

determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the

Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because of the limited duration and scope of the regulation. A “Categorical Exclusion Determination” is available in the docket for inspection or copying where indicated under **ADDRESSES**.

### List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add § 165.T05–006 to read as follows:

#### § 165.T05–006 Security Zone; Potomac River, Washington Channel, Washington, DC

(a) *Location.* The following area is a security zone: all waters of the Washington Channel, from surface to bottom, encompassed by lines connecting the following points, beginning at 38°52′03″ N, 077°01′07″ W, thence to 38°52′03″ N, 077°01′14″ W, thence to 38°51′50″ N, 077°01′16″ W, thence to 38°51′50″ N, 077°01′07″ W, thence to 38°52′03″ N, 077°01′07″ W. These coordinates are based upon NAD 1983.

(b) *Regulations.*

(1) In accordance with § 165.33, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland, or his or her designated representative. Section 165.33 also contains other general requirements.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number (410) 576–2693 or on VHF channel 16 (156.8 MHz) or VHF channel 22 (157.1 MHz) to seek permission to transit the

area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Effective period.* This section will be effective from 11 a.m. through 4 p.m. on May 30, 2002.

Dated: April 23, 2002.

**E.Q. Kahler,**

*Acting Commander, U.S. Coast Guard,  
Captain of the Port, Baltimore, Maryland.*

[FR Doc. 02–11275 Filed 5–6–02; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 50 CFR Part 100

#### 36 CFR Part 242

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### RIN 1018–AH85

#### Subsistence Management Regulations for Public Lands in Alaska

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

**ACTION:** Final rule.

**SUMMARY:** This rule, in response to comments on an interim rule, amends the operating regulations of the Federal Subsistence Management Program in Alaska. The primary aspects of that Interim Rule, published June 12, 2001, expanded the authority that the Board may delegate to agency field officials and clarified the procedures for enacting emergency or temporary restrictions, closures, or openings. This Final Rule also corrects some inadvertent errors and oversights of previous rules.

**DATES:** This rule is effective June 6, 2002.

**FOR FURTHER INFORMATION CONTACT:** Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Thomas H. Boyd, (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 271–2540.

#### 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, 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, 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.

On June 12, 2001 (66 FR 31533), the Secretaries published an Interim rule expanding the authority of the Board to delegate in-season management

decisions to local field managers. This final rule responds to comments received on that Interim rule and makes changes to it as appropriate. All Board members have reviewed this rule and agree with its substance.

#### **Federal Subsistence Regional Advisory Councils**

Alaska has been divided into ten subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory 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 geographical, cultural, and user diversity within each region.

#### **Public Review and Comment**

The Secretaries published an Interim rule (66 FR 31533) on June 12, 2001, in order to provide necessary delegation of authority to field managers to make crucial fishery management decisions during the past fishing season. At the same time, comments were solicited on the Interim rule. During their Winter Council meetings in February and March 2001, all Regional Advisory Councils supported the expansion of delegation authority found in § \_\_\_\_\_.10(d)(6). We also received a total of three written comments on the Interim rule.

#### *Analysis of Public Comments*

Two commentators supported clarification of residency requirements found in § \_\_\_\_\_.6(a)(1). A number of agencies indicated that there needed to be clarification regarding the minimum age at which a person could obtain a Federal Subsistence Registration permit or Designated Harvester permit. Clarifying language has been added at § \_\_\_\_\_.6(b).

Three commentators opposed the expansion of delegated authority, believing that it would remove the public process from critical management decisions. They also indicated that the decisions should remain with the Federal Subsistence Board. In developing the implementing letter that instructs field managers in the procedures to use for in-season management decisions, the Federal Subsistence Board specifically included language requiring public coordination and communication prior to in-season management decisions. During summer and fall 2001, over 30 in-season management decisions were made by

field managers. All of these were accomplished with public involvement and close coordination with the Alaska Department of Fish and Game (ADFG). The delegated authority worked so well that ADFG is in the process of acquiring the same level of authority for its own field managers.

