested in association with black brant (*Brant bernicla*) and cackling Canada geese (*B. canadensis minima*) as a strategy to reduce predation losses (Kertell 1991). When brant and cacklers declined sharply during the past few decades in Alaska, fox predation on eider eggs may have increased (Kertell 1991). Arctic foxes decimated numerically small, remnant brant colonies on the Yukon-Kuskokwim Delta in recent years (Raveling 1989), and they also could have impacted eider populations. Populations of large gulls (primarily glaucous-winged gulls [*L. glaucescens*]

but also glaucous gulls) have apparently increased markedly in southwestern Alaska due to increased food availability, particularly fish processing wastes (Robert Gill, U.S. Fish and Wildlife Service, Anchorage, Alaska, pers. comm., 1991). Hence, gull predation on eggs or young eiders may have risen as well.

D. The Inadequacy of Existing Regulatory Mechanisms

Harvest of eiders is regulated under authority of the Migratory Bird Treaty Act (16 U.S.C. 703-711). The U.S. sport hunting season on spectacled eiders was closed in 1991, while the estimated subsistence harvest is about 570 birds per year or more. No recent information is available on harvest in Russia. The State of Alaska recently initiated a non-game wildlife program, but the spectacled eider has not yet received any attention from State agencies.

Spring and summer subsistence hunting of eiders in Alaska is in violation of the Migratory Bird Treaty Act, which prohibits hunting for most migratory birds between March 10 and September 1. The Service recognizes however, that residents of certain rural areas in Alaska depend on waterfowl as a customary and traditional source of food. Due to this long established dependence, the Service generally has exercised its discretion to not strictly enforce the closed season with respect to some birds, provided that the birds are taken in a non-wasteful manner and are used for food. The United States is presently working with the Canadian government and interested groups on development of an agreement to amend the 1916 Migratory Bird Treaty with Canada to allow for regulated spring subsistence harvest of waterfowl in some remote northern locations. The Service is also reviewing appropriate harvest management strategies in accord with existing policies and regulations.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The petition to list the spectacled eider as an endangered species cited oil spills, pollution resulting from offshore oil development and fishery vessels, the effects of large scale fishery fleets on marine ecology, and direct mortality in fishing nets, as potential factors affecting the spectacled eider. At present, no evidence is available demonstrating that these factors have had a direct effect on spectacled eiders in the North Pacific or Arctic Oceans. Direct mortality in fishing nets or from oil spills has not been documented by the Service. However, food supplies or

other critical elements of the marine ecosystem may have been diminished by fishing activity, contamination, competition with other species, or disruption of the benthic environment.

Hazardous materials are spilled regularly into the Bering Sea from shipwrecks and bilge discharges and some of these materials may enter benthic or pelagic food chains (Everett Robinson-Wilson, U.S. Fish and Wildlife Service, Anchorage, Alaska, pers. comm., 1991). Current and future oil and gas exploration, and potential development, in State and other continental shelf waters could impact eiders due to disturbance and oil spills. Potential production of oil from leases in the outer continental shelf of the Bering, Beaufort, and Chukchi Seas will substantially increase the probability of oil spills from platforms, pipelines, and tankers (U.S. Minerals Management Service 1991), with potential effects on spectacled eiders. The anticipated increase in general shipping activity in pack ice lead systems may put eiders at risk of oil spills damages during critical migration, wintering, and molting periods, when they are highly concentrated or in flightless flocks. Currently, spectacled eider nesting habitat on the North Slope is largely within the National Petroleum Reserve in Alaska, an area of little oil and gas activity.

Severe weather is also a threat to arctic sea ducks, and major eider die-offs have been recorded after late spring storms on the Arctic Ocean (Myres 1958, Barry 1968). While historically large populations would not be seriously affected by periodic die-offs or by nesting failures due to coastal flood surges (Dau 1974), remnant or isolated populations are susceptible to devastation from these periodic events.

