

## Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## Environment

We have analyzed this rule under Commandant Instruction M16475.ID, and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule.

## List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 100.35–T05–065 to read as follows:

### § 100.35–T05–065 Choptank River, Cambridge, MD.

(a) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the 2006 Cambridge Offshore Challenge under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(b) *Regulated area* includes all waters of the Choptank River, from shoreline to shoreline, bounded to the west by the Route 50 Bridge and bounded to the east by a line drawn along longitude 076° W, between Goose Point, MD and Oystershell Point, MD. All coordinates reference Datum: NAD 1983.

(c) *Special local regulations:* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* This section will be enforced from 10:30 a.m. on September 23, 2006 to 4:30 p.m. on September 24, 2006.

Dated: August 21, 2006.

**L.L. Hereth,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

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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 Adjustment—Arctic Village Sheep Management Area

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

**ACTION:** Seasonal adjustment.

**SUMMARY:** This provides notice of the Federal Subsistence Board’s in-season management action to remove closure restrictions on non-Federally qualified users in the Red Sheep and Cane Creek drainages of the Arctic Village Sheep Management Area. The Board’s action provides an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on June 30, 2006. Those regulations established seasons, harvest limits, methods, and means relating to the taking of wildlife for subsistence uses during the 2006 regulatory year.

**DATES:** The action is effective from August 10, 2006, through September 20, 2006.

#### FOR FURTHER INFORMATION CONTACT:

Peter J. Probasco, 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 Manager, 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 rural

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 2006 wildlife seasons, harvest limits, and methods and means were published on June 30, 2006 (71 FR 37642). Because this action relates to a joint program managed by an agency or agencies in both the Departments of Agriculture and the Interior, an identical adjustment 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 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 Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

#### *Current Management Action*

This action is authorized and in accordance with 50 CFR 100.19(d)–(e) and 36 CFR 242.19(d)–(e).

#### *Arctic Village Sheep Management Area*

Section 815(3) of ANILCA authorizes restrictions or closures to nonsubsistence uses on the public lands only when necessary for the conservation of healthy populations of fish and wildlife or to continue subsistence uses of such populations. Federal closure regulations for the Arctic Village Sheep Management Area have been in existence since the 1991/92 regulatory year. The management area was expanded in 1995 to include the Cane Creek and Red Sheep Creek drainages. The initial closure was proposed to address concerns regarding low number of sheep in the area, and to provide for continued subsistence use of sheep in the area.

In 2005, the Alaska Department of Fish and Game submitted a proposal that requested the Board remove the closure in the Arctic Village Sheep Management Area to nonrural hunters. Their proposal stated that without evidence of any significant use by local subsistence hunters, the necessity of the closure to continue subsistence use of sheep in the area could not be used to justify maintaining the closure. The public and the Eastern Interior Subsistence Regional Advisory Council reviewed and made recommendations on the proposal. At its May 2006 meeting, the Board rejected the proposal, as well as a motion to remove the closure for only the Red Sheep and Cane Creek drainages, based on the lack of biological and harvest data that would support or oppose the proposed action. The Board requested agency staff to conduct a sheep population survey within the affected area and indicated it would revisit this issue pending the results of the survey.

A survey of sheep in the Red Sheep Creek and Cane Creek drainages within the Arctic Village Sheep Management Area conducted June 19–21, 2006, found a minimum of 188 sheep in these drainages, including 53 rams, of which 18 were classified as mature rams. The estimated density of sheep in these drainages was 1.8 sheep/mi<sup>2</sup>. Although the density of sheep in the area is relatively low compared to some other areas in the state, the density reflects the relatively poor quality of the sheep habitat. The sex and age ratios of the sheep are within normal ranges and indicate that the population is healthy. Allowing sheep hunting by non-Federally qualified hunters in these

drainages would not adversely affect the sheep population because these hunters would be limited to taking one full curl ram in the fall season when this special action would be effective. Removal of some full curl rams from the population will not reduce reproductive success in the sheep population. Maintaining the closure to nonsubsistence hunting of sheep in the Red Sheep Creek and Cane Creek drainages within the Arctic Village Sheep Management Area is no longer necessary for conservation of a healthy sheep population.

Maintaining the closure to nonsubsistence hunting of sheep in these drainages is also not necessary to provide for continued subsistence use of sheep. Currently, despite the closure to non-Federally qualified hunters and a more liberal Federal subsistence harvest limit during the fall than that provided under State regulations in adjacent areas, there has been relatively little hunting effort in these drainages reported by Arctic Village and other Federally qualified residents and very few sheep have been reported taken there since the closure was instituted in 1995. The sheep population in these drainages can support harvest by both subsistence and nonsubsistence hunters. In fact, because subsistence hunters can take rams of any age, the number of rams available to subsistence hunters far exceeds the number of full curl rams to which non-Federally qualified hunters are limited. Allowing hunting by non-Federally qualified hunters in the Red Sheep Creek and Cane Creek drainages would not significantly reduce harvest opportunities for Arctic Village residents.

Finally, the existing closure is not justified for reasons of public safety, administration, or pursuant to other applicable law.

On July 18, 2006, at a public work session in Anchorage, the Board approved lifting the closure in the Red Sheep and Cane Creek drainages from August 10, 2006, through September 20, 2006. The remainder of the Arctic Village Sheep Management Area remains closed to nonrural hunters.

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

##### *Administrative Procedure Act*

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for this adjustment are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate action would generally fail to serve the overall public interest and conflict with Section

815(3) of ANILCA. 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 this action and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the **DATES** section.

#### *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, 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).

#### *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 does not contain information collection requirements subject to Office of Management and Budget (OMB) approval 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 adjustment has 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 sporting goods dealers. The number of small entities affected is unknown; however, the effects will be seasonally and geographically limited in nature and will likely not be significant. The Departments certify that this adjustment 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 preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, this adjustment has no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies under the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustment 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 adjustment meets 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 adjustment 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. Cooperative salmon run assessment efforts with ADF&G will continue.

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.

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 action is not expected to significantly affect energy supply, distribution, or use, it is not a significant energy action and no Statement of Energy Effects is required.

#### *Drafting Information*

Bill Knauer drafted this document 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, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Dr. Warren Eastland, 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: August 8, 2006.

**Peter J. Probasco,**

*Acting Chair, Federal Subsistence Board.*

Dated: August 8, 2006.

**Steve Kessler,**

*Subsistence Program Leader, USDA—Forest Service.*

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