One commentator indicated opposition to the formation of any Federal local advisory committees (§ \_\_\_\_\_.10(d)(4)(xii)). The Board intends to continue utilizing State local fish and game advisory committees and not to establish any Federal ones.

One commentator supported the reorganization and clarifying language relative to Special Actions (§ \_\_\_\_\_.19).

One commentator recommended transmitting a copy of any Request for Reconsideration to the State for review and recommendation. This requirement has been added to § \_\_\_\_\_.20(e). Another commentator recommended that the conditions for accepting a Request for Reconsideration be less open to interpretation. The standards that were placed in § \_\_\_\_\_.20(d) are the same standards that the Board has been using since assuming jurisdiction for subsistence management. However, this is the first time that they have been formally published. We believe that it is in the public interest to let potential requestors know under what circumstances the Board will be accepting a Request for Reconsideration. Unfortunately, all of the criteria cannot be completely objective; there will always be some level of subjectivity.

One commentator also disagreed with a statement made in the preamble regarding economic effects. This rule by itself does not, and will not, restrict any existing sport or commercial fisheries. However, future Board actions could result in some closures to those fisheries in certain areas in order to protect the fish stocks upon which subsistence users and non-subsistence users depend.

#### *Summary of Changes*

Based on our analysis of public comments and agency concerns expressed since publication of the Interim rule (66 FR 31533) on June 12, 2001, we have made the following revisions:

Section \_\_\_\_\_.6(b)—Clarified the age at which you can obtain a Federal subsistence registration permit, a Designated Harvester permit, or have someone serve as a designated harvester for you. Agencies, staff, and members of the public have expressed concern about alleged and potential abuse by individuals obtaining permits for infants;

Section \_\_\_\_\_.7—Corrected an inadvertent error that removed the allowance for barter of fish and wildlife. Barter is provided for in ANILCA and had been allowed in the regulations until publication of the rule expanding jurisdiction for subsistence fisheries management (January 8, 1999, 64 FR 1276);

Section \_\_\_\_\_.11(b)(1)—Removed the unintended requirement that Regional Council member recommendations could only come from nominations made by subsistence users. The Board's recommendations to the Secretaries for appointment to the Regional Councils may come from nominations or from self-applicants;

Section \_\_\_\_\_.11(c)(3)—Clarified that Regional Council recommendations should be supported by substantial evidence, be consistent with recognized principles of fish and wildlife conservation, and not be detrimental to the satisfaction of subsistence needs. This corresponds to the reasons under which the Board may reject a Regional Council recommendation;

Section \_\_\_\_\_.14(b)—Clarified that the Board's authority includes trapping, as well as hunting and fishing;

Section \_\_\_\_\_.18—Removed duplicative language;

Section \_\_\_\_\_.19(c)—Revised the statement that implied that any Special Action that is not accepted would be deferred to the next regulatory cycle. Upon further consideration, a proponent may not wish to have his/her request appear in the next cycle because conditions may have changed or other information is now available warranting other action;

Section \_\_\_\_\_.20—Inserted a requirement for the Board to provide a copy of any Request for Reconsideration for review and recommendation to the Alaska Department of Fish and Game;

Section \_\_\_\_\_.23(a)—Included the areas of Kenai, Seward, and Homer to the list of non-rural areas. This reflects the Board's May 2001 rescission of its May 2000 decision that had determined these communities to be rural; and,

Section \_\_\_\_\_.23(a)—Corrected the description of one location in the Ketchikan area (Mountain Point versus Mountain Pass) and parts of Gravina Island.

Nothing in this rule is intended to change the underlying rural priority that is set out in Title VIII of ANILCA or otherwise amend the statutory basis of the Federal Subsistence Management Program. Although most sections of these regulations are not being amended, for the purpose of clarity and ease of understanding, the entire text of subparts A and B, and portions of C is

being printed. The unpublished sections (portions of subpart C and Sections \_\_\_\_\_.25, \_\_\_\_\_.26, \_\_\_\_\_.27, and \_\_\_\_\_.28) relate to wildlife, fish, and shellfish regulations that are revised annually. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text is incorporated into 36 CFR part 242 and 50 CFR part 100.