In summary, approximately 2,700 pairs of spectacled eiders nested on their historically important breeding range on the Yukon-Kuskokwim Delta in 1991, where an estimated 48,000-70,000 pairs nested twenty year ago. This 94 percent decline is corroborated by the 87 percent decline in the number of eiders seen on breeding pair surveys in southwestern Alaska since 1957 and the 14-19 percent per year declines in nest and breeding pair densities observed in studies on the Yukon Delta National Wildlife Refuge since 1986.

Although the factors that caused this decline are unknown, a number of potential, contributory factors have been identified. These, or other still unidentified threats, in some combination, have increased mortality beyond the reproductive rate of this

species to replace the additive losses. If the downward trend in nest densities on the Yukon-Kuskokwim Delta continues unabated, this breeding segment will be reduced to 50 percent of current size every 3.3 years (Stehn 1991). No data are available to show whether similar trends have affected the Siberian breeding population where as many as 40,000 pairs traditionally nested.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining this rule. Based on this evaluation, the preferred action is to list the spectacled eider as a threatened species (i.e., a species that is likely to become endangered throughout all or a significant portion of its range in the foreseeable future).

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that the designation of critical habitat for the spectacled eider is not prudent at this time, because such a designation would not benefit the species (50 CFR 424.12). Loss or alteration of terrestrial habitat is not considered to be factor in the population decline of spectacled eiders. Extensive, unaltered breeding habitat is available for recovery of the species, including lands under Federal jurisdiction such as the Yukon Delta National Wildlife Refuge. Marine habitat requirements of the spectacled eider are unknown. Protection of spectacled eider habitat will be addressed through the recovery process and through the section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and local governments and private agencies, groups and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the

prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402 (see revision at 51 CFR 19926, June 3, 1986). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Presently it is difficult to assess whether any existing or planned Federal involvement is likely to adversely affect this species, due principally to the lack of specific information on eider distribution. Spectacled eiders may be affected by proposed oil exploration activities in the outer continental shelf. If they are staging, molting, or wintering in these areas, consultation between the U.S. Minerals Management Service and the Service would be initiated. Also, eider nesting habitat on the North Slope is largely within the National Petroleum Reserve in Alaska, an area of mineral oil and gas activities. Critical habitat is not currently being proposed.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and state conservation agencies.

Section 10(e) of the Act exempts any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska,

or any non-native permanent resident of an Alaskan Native village, from the aforementioned prohibitions on taking any endangered or threatened species, if such taking is primarily for subsistence purposes. Non-edible by-products of species taken pursuant to Section 10(e) may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that provisions of this subsection shall not apply to any non-native resident of an Alaskan Native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

Regulations on subsistence harvest by any Indian, Aleut, Eskimo, or non-native Alaskan resident of an Alaskan Native village may be established pursuant to section 10(e)(4) of the Act if the Secretary determines that such taking materially and negatively affects the threatened or endangered species and holds hearings on the proposed harvest regulations in the affected judicial districts of Alaska. Subsistence harvest regulations promulgated pursuant to the Endangered Species Act would have to be in accordance with the Migratory Bird Treaty Act, which prohibits taking of eiders between March 10 and September 1. The Service is presently considering appropriate harvest management strategies in accord with existing policies and regulations.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. The purpose of the long comment period (120

days) is to allow foreign scientists to be given due notice and time to respond. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;
- (2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of this Act;
- (3) Additional information concerning the range, distribution, and population size of this species; and
- (4) Current or planned activities in the subject area and their possible impacts on this species;

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Ecological Services Anchorage Field Office (see **ADDRESSES** above).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ecological Services Anchorage Field Office (see **ADDRESSES** above).

Author

The primary author of this proposed rule is Jean Fitts Cochrane, Ecological Services Anchorage Field Office (see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority for citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical

order under BIRDS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
BIRDS							
Eider, spectacled (= Fisher's)	Somateria (= Fuligula, = Lampronetta, = Arctonetta) fischeri.	U.S.C. (AL); C.I.S.	Entire	T	NA	NA

Dated: April 21, 1992.
 Richard N. Smith,
 Director, Fish and Wildlife Service.
 [FR Doc. 92-10712 Filed 5-7-92; 8:45 am]
 BILLING CODE 4310-55-M