

## Washington State Implementation Plan for Air Quality; State and Local Requirements

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[FR Doc. 04–19818 Filed 8–30–04; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 242

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 100

RIN 1018–AJ25

### Subsistence Management Regulations for Public Lands in Alaska, Subpart D—2004–05 Subsistence Taking of Wildlife Regulations; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** This rule corrects the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on July 1, 2004, (69 FR 40174) implementing the subsistence priority for rural residents of Alaska under Title VIII of the Alaska National Interest Lands Conservation Act of 1980. The July 1, 2004, final rule established regulations for seasons, harvest limits, methods, and means relating to the taking of wildlife for subsistence uses during the 2004–05 regulatory year. This document makes three changes to that final rule: It corrects an inadvertent error in the definition of “fur,” clarifies exactly who may sell handicrafts made from the fur of bears, and corrects a Government Printing Office publication error relative to caribou seasons in Unit 10.

**DATES:** The amendment to section \_\_\_\_\_.25 is effective July 1, 2004. The amendment to section \_\_\_\_\_.26 is effective July 1, 2004 through June 30, 2005.

**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 Steve Kessler, Regional Subsistence Program Leader, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 1, 2004, we published in the **Federal Register** a final rule to establish regulations for seasons, harvest limits, methods, and means related to taking of wildlife for subsistence uses in Alaska during the 2004–05 regulatory year (69 FR 40174). That rulemaking was

necessary because the regulations governing the subsistence harvest of wildlife in Alaska are subject to an annual public review cycle. The July 1, 2004, rule replaced the wildlife regulations that expired on June 30, 2004. The rule also amended the regulations that establish which Alaska residents are eligible to take specific species for subsistence uses.

Since publication of the July 1, 2004, final rule, we have become aware of some needed corrections to that document. Because the final rule related to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text was incorporated into 36 CFR part 242 and 50 CFR part 100. Consequently, the corrections cited in this document will be incorporated into those same CFR sections. The corrections are as follows: (1) In the rule, we attempted to clarify the use of fur from bears in handicraft articles by inserting a definition of "fur." However, we now believe that definition to be incorrect, and this correction replaces the new definition with that in place prior to publication of the final rule. (2) This document clarifies exactly who is allowed to sell handicrafts made from the fur of bears. (3) A final correction identifies the correct seasons for caribou in Unit 10 that were scrambled during printing the original **Federal Register** publication.

The Federal Subsistence Board finds that additional public notice and comment requirements under the Administrative Procedure Act for this correcting amendment 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)(3)(B) to waive the public notice and comment procedures prior to publication of this rule. The Board further finds good cause under 5 U.S.C. 553(d)(3) to make this rule effective July 1, 2004.

*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; Greg Bos and Carl Jack, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Warren Eastland, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, Alaska Regional Office, 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 presented in the preamble, the Federal Subsistence Board amends Title 36, part 242, and Title 50, part 100, of the Code of Federal Regulations, by making the following correcting amendments:

**PART D—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA [AMENDED]**

■ 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 is amended:

- a. In paragraph (a), by removing the definition of "fur";
- b. In paragraph (a), by removing the definition of "skin, hide, or pelt" and adding in its place a definition for "skin, hide, pelt, or fur" to read as set forth below; and
- c. In paragraph (j), by revising paragraphs (j)(6) and (j)(7) to read as set forth below:

**§ \_\_\_\_\_.25 Subsistence taking of fish, wildlife, and shellfish: general regulations.**

(a) \* \* \*  
*Skin, hide, pelt, or fur* means any tanned or untanned external covering of an animal's body; excluding bear. The skin, hide, pelt, or fur of a bear is the entire external covering with claws attached.

\* \* \* \* \*

(j) \* \* \*

(6) If you are a federally qualified subsistence user, you may sell handicraft articles made from the fur of a black bear.

(7) If you are a federally qualified subsistence user, you may sell handicraft articles made from the fur of a brown bear taken from Units 1–5, 9(A)–(C), 9(E), 12, 17, 20, and 25.

\* \* \* \* \*

■ 3. In § \_\_\_\_\_.26(n)(10), the entry for caribou in the table showing Harvest Limits and Open Season is revised to read as follows:

**§ \_\_\_\_\_.26 Subsistence taking of wildlife.**

\* \* \* \* \*

(n) \* \* \*

(10) \* \* \*

Harvest limits	Open season
<b>Hunting</b>	
Caribou:	
Unit 10—Unimak Island only—4 caribou by Federal registration permit only .....	Aug. 1–Sept. 30. Nov. 15–Mar. 31.
Unit 10—remainder—No limit .....	July 1–June 30.

\* \* \* \* \*

Dated: August 11, 2004.

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

Dated: August 11, 2004.

**Calvin H. Casipit,***Acting Regional Subsistence Program Leader,  
USDA-Forest Service.*

[FR Doc. 04-19838 Filed 8-30-04; 8:45 am]

BILLING CODE 3410-11; 4310-55-P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 229**[Docket No. 030221039-4247-13; I.D.  
082404A]**Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)****AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.**ACTION:** Temporary rule.**SUMMARY:** The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 2,600 square nautical miles (nm<sup>2</sup>) (8,918 km<sup>2</sup>), east of Cape Ann, MA, for 15 days. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).**DATES:** Effective beginning at 0001 hours September 2, 2004, through 2400 hours September 16, 2004.**ADDRESSES:** Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.**FOR FURTHER INFORMATION CONTACT:** Diane Borggaard, NMFS/Northeast Region, 978-281-9328 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301-713-1401.**SUPPLEMENTARY INFORMATION:****Electronic Access**Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP Web site at <http://www.nero.noaa.gov/whaletrp/>.**Background**

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) as well as to provide conservation benefits to a fourth non-endangered species (minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15-day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15-day period and asking fishermen not to set any additional gear in the DAM zone during the 15-day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm<sup>2</sup> (139 km<sup>2</sup>)) such that right whale density is equal to or greater than 0.04 right whales per nm<sup>2</sup> (1.85 km<sup>2</sup>). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy

personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On August 17, 2004, NMFS received a report of two groups of right whales, totaling 15 animals, in the proximity of 42°55' N lat. and 69°00' W long. This position lies east of Cape Ann, MA. After conducting an investigation, the Northeast Fisheries Science Center ascertained that the report came from a qualified individual and determined that the report was reliable.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15-day restricted period unless it is modified in the manner described in this temporary rule. The DAM zone is bounded by the following coordinates:

43°20' N, 69°24' W (NW Corner)  
43°20' N, 68°36' W  
42°05' N, 68°36' W  
42°05' N, 69°24' W

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: This DAM zone overlaps the year round Cashes Ledge Closure Area. This DAM action does not supersede Northeast multispecies closures found at 50 CFR 648.81.

**Lobster Trap/Pot Gear**

Fishermen utilizing lobster trap/pot gear within the portion of the Northern Nearshore Lobster Waters that overlap with the DAM zone are required to