The primary purpose of the interim rulemaking action was to delegate additional authority from the Board to local officials to make conservation decisions. We published an interim rule because there was inadequate time to engage in notice-and-comment rulemaking prior to the start of the spring/summer salmon runs. Many of these runs, particularly on the Yukon and Kuskokwim Rivers, were the lowest in history last year and were expected to be very low again this past season. As such, the ability to make immediate (often within hours) decisions relative to a specific run or pulse of fish was critical in protecting the health of the population while, if at all possible, providing a subsistence opportunity for the rural residents.

#### 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 22940-22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

An environmental assessment has been prepared 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 has 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.

*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 final 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 rule contains information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. It applies to the

use of public lands in Alaska. The information collection has been approved by OMB, Control Number 1018-0075, which expires July 31, 2003. An agency 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.

Currently, information is being collected by the use of a Federal

Subsistence Registration Permit and Designated Harvester Application. The information collected on these two permits establishes whether an applicant qualifies to participate in a Federal subsistence hunt or fishery on public land in Alaska and provides a report of harvest and the location of harvest. The collected information is necessary to determine harvest success, harvest location, and population health

in order to make management decisions relative to the conservation of healthy fish or wildlife populations. Additional harvest information is obtained from harvest reports submitted to the State of Alaska. The recordkeeping burden for this aspect of the program is negligible (1 hour or less). This information is accessed via computer data base.

Form	Estimated number of respondents	Completion time for each form (in hours)	Estimated annual response	Estimated annual burden (in hours)	Hourly cost for respondent	Financial burden on respondents
Federal Subsistence Registration Permit.	15,000	¼	15,000	3,750	\$20.00	\$5.00 each or \$75,000 total
Designated Harvester Application	2,000	¼	2,000	500	\$20.00	\$5.00 each or \$10,000 total

The information collected will establish whether the applicant qualifies to participate in a Federal subsistence hunt or fishery on public land in Alaska and will provide a report of harvest and location of harvest.

You may direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 222 ARLSQ, Washington, D.C. 20240; and the Office of Management and Budget, Department of the Interior Desk Officer, 725 17th Street, NW., Washington, D.C. 20503. Additional information collection requirements may be imposed if local advisory committees subject to the Federal Advisory Committee Act are established under subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

*Clarity of the Rule* Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "\$" and a numbered heading; for example, § 24 Customary and traditional determinations.) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make

the rule easier to understand? Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

*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, fishing tackle, and gasoline dealers. The number of small entities affected is unknown; but, 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, it is estimated that 24 million pounds of fish (including 8.3 million pounds of salmon) are harvested by subsistence users annually and, if given an estimated dollar value of \$3.00 per pound for salmon and \$0.58 per pound for other fish, would equate to about \$34 million in food value state-wide. We also 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 state-wide.

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 impact on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments have determined based on the above figures that this rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement 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 final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

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**—These regulations were drafted by William Knauer under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Taylor Breseford, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch and Bob Gerhard, Alaska Regional Office, National Park Service; Greg Bos and Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service.

#### 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 Departments 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 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. Revise subparts A and B of 36 CFR part 242 and 50 CFR part 100 to read as follows:

#### Subpart A—General Provisions

Sec.

- \_\_\_ .1 Purpose.
- \_\_\_ .2 Authority.
- \_\_\_ .3 Applicability and scope.
- \_\_\_ .4 Definitions.
- \_\_\_ .5 Eligibility for subsistence use.
- \_\_\_ .6 Licenses, permits, harvest tickets, tags, and reports.
- \_\_\_ .7 Restriction on use.
- \_\_\_ .8 Penalties.
- \_\_\_ .9 Information collection requirements.

