

restrictions is prohibited. Notwithstanding the provisions of this section, the Superintendent may issue a Special Use Permit to authorize uses in the KNHL and either developed area.

Dated: November 18, 2004.

**Paul Hoffman,**

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 242

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 100

#### **Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Seasonal Adjustments—Units 22 and 24**

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

**ACTION:** Seasonal adjustments.

**SUMMARY:** This provides notice of the Federal Subsistence Board's management actions to provide for subsistence harvest opportunity and to protect a declining moose population in Units 22 and 24. These actions provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on July 1, 2004. Those regulations established seasons, harvest limits, methods, and means relating to the taking of wildlife for subsistence uses during the 2004 regulatory year.

**DATES:** The Unit 22B (west of the Darby Mountains) bull moose action is effective January 1, 2005 to January 31, 2005. The Unit 24 (John River, Upper John River, and Alatna River) antlerless moose action is effective September 8, 2004, through October 26, 2004. The Unit 24 (Kanuti Controlled Use Area) moose hunt extension is effective September 26 to October 2, 2004.

**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, Subsistence Program Leader, USDA—Forest Service, Alaska Region, telephone (907) 786-3592.

**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 in Alaska, 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. In December 1989, the Alaska Supreme Court ruled that the Alaska preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

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. The Departments administer Title VIII through regulations at title 50, part 100, and title 36, part 242, of the Code of Federal Regulations (CFR). Consistent with subparts A, B, and C of these regulations, as revised January 8, 1999 (64 FR 1276), 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, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, 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, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2004 hunting seasons, harvest limits, and methods and means were published on July 1, 2004 (69 FR 40174). Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Game (BOG) and the Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Federal Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

These adjustments are necessary because of the need to enhance productivity of a declining moose population in portions of Units 22B and 24. These actions are authorized and in accordance with 50 CFR 100.19(d-e) and 36 CFR 242.19(d-e).

#### *Unit 22B—Moose (West of the Darby Mountains)*

Currently the moose population in Unit 22B is substantially depressed and well below management objectives. This represents a conservation concern. A reduction in harvest is necessary and reducing the quota for the combined fall and winter hunts, from 48 to 30, would significantly reduce the overall harvest of moose, for conservation purposes, while preserving the winter hunt for the smaller communities of White Mountain and Golovin, which have a high reliance on the resource.

The Unit 22B moose population of 586 is well below the objective of 1,500 to 2,500. Limiting the number of moose that may be harvested should aid in the recovery of the moose population, allowing the population to recover more quickly, ultimately conserving the resource for future potential harvest opportunities. This action also aligns State and Federal regulations, eliminating differing regulations that could be problematic.

Federal lands in Unit 22B affected by the special action are Bering Land Bridge National Preserve and Bureau of Land Management lands west of the Darby Mountains, and Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including the Topkok Creek drainage.

#### *Unit 24—Moose (John River, Upper John River, and Alatna River)*

Moose surveys in Unit 24 from 1998 through 2003 have indicated poor recruitment of calves and yearlings. More specifically, aerial trend count area surveys were most recently conducted in the fall of 2003 and the data indicates that none of the five trend

count areas surveyed had calf:cow ratios above 30 calves:100 cows. Data from adjacent areas indicate that there has been a 25% decline in moose numbers since 1998.

Previous cow harvest levels have provided additional harvest opportunities and have served to help stabilize moose populations in past years. However, continued cow harvest at the current levels will likely contribute to further declines in productivity and recruitment. Current management objectives prescribe more conservative yields than what are allowed by current regulatory provisions. Thus, regulatory changes are needed to decrease the cow harvest and to maintain productivity and recruitment. This special action is consistent with the Management Plan which calls for additional regulatory restrictions on antlerless moose harvest in response to the ongoing population declines.

Federal lands in Unit 24 affected by the special action are: (1) All drainages to the north of the Koyukuk River upstream from and including the Alatna River to and including the North fork of the Koyukuk River, except those portions of the John River and the Alatna River drainages within the Gates of the Arctic National Park. (2) That portion that includes the John River within Gates of the Arctic National Park. (3) The Alatna River drainage within Gates of Arctic National Park.

The Alaska Department of Fish and Game issued an Emergency Order No. 03-04-04 to close the August and September antlerless moose season on State lands in Unit 21 D and Unit 24. The Board has taken a similar action on Federal public lands in Unit 24 in order to protect the continued viability of the moose population and to reduce confusion among hunters with conflicting regulations.

ADF&G has executed an Emergency Order for a closure of the State antlerless moose season on private lands within the John and Alatna River drainages of Unit 24 consistent with the Management Plan, which calls for additional regulatory restrictions on antlerless moose harvest in response to the ongoing population declines. A second Board action prohibits the harvest of antlerless moose within the upper John River drainage in the Gates of the Arctic National Park area from October 27 through December 31, 2004.

#### *Unit 24—Moose (Kanuti Controlled Use Area)*

Interior Alaska has experienced unseasonably high summer temperatures, a lower than average

amount of rainfall, and a record number of wild fires in 2004. These conditions may have accounted for a change in the fall movement of moose and reduced the opportunity for subsistence users to harvest a moose. In addition, a number of local subsistence hunters have had limited time to hunt moose due to seasonal employment on fire crews. Federal lands in Unit 24 affected by this special action are the Kanuti Controlled Use Area. The Board lengthened the bull moose season in Unit 24 (Kanuti Controlled Use Area) to include September 26, 2004, through October 2, 2004.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these adjustments are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate measures could seriously affect the continued viability of wildlife populations, adversely impact 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 additional public notice and comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the DATES section.

#### **Conformance With Statutory and Regulatory Authorities**

##### *National Environmental Policy Act Compliance*

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. 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. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999 (64 FR 1276.)

##### *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 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 the program is not likely to significantly restrict subsistence uses.

##### *Paperwork Reduction Act*

The adjustment and emergency closures do not contain any information collections for which Office of Management and Budget (OMB) approval is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

##### *Other Requirements*

The adjustments have been exempted from 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 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 economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as firearm, ammunition, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the adjustments 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 will 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 preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustments 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 Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustments will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustments 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 adjustments do 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.

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 these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

#### *Drafting Information*

Theodore Matuskowitz drafted this document 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; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, USDA-Forest Service, provided additional guidance.

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

Dated: October 29, 2004.

**Thomas H. Boyd,**

*Acting Chair, Federal Subsistence Board.*

Dated: October 29, 2004.

**Steve Kessler,**

*Subsistence Program Leader, USDA-Forest Service.*

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