

action is not a significant action and no Statement of Energy Effects is required.

William Knauer drafted these regulations under the guidance of Peter J. Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Chuck Ardizzone, Alaska State Office, Bureau of Land Management; Greg Bos, Carl Jack, and Jerry Berg, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service; Dr. Warren Eastland, Pat Petrivelli, and Dr. Glenn Chen, 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.

#### List of Subjects

##### 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 Secretaries propose to amend title 36, part 242, and title 50, part 100, of the Code of Federal Regulations, 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 would continue 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.

#### Subpart C—Board Determinations

2. In Subpart C of 36 CFR part 242 and 50 CFR part 100, § \_\_\_\_ .23(a) would be revised to read as follows:

\* \* \* \* \*

#### § \_\_\_\_ .23 Rural Determinations.

(a) The Board has determined all communities and areas to be rural in accordance with § \_\_\_\_ .15 except the following:

- (1) Fairbanks North Star Borough;
- (2) Homer area—including Homer, Anchor Point, North Fork Road area, Kachemak City, and the Fritz Creek area (not including Voznesenka);

(3) Juneau area—including Juneau, West Juneau, and Douglas;

(4) Kenai area—including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kasilof, and Clam Gulch;

(5) Ketchikan area—including all parts of the road system connected to the City of Ketchikan (except Saxman), Penneck Island, and parts of Gravina Island;

(6) Kodiak area—including the City of Kodiak, the Mill Bay area, the Coast Guard Station, Womens Bay, and Bells Flats;

(7) Municipality of Anchorage;

(8) Prudhoe Bay;

(9) Seward area—including Seward and Moose Pass;

(10) Valdez; and

(11) Wasilla/Palmer area—including Wasilla, Palmer, Sutton, Big Lake, Houston, Point MacKenzie, and Bodenbergt Butte.

You may obtain maps delineating the boundaries of nonrural areas from the U.S. Fish and Wildlife Service, Office of Subsistence Management.

\* \* \* \* \*

Dated: July 24, 2006.

**Peter J. Probasco,**

*Acting Chair, Federal Subsistence Board.*

Dated: July 24, 2006.

**Steve Kessler,**

*Subsistence Program Leader, USDA—Forest Service.*

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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

#### RIN 1018–AU15

### Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2007–2008 Subsistence Taking of Wildlife Regulations; 2007–2008 Subsistence Taking of Fish on the Kenai Peninsula Regulations

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish regulations for hunting and trapping seasons, harvest limits, methods, and means related to taking of

wildlife for subsistence uses during the 2007–2008 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. When final, this rulemaking would replace the wildlife taking regulations included in the “Subsistence Management Regulations for Public Lands in Alaska, Subpart D—2006–2007 Subsistence Taking of Fish and Wildlife Regulations,” which expire on June 30, 2007. This rule would also amend the Customary and Traditional Use Determinations of the Federal Subsistence Board and the General Regulations on taking of wildlife. In addition, at the request of the Southcentral Subsistence Regional Advisory Council, the Federal Subsistence Board is accepting proposals to revise the regulations for fishing seasons, harvest limits, and methods related to taking of fish on the Kenai Peninsula for subsistence uses during the 2007–2008 regulatory year.

**DATES:** The Federal Subsistence Board must receive your written public comments and proposals to change this proposed rule no later than October 20, 2006. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings to receive proposals to change this proposed rule on several dates from September 7, 2006, through October 20, 2006. See **SUPPLEMENTARY INFORMATION** for additional information on the public meetings, including dates.

**ADDRESSES:** You may 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:** Pete Probasco, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, (907) 786–3592.

#### SUPPLEMENTARY INFORMATION:

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

The Federal Subsistence Board (Board), through the Regional Councils, will hold meetings on this proposed rule at the following Alaska locations, on the following dates:

Region 1—Southeast Regional Council .....	Sitka .....	October 10, 2006.
Region 2—Southcentral Regional Council .....	Homer .....	October 17, 2006.
Region 3—Kodiak/Aleutians Regional Council .....	Kodiak .....	September 21, 2006.
Region 4—Bristol Bay Regional Council .....	Dillingham .....	October 2, 2006.
Region 5—Yukon-Kuskokwim Delta Regional Council .....	Bethel .....	October 5, 2006.
Region 6—Western Interior Regional Council .....	Ruby .....	October 11, 2006.
Region 7—Seward Peninsula Regional Council .....	Nome .....	October 5, 2006.
Region 8—Northwest Arctic Regional Council .....	Kotzebue .....	October 13, 2006.
Region 9—Eastern Interior Regional Council .....	Delta Junction .....	October 17, 2006.
Region 10—North Slope Regional Council .....	Barrow .....	September 7, 2006.

Specific times and meeting locations will be published in local and statewide newspapers prior to the meetings. Locations and dates may change based on weather or local circumstances. The amount of material on each Regional Council’s agenda will determine the length of the Regional Council meetings. The agenda of each Regional Council meeting will include a review of wildlife issues in the Region, discussion and development of recommendations on fishery proposals for the Region, and staff briefings on matters of interest to the Council.

Electronic filing of comments is preferred: You may submit electronic comments (proposals) and other data to [Subsistence@fws.gov](mailto:Subsistence@fws.gov). Please submit as Adobe Acrobat (PDF) or MS Word files, avoiding the use of any special characters and any form of encryption.

During November 2006, we will compile the written proposals to change Subpart D hunting and trapping regulations and Subpart C customary and traditional use determinations and distribute them for additional public review in a 30-day public comment period. During the public comment period, which is presently scheduled to end on January 5, 2007, we will accept written public comments on distributed proposals.