#### Subpart B—Program Structure

- \_\_\_ .10 Federal Subsistence Board.
- \_\_\_ .11 Regional advisory councils.
- \_\_\_ .12 Local advisory committees.
- \_\_\_ .13 Board/agency relationships.
- \_\_\_ .14 Relationship to State procedures and regulations.
- \_\_\_ .15 Rural determination process.
- \_\_\_ .16 Customary and traditional use determination process.
- \_\_\_ .17 Determining priorities for subsistence uses among rural Alaska residents.
- \_\_\_ .18 Regulation adoption process.
- \_\_\_ .19 Special actions.
- \_\_\_ .20 Request for reconsideration.
- \_\_\_ .21 [Reserved]

#### Subpart A—General Provisions

##### § \_\_\_ .1 Purpose.

The regulations in this part implement the Federal Subsistence Management Program on public lands within the State of Alaska.

##### § \_\_\_ .2 Authority.

The Secretary of the Interior and Secretary of Agriculture issue the regulations in this part pursuant to authority vested in Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3101–3126.

##### § \_\_\_ .3 Applicability and scope.

(a) The regulations in this part implement the provisions of Title VIII of ANILCA relevant to the taking of fish and wildlife on public lands in the State

of Alaska. The regulations in this part do not permit subsistence uses in Glacier Bay National Park, Kenai Fjords National Park, Katmai National Park, and that portion of Denali National Park established as Mt. McKinley National Park prior to passage of ANILCA, where subsistence taking and uses are prohibited. The regulations in this part do not supersede agency-specific regulations.

(b) The regulations contained in this part apply on all public lands including all non-navigable waters located on these lands, on all navigable and non-navigable water within the exterior boundaries of the following areas, and on inland waters adjacent to the exterior boundaries of the following areas:

- (1) Alaska Maritime National Wildlife Refuge;
- (2) Alaska Peninsula National Wildlife Refuge;
- (3) Aniakchak National Monument and Preserve;
- (4) Arctic National Wildlife Refuge;
- (5) Becharof National Wildlife Refuge;
- (6) Bering Land Bridge National Preserve;
- (7) Cape Krusenstern National Monument;
- (8) Chugach National Forest, excluding marine waters;
- (9) Denali National Preserve and the 1980 additions to Denali National Park;
- (10) Gates of the Arctic National Park and Preserve;
- (11) Glacier Bay National Preserve;
- (12) Innoko National Wildlife Refuge;
- (13) Izembek National Wildlife Refuge;
- (14) Katmai National Preserve;
- (15) Kanuti National Wildlife Refuge;
- (16) Kenai National Wildlife Refuge;
- (17) Kobuk Valley National Park;
- (18) Kodiak National Wildlife Refuge;
- (19) Koyukuk National Wildlife Refuge;
- (20) Lake Clark National Park and Preserve;
- (21) National Petroleum Reserve in Alaska;
- (22) Noatak National Preserve;
- (23) Nowitna National Wildlife Refuge;
- (24) Selawik National Wildlife Refuge;
- (25) Steese National Conservation Area;
- (26) Tetlin National Wildlife Refuge;
- (27) Togiak National Wildlife Refuge;
- (28) Tongass National Forest, including Admiralty Island National Monument and Misty Fjords National Monument, and excluding marine waters;
- (29) White Mountain National Recreation Area;
- (30) Wrangell-St. Elias National Park and Preserve;
- (31) Yukon-Charley Rivers National Preserve;
- (32) Yukon Delta National Wildlife Refuge;

- (33) Yukon Flats National Wildlife Refuge;
- (34) All components of the Wild and Scenic River System located outside the boundaries of National Parks, National Preserves, or National Wildlife Refuges, including segments of the Alagnak River, Beaver Creek, Birch Creek, Delta River, Fortymile River, Gulkana River, and Unalakleet River.

(c) The public lands described in paragraph (b) of this section remain subject to change through rulemaking pending a Department of the Interior review of title and jurisdictional issues regarding certain submerged lands beneath navigable waters in Alaska.

#### § \_\_\_\_ .4 Definitions.

The following definitions apply to all regulations contained in this part:

*Agency* means a subunit of a cabinet-level Department of the Federal Government having land management authority over the public lands including, but not limited to, the U.S. Fish & Wildlife Service, Bureau of Indian Affairs, Bureau of Land Management, National Park Service, and USDA Forest Service.

