

major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior certifies that the provisions in this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based upon the fact that the provisions are not expected to have a substantive effect on the regulated industry.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of \$100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State provisions are not expected to have a substantive effect on the regulated industry.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State provisions are not expected to have a substantive effect on the regulated industry.

**List of Subjects in 30 CFR Part 943**

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 30, 2003.

**Charles E. Sandberg**

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 04-2130 Filed 2-2-04; 8:45 am]

BILLING CODE 4310-05-U

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 242**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 100**

**RIN 1018-AT46**

**Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2005–06 Subsistence Taking of Fish and Shellfish Regulations**

**AGENCIES:** Forest Service, Agriculture; Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish regulations for fishing seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2005–06 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. When final, this rulemaking would replace the fish and shellfish taking regulations included in the “Subsistence Management Regulations for Public Lands in Alaska, Subpart DX—2004–05 Subsistence Taking of Fish and Wildlife Regulations,” which expire on March 31, 2005. This rule would also amend the Customary and Traditional Use Determinations of the Federal Subsistence Board and the General Regulations related to the taking of fish and shellfish.

**DATES:** The Federal Subsistence Board must receive your written public comments and proposals to change this proposed rule no later than March 26, 2004. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings to receive proposals to change this proposed rule from February 23, 2004–March 26, 2004. See **SUPPLEMENTARY INFORMATION** for additional information on the public meetings.

**ADDRESSES:** Please submit proposals electronically to [Subsistence@fws.gov](mailto:Subsistence@fws.gov). See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. You may also submit written comments and proposals to the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503. The public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for

additional information on locations of the public meetings.

**FOR FURTHER INFORMATION CONTACT:**

Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region, (907) 786–3592.

**SUPPLEMENTARY INFORMATION:**

**Public Review Process—Regulation Comments, Proposals, and Public Meetings**

The Federal Subsistence Board (Board) will hold meetings on this proposed rule at the following locations in Alaska:

Region 1—Southeast Regional Council, Sitka, March 17, 2004.

Region 2—Southcentral Regional Council, Anchorage, March 9, 2004.

Region 3—Kodiak/Aleutians Regional Council, Larson Bay, March 18, 2004.

Region 4—Bristol Bay Regional Council, Naknek, February 26, 2004.

Region 5—Yukon-Kuskokwim Delta Regional Council, St. Mary’s, March 3, 2004.

Region 6—Western Interior Regional Council, Ruby, March 9, 2004.

Region 7—Seward Peninsula Regional Council, Nome, February 18, 2004.

Region 8—Northwest Arctic Regional Council, Kotzebue, February 24, 2004.

Region 9—Eastern Interior Regional Council, Beaver, February 27, 2004.

Region 10—North Slope Regional Council, Barrow, March 3, 2004.

We will publish notice of specific dates, times, and meeting locations in local and statewide newspapers prior to the meetings. We may need to change locations and dates based on weather or local circumstances. The amount of work on each Regional Council’s agenda will determine the length of the Regional Council meetings.

**Electronic filing of comments (preferred method):** Please submit electronic comments (proposals) and other data to [Subsistence@fws.gov](mailto:Subsistence@fws.gov). Please submit as either WordPerfect or MS Word files, avoiding the use of any special characters and any form of encryption.

During May 2004, we will compile and distribute for additional public review the written proposals to change Subpart D fishing regulations and in Subpart C the customary and traditional use determinations. A 30-day public comment period will follow distribution of the compiled proposal packet. We will accept written public comments on

distributed proposals during the public comment period, which is presently scheduled to end on June 30, 2004.

We will hold a second series of Regional Council meetings in September and October 2004, to assist the Regional Councils in developing recommendations to the Board. You may also present comments on published proposals to change fishing and customary and traditional use determination regulations to the Regional Councils at those fall meetings.

The Board will discuss and evaluate proposed changes to the subsistence taking of fish and shellfish regulations during a public meeting to be held in Anchorage, January 2005. You may provide additional oral testimony on specific proposals before the Board at that time. The Board will then deliberate and take final action on proposals received that request changes to this proposed rule at that public meeting.

**Note:** The Board will not consider proposals for changes relating to hunting or trapping regulations at this time. The Board will be calling for proposed changes to those regulations in August 2004.

The Board's review of your comments and fish and shellfish proposals will be facilitated by you providing the following information: (a) Your name, address, and telephone number; (b) The section and/or paragraph of the proposed rule for which your change is being suggested; (c) A statement explaining why the change is necessary; (d) The proposed wording change; (e) Any additional information you believe will help the Board in evaluating your proposal. Proposals that fail to include the above information, or proposals that are beyond the scope of authorities in \_\_\_\_\_.24, Subpart C, and \_\_\_\_\_.24 \_\_\_\_\_.25, \_\_\_\_\_.27, or \_\_\_\_\_.28, Subpart D, may be rejected. The Board may defer review and action on some proposals if workload exceeds work capacity of staff, Regional Councils, or Board. These deferrals will be based on recommendations of the affected Regional Council, staff members, and on the basis of least harm to the subsistence user and the resource involved. Proposals should be specific to customary and traditional use determinations or to subsistence fishing seasons, harvest limits, and/or methods and means.

## 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 that are consistent with ANILCA and that 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). Consistent with Subparts A, B, and C of these regulations, as revised May 7, 2002 (67 FR 30559), the Departments established a Federal Subsistence Board 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 Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

All Board members have reviewed this proposed rule and agree with its substance. Because this proposed 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.

## Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence

Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this proposed rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 would apply to regulations found in this subpart.

## Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (2002) and 50 CFR 100.11 (2002), and for the purposes identified therein, we divide Alaska into 10 subsistence resource regions, each of which is represented by a Regional Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils have a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, will present their Council's recommendations at the Board meeting in January 2005.

## Proposed Changes from 2004–05 Seasons and Harvest Limit Regulations

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations (\_\_\_\_\_.24 of Subpart C) are also subject to an annual review process providing for modification each year. The text of the 2004–05 Subparts C and D final rule, without modification, serves as the foundation for the 2005–06 Subparts C and D proposed rule. Please see the final rule published in the Rules and Regulations section of this issue of the **Federal Register**. The amendments made to subparts C and D in that rule are the same as the amendments we are proposing in this rule. The regulations contained in this proposed rule would take effect on April 1, 2005, unless elements are changed by subsequent Board action following the public review process outlined herein.

### 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, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available by contacting the office listed under **FOR FURTHER INFORMATION**

**CONTACT.** The Secretary of the Interior with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction did not constitute a major Federal action, significantly affecting the human environment and has, therefore, signed a Finding of No Significant Impact.

Compliance with Section 810 of ANILCA—A section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. 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. The final section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

During the environmental assessment process, an evaluation of the effects of this rule was also conducted in accordance with Section 810. This evaluation supports the Secretaries' determination that the rule will not reach the Amay significantly restrict" threshold for notice and hearings under ANILCA Section 810(a) for any subsistence resources or uses.

Paperwork Reduction Act—The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and assigned OMB control number 1018-0075, which expires August 31, 2006. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a current valid OMB control number.

Economic Effects—This rule is not a significant rule subject to OMB review under Executive Order 12866. This rulemaking will impose no significant costs on small entities; this rule does not restrict any existing sport or commercial fishery on the public lands, and subsistence fisheries will continue at essentially the same levels as they presently occur. 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 tackle, boat, and gasoline dealers. The number of small entities affected is unknown; however, 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 to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that 24 million pounds of fish (including 8.3 million pounds of salmon) are harvested by the local subsistence users annually and, if given a dollar value of \$3.00 per pound for salmon [Note: \$3.00 per pound is much higher than the current commercial value for salmon] and \$0.58 per pound for other fish, would equate to about \$34 million in food value Statewide.

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 economic effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments certify based on the above figures 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. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority 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 Secretaries have determined and certify pursuant to the Unfunded Mandates Reform 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 implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

The Secretaries have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the

preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, this action is not a significant action and no Statement of Energy Effects is required.

Drafting Information—William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Bob Gerhard, Alaska Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; and Steve Kessler, USDA-Forest Service provided additional guidance.

#### 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, the Federal Subsistence Board proposes to amend 36 CFR 242 and 50 CFR 100 for the 2005–06 regulatory year. The text of the amendments would be the same as the final rule amendments for the 2004–05 regulatory year published elsewhere in this issue of the **Federal Register**.

Dated: December 11, 2003.

**Thomas H. Boyd,**  
*Acting Chair, Federal Subsistence Board.*

Dated: December 11, 2003.

**Steve Kessler,**  
*Subsistence Program Leader, USDA-Forest Service.*  
[FR Doc. 04-2098 Filed 2-2-04; 8:45 am]  
**BILLING CODE 3410-11-P; 4310-55-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA-2003-15715]

RIN 2127-AH73

#### Request for Comments; Federal Motor Vehicle Safety Standards; Occupant Crash Protection

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Request for comments.

**SUMMARY:** This document is intended to inform the public about recent testing the agency has conducted in consideration of whether to propose a high speed frontal offset crash test requirement. NHTSA has been conducting research since the early to mid-1990s on developing a frontal offset crash test procedure. In fiscal year 1997, the U.S. House of Representatives directed the National Highway Traffic Safety Administration (NHTSA) to work toward "establishing a federal motor vehicle safety standard for frontal offset crash testing." Since then, frontal offset crash tests have been adopted for New Car Assessment Programs in several countries worldwide. Additionally, in the U.S., the Insurance Institute for Highway Safety began a consumer crashworthiness ratings program in 1995 that included a fixed offset deformable barrier crash test.

Over the past several years, NHTSA has conducted testing to evaluate the feasibility of adopting a fixed offset deformable barrier crash test in Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant crash protection," for improving frontal crash protection. It was preliminarily determined that the benefits from such a crash test could lead to an annual reduction in approximately 1,300 to 8,000 MAIS 2+ lower extremity injuries. NHTSA also conducted vehicle-to-vehicle crash tests to investigate the potential for disbenefits from a fixed offset

deformable barrier crash test requirement. The testing demonstrated that, for some sport utility vehicles, design changes that improved their performance in high speed frontal offset crash tests may also result in adverse effects on the occupants of their collision partners. This notice discusses additional tests the agency plans to conduct to further evaluate the potential disbenefits, and poses some alternative strategies that could be coupled with a frontal offset crash test requirement. The agency invites the public to comment on this notice and share information and views with the agency.

**DATES:** Comments must be received by April 5, 2004.

**ADDRESSES:** You may submit comments (identified by the docket number set forth above) by any of the following methods:

- Web Site: <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site. Please note, if you are submitting petitions electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.<sup>1</sup>
- Fax: 1-202-493-2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.
- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

**Instructions:** All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided.

**Docket:** For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif

<sup>1</sup> Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.