

**DEPARTMENT OF AGRICULTURE****Forest Service****36 CFR Part 242****DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 100****RIN 1018-AE12****Subsistence Management Regulations for Public Lands in Alaska, Subpart C & Subpart D—1998–1999 Subsistence Taking of Fish and Wildlife Regulations; Correcting Amendments**

**AGENCY:** Forest Service, USDA, Fish and Wildlife Service, Interior.

**ACTION:** Correcting amendments.

**SUMMARY:** These corrections amend the Subsistence Management Regulations for Public Lands in Alaska published in the **Federal Register** on June 29, 1998 (63 FR 35332) implementing the subsistence priority for rural residents of Alaska under Title VIII of the Alaska National Interest Lands Conservation Act of 1980. The June 29, 1998, final rule established regulations for seasons, harvest limits, methods, and means relating to taking of wildlife for subsistence uses during the 1998–1999 regulatory year.

**DATES:** The amendments to Section \_\_\_\_\_.25 are effective July 1, 1998, through June 30, 1999.

**FOR FURTHER INFORMATION CONTACT:** Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 271–2540.

**SUPPLEMENTARY INFORMATION:****Background**

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability which are consistent with ANILCA, and which provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously

found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell v. State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute, and therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with Subparts A, B, and C of these regulations, a Federal Subsistence Board was established to administer the Federal subsistence management program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Area Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies have participated in development of regulations for Subparts A, B, and C, and the annual Subpart D regulations. All Board members have reviewed this rule and agree with its substance. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Proposed Subpart C regulations for customary and traditional use determinations and Subpart D regulations for the 1998–1999 seasons and bag limits, and methods and means were published on July 25, 1997, in the **Federal Register** (62 FR 39987). A 60-day comment period providing for public review of the proposed rule was advertised by mail, radio, and newspaper. Subsequent to that 60-day review period, the Board prepared a booklet describing all proposals for change. The public then had an additional 30 days in which to comment on the proposals for changes to the regulations. The Federal Subsistence Regional Advisory Councils met in

regional centers, received public comments, and formulated recommendations to the Board on proposals for their respective regions. The final regulations, published on June 29, 1998 (63 FR 35332) reflect Board review and consideration of Regional Council recommendations and public comments submitted to the Board during their April/May meeting.

These correcting amendments are a result of two requests for Special Action resulting from additional opportunities for subsistence harvest of wildlife resources. Below are summaries of each action.

**Subpart D**

Units 9D) and 10, Unimak Island—Caribou—The Board acted on a request to open a limited hunt. This follows biological surveys which indicate that the herd in this area is large enough to support a limited harvest.

Units 23 and 26—Sheep—The Board acted on a request to open a limited hunt. This follows biological surveys which indicate that the herd in this area is large enough to support a limited harvest. This action would also close Federal public lands to non-Federally qualified users.

Only the items described above are being changed; but for clarity, the entire table section for the pertinent species in each Unit is reproduced. The above actions were supported by the Regional Councils in the affected areas. Notice of the Board meeting and the subjects to be considered were widely circulated and the public had an opportunity to comment and participate.

The Board finds that additional public notice and comment requirements under the Administrative Procedures Act (APA) for this final rule are impracticable, unnecessary, and contrary to the public interest. A lapse in regulatory control could seriously affect the continued viability of wildlife populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive the public notice and comment procedures prior to publication of this rule. The Board finds good cause under 5 U.S.C. 553(d)(3) to make this rule effective July 1, 1998.

**Conformance With Statutory and Regulatory Authorities***National Environmental Policy Act Compliance*

A Draft Environmental Impact Statement (DEIS) that described four

alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940-22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

#### *Compliance With Section 810 of ANILCA*

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appears in the April 6, 1992, ROD which found that the Federal Subsistence Management Program, under a modified Alternative IV with an annual process for setting hunting and fishing regulations, had no significant

possibility of a significant restriction of subsistence uses.

#### *Paperwork Reduction Act*

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. They apply to the use of public lands in Alaska. The information collection requirements described below have been approved by OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018-0075, which expires 5/31/2000.

The collection of information will be achieved through the use of the Federal Subsistence Hunt Permit Application. This collection information will establish whether the applicant qualifies to participate in a Federal subsistence hunt on public land in Alaska and will provide a report of harvest and location of harvest.