*ANILCA* means the Alaska National Interest Lands Conservation Act, Public Law 96-487, 94 Stat. 2371, (codified, as amended, in scattered sections of 16 U.S.C. and 43 U.S.C.)

*Area, District, Subdistrict, and Section* mean one of the geographical areas defined in the codified Alaska Department of Fish and Game regulations found in Title 5 of the Alaska Administrative Code.

*Barter* means the exchange of fish or wildlife or their parts taken for subsistence uses; for other fish, wildlife or their parts; or, for other food or for nonedible items other than money, if the exchange is of a limited and noncommercial nature.

*Board* means the Federal Subsistence Board as described in § \_\_\_\_ .10.

*Commissions* means the Subsistence Resource Commissions established pursuant to section 808 of ANILCA.

*Conservation of healthy populations of fish and wildlife* means the maintenance of fish and wildlife resources and their habitats in a condition that assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystem, including the recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem; minimizes the likelihood of irreversible or long-term adverse effects upon such populations and species; ensures the maximum practicable diversity of

options for the future; and recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and the manipulation of the components of the ecosystem.

*Customary trade* means exchange for cash of fish and wildlife resources regulated in this part, not otherwise prohibited by Federal law or regulation, to support personal and family needs; and does not include trade which constitutes a significant commercial enterprise.

*Customary and traditional use* means a long-established, consistent pattern of use, incorporating beliefs and customs which have been transmitted from generation to generation. This use plays an important role in the economy of the community.

*FACA* means the Federal Advisory Committee Act, Public Law 92-463, 86 Stat. 770 (codified as amended, at 5 U.S.C. Appendix II, 1-15).

*Family* means all persons related by blood, marriage, or adoption or any other person living within the household on a permanent basis.

*Federal Advisory Committees or Federal Local Advisory Committees* as described in § \_\_\_\_ .12

*Federal lands* means lands and waters and interests therein the title to which is in the United States, including navigable and non-navigable waters in which the United States has reserved water rights.

*Fish and wildlife* means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the carcass or part thereof.

*Game Management Unit or GMU* means one of the 26 geographical areas listed under game management units in the codified State of Alaska hunting and trapping regulations and the Game Unit Maps of Alaska.

*Inland Waters* means, for the purposes of this part, those waters located landward of the mean high tide line or the waters located upstream of the straight line drawn from headland to headland across the mouths of rivers or other waters as they flow into the sea. Inland waters include, but are not limited to, lakes, reservoirs, ponds, streams, and rivers.

*Marine Waters* means, for the purposes of this part, those waters located seaward of the mean high tide line or the waters located seaward of the straight line drawn from headland to headland across the mouths of rivers or other waters as they flow into the sea.

*Person* means an individual and does not include a corporation, company, partnership, firm, association, organization, business, trust, or society.

*Public lands or public land* means:

(1) Lands situated in Alaska which are Federal lands, except—

(i) Land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(ii) Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*, which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(iii) Lands referred to in section 19(b) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1618(b).

(2) Notwithstanding the exceptions in paragraphs (1)(i) through (iii) of this definition, until conveyed or interim conveyed, all Federal lands within the boundaries of any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Forest Monument, National Recreation Area, National Conservation Area, new National forest or forest addition shall be treated as public lands for the purposes of the regulations in this part pursuant to section 906(o)(2) of ANILCA.

*Regional Councils or Regional Council* means the Regional Advisory Councils as described in § \_\_\_\_ .11.

*Regulatory year* means July 1 through June 30, except for fish and shellfish where it means March 1 through the last day of February.

*Reserved water right(s)* means the Federal right to use unappropriated appurtenant water necessary to accomplish the purposes for which a Federal reservation was established. Reserved water rights include nonconsumptive and consumptive uses.