A second series of Regional Council meetings will be held in February and March 2007, to assist the Regional Councils in developing recommendations to the Board. You may also present comments on published proposals to change hunting and trapping and customary and traditional use determination regulations to the Regional Councils at those winter meetings.

The Board will discuss and evaluate proposed changes to this rule during a public meeting scheduled to be held in Anchorage, May 8–10, 2007. You may provide additional oral testimony on specific proposals before the Board at that time. At that public meeting, the Board will then deliberate and take final action on proposals received that request changes to this proposed rule.

**Please Note:** The Board will not consider proposals for changes relating to fish or

shellfish regulations, other than for the Kenai Peninsula, at this time. The Board will be calling for proposed changes to the fish and shellfish regulations in January 2007.

The Board’s review of your comments, fish proposals for the Kenai Peninsula only, and wildlife and will be facilitated by you providing the following information: (a) Your name, address, and telephone number; (b) The section and/or paragraph of this proposed rule for which you are suggesting changes; (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 §§ \_\_\_\_.25, \_\_\_\_.26, or \_\_\_\_.27, Subpart D, may be rejected. The Board may defer review and action on some proposals to allow time for local cooperative planning efforts, or to acquire additional needed information, or if workload exceeds work capacity of staff, Regional Councils, or the 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 hunting and trapping 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 27114–27170). On January 8, 1999 (64 FR 1276), the Departments extended jurisdiction to include waters in which there exists a Federal reserved water right. This amended rule conformed the Federal Subsistence Management Program to the Ninth Circuit’s ruling in *Alaska v. Babbitt*. Consistent with Subparts A, B, and C of these regulations, as revised February 18, 2003 (68 FR 7703), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board’s composition consists of 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 and B and the annual Subparts C and 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 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 (2004) and 50 CFR 100.11 (2004), 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 May 2007.

#### **Proposed Changes From 2006–2007 Wildlife 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 2006–2007 Subparts C and D final rule published June 30, 2006 (71 FR 37642), serves as the foundation for this 2007–2008 Subparts C and D proposed rule. The regulations relating to wildlife contained in this proposed rule would take effect on July 1, 2007, unless elements are changed by subsequent Board action following the public review process outlined herein.

#### **Proposed Changes to Kenai Peninsula Fishing Seasons and Harvest Limit Regulations**

At its winter 2006 meeting, the Southcentral Regional Council requested that the Board either extend the proposal period for receiving fishery proposals for the Kenai Peninsula or reopen the proposal period concurrently with the fall 2006 wildlife proposal period. Over time, the Board has come to recognize and appreciate the unique nature of the circumstances associated with management of fish and wildlife resources on the Kenai Peninsula. These circumstances stem, in large part, from competing intensive use by local residents, other Alaskans, and nonresidents. The Board believes that the best option for resolving subsistence-related conflicts on the Kenai Peninsula is the establishment of a dedicated forum for all interested users of fish and wildlife to share their views and discuss their respective needs. In light of that, the Board has requested that the Secretary of the Interior authorize the establishment of a new subsistence regional advisory council to address subsistence uses of fish and wildlife on Federal public lands and waters on the Kenai Peninsula. Also, with the new customary and traditional use determinations that the Board adopted during its January 2006 meeting, it is appropriate to consider changes to the seasons, harvest limits, and methods of take by subsistence users for fish on the Kenai Peninsula for the 2007 fishing season. With this notice, the Board is providing a special opportunity for the public to propose changes to the 2006 fishing regulations for the Kenai Peninsula, published in the Federal Register on March 29, 2006 (71 FR 15569). The Board will make a concerted effort to have any adopted changes in place for the 2007 fishing season on the Kenai Peninsula.

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

*National Environmental Policy Act:* 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; 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 at the office listed under **ADDRESSES**. The Secretary of the Interior, with the concurrence of the Secretary of Agriculture, determined that the expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and has therefore signed a Finding of No Significant Impact.

*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 and 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 will

not likely restrict subsistence uses significantly.

During the environmental assessment process for extending fisheries jurisdiction, 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 "may significantly restrict" threshold for notice and hearings under ANILCA section 810(a) for any subsistence resources or uses.

**Paperwork Reduction Act:** This proposed rule does not contain any information collections for which 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.

**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 ammunition, snowmachine, 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 2 million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of \$3.00 per pound, would equate to about \$6 million in food value Statewide.

**Regulatory Flexibility Act:** 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 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.

**Executive Order 12630:** 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.

**Unfunded Mandates Reform Act:** 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.

**Executive Order 12988:** 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.

**Executive Order 13132:** 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.

**Government-to-Government Relations with Native American Tribal Governments:** 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 substantial direct effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

**Energy Effects:** 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:** Bill Knauer drafted these regulations under the guidance of Peter J. Probasco, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Chuck Ardizzone, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Warren Eastland, Alaska Regional Office, Bureau of Indian Affairs; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife Service; 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 set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR part 242 and 50 CFR part 100 for the 2007–08 regulatory year. The text of the amendments would be the same as the final rule for the 2006–07 wildlife regulatory year published in the **Federal Register** (71 FR 37642) June 30, 2006, and the final rule for the 2006–07 fishery regulatory year published in the **Federal Register** (71 FR 15569) March 29, 2006.

Dated: July 18, 2006.

**Peter J. Probasco,**

*Acting Chair, Federal Subsistence Board.*

Dated: July 20, 2006.

**Steve Kessler,**

*Subsistence Program Leader, USDA—Forest Service.*

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