The likely respondents to this collection of information are rural Alaska residents who wish to participate in specific subsistence hunts on Federal land. The collected information is necessary to determine harvest success and harvest location in order to make management decisions relative to the conservation of healthy wildlife populations. The annual burden of reporting and recordkeeping is estimated to average 0.25 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under this rule is less than 5,000, yielding a total annual reporting and recordkeeping burden of 1,250 hours or less.

Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, D.C. 20240; and the Office of Management and Budget, Paperwork Reduction Project (Subsistence), Washington, D.C. 20503. Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under Subpart B.

#### *Economic Effects*

This rule was not subject to OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The

Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However, it is estimated that 2 million pounds of meat are harvested State-wide by the local subsistence users annually and, if given a dollar value of \$3.00 per pound, would equate to \$6 million State wide.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or state governments or private entities.

The Service has determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Drafting Information. These regulations were drafted by William Knauer under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Curt Wilson, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Area Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service.

#### **List of Subjects**

##### *36 CFR Part 242*

Administrative practice and procedure, Alaska, Fish, National

forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, are amended effective July

1, 1998, through June 30, 1999, as set forth below.

PART \_\_\_\_—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. Section \_\_\_\_25(k)(9)(ii) is amended in the table under “Hunting” by revising the entry for “Caribou” to read as follows:

§ \_\_\_\_25 Subsistence taking of wildlife.

\* \* \* \* \*

(k) \* \* \*

(9) \* \* \*

(ii) \* \* \*

Harvest limits

Open season

Hunting

\* \* \* \* \*

Caribou:

Unit 9(A)—4 caribou; however, no more than 2 caribou may be taken Aug. 10—Sept. 30 and no more than 1 caribou may be taken Oct. 1—Nov. 30. Aug. 10—Mar. 31.

Unit 9(C)—4 caribou; however, no more than 1 may be a cow, no more than 2 caribou may be taken Aug. 10—Nov. 30, and no more than 1 caribou may be taken per calendar month between Dec. 1—Mar. 31. Aug. 10—Mar. 31.

Unit 9(B)—5 caribou; however, no more than 2 bulls may be taken from Oct. 1—Nov. 30 ..... Aug. 1—Apr. 15.

Unit 9(D)—1 bull by Federal registration permit only. A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than four harvest limits in his/her possession at any one time. Aug. 1—Mar. 31.

Unit 9(E)—that portion southwest of the headwaters of Fireweed and Blueberry Creeks (north of Mt. Veniaminof) to and including the Sandy River drainage on the Bristol Bay side of the Alaska Peninsula; and that portion south of Seal Cape to Ramsey Bay on the Pacific side of the Alaska Peninsula divide is closed to all hunting of caribou. No open season.

Remainder of Unit 9(E)—4 caribou. Aug. 10—Apr. 30.

\* \* \* \* \*

\* \* \* \* \*

3. Section \_\_\_\_25(k)(10)(ii) is amended in the table under “Hunting” by revising the entry for “Caribou” to read as follows:

\* \* \* \* \*

(k) \* \* \*

(10) \* \* \*

(ii) \* \* \*

Harvest limits

Open season

Hunting

Caribou:

Unit 10—Unimak Island only. .... Aug. 1—Mar. 31.

1 bull by Federal registration permit only. A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than four harvest limits in his/her possession at any one time..

Remainder of Unit 10—No limit. .... July 1—June 30.

\* \* \* \* \*

\* \* \* \* \*

4. Section \_\_\_\_25(k)(23)(iii) is amended in the table under “Hunting” by revising the entry for Sheep to read as follows:

\* \* \* \* \*

(k) \* \* \*

(23) \* \* \*

(iii) \* \* \*

Harvest limits

Open season

Hunting



\* \* \* \* \*

Dated: August 14, 1998.

**Thomas H. Boyd,**

*Acting Chair, Federal Subsistence Board.*

Dated: August 17, 1998.

**John C. Capp,**

*Acting Regional Forester, USDA—Forest Service.*

[FR Doc. 98-23117 Filed 8-27-98; 8:45 am]

BILLING CODE 3410-11-P; 4310-55-P