*Resident* means any person who has his or her primary, permanent home for the previous 12 months within Alaska and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are

not limited to: the address listed on an Alaska Permanent Fund dividend application; an Alaska license to drive, hunt, fish, or engage in an activity regulated by a government entity; affidavit of person or persons who know the individual; voter registration; location of residences owned, rented, or leased; location of stored household goods; residence of spouse, minor children, or dependents; tax documents; or whether the person claims residence in another location for any purpose.

*Rural* means any community or area of Alaska determined by the Board to qualify as such under the process described in § \_\_\_\_\_.15.

*Secretary* means the Secretary of the Interior, except that in reference to matters related to any unit of the National Forest System, such term means the Secretary of Agriculture.

*State* means the State of Alaska.

*Subsistence uses* means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.

*Take* or *taking* as used with respect to fish or wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

*Year* means calendar year unless another year is specified.

#### § \_\_\_\_\_.5 Eligibility for subsistence use.

(a) You may take fish and wildlife on public lands for subsistence uses only if you are an Alaska resident of a rural area or rural community. The regulations in this part may further limit your qualifications to harvest fish or wildlife resources for subsistence uses. If you are not an Alaska resident or are a resident of a non-rural area or community listed in § \_\_\_\_\_.23, you may not take fish or wildlife on public lands for subsistence uses under the regulations in this part.

(b) Where the Board has made a customary and traditional use determination regarding subsistence use of a specific fish stock or wildlife population, in accordance with, and as listed in, § \_\_\_\_\_.24, only those Alaskans who are residents of rural areas or communities designated by the Board are eligible for subsistence taking of that population or stock on public lands for subsistence uses under the regulations in this part. If you do not live in one of

those areas or communities, you may not take fish or wildlife from that population or stock, on public lands under the regulations in this part.

(c) Where customary and traditional use determinations for a fish stock or wildlife population within a specific area have not yet been made by the Board (e.g., "no determination"), all Alaskans who are residents of rural areas or communities may harvest for subsistence from that stock or population under the regulations in this part.

(d) The National Park Service may regulate further the eligibility of those individuals qualified to engage in subsistence uses on National Park Service lands in accordance with specific authority in ANILCA, and National Park Service regulations at 36 CFR Part 13.

#### § \_\_\_\_\_.6 Licenses, permits, harvest tickets, tags, and reports.

(a) If you wish to take fish and wildlife on public lands for subsistence uses, you must be an eligible rural Alaska resident and:

(1) Possess the pertinent valid Alaska resident hunting and trapping licenses (no license required to take fish or shellfish, but you must be an Alaska resident) unless Federal licenses are required or unless otherwise provided for in subpart D of this part;

(2) Possess and comply with the provisions of any pertinent Federal permits (Federal Subsistence Registration Permit or Federal Designated Harvester Permit) required by subpart D of this part; and

(3) Possess and comply with the provisions of any pertinent permits, harvest tickets, or tags required by the State unless any of these documents or individual provisions in them are superseded by the requirements in subpart D of this part.

(b) In order to receive a Federal Subsistence Registration Permit or Federal Designated Harvester Permit or designate someone to harvest fish or wildlife for you under a Federal Designated Harvester Permit, you must be old enough to have reasonably harvested that species yourself (or under the guidance of an adult.)

(c) If you have been awarded a permit to take fish and wildlife, you must have that permit in your possession during the taking and must comply with all requirements of the permit and the regulations in this section pertaining to validation and reporting and to regulations in subpart D of this part pertaining to methods and means, possession and transportation, and utilization. Upon the request of a State

or Federal law enforcement agent, you must also produce any licenses, permits, harvest tickets, tags, or other documents required by this section. If you are engaged in taking fish and wildlife under the regulations in this part, you must allow State or Federal law enforcement agents to inspect any apparatus designed to be used, or capable of being used to take fish or wildlife, or any fish or wildlife in your possession.

(d) You must validate the harvest tickets, tags, permits, or other required documents before removing your kill from the harvest site. You must also comply with all reporting provisions as set forth in subpart D of this part.

(e) If you take fish and wildlife under a community harvest system, you must report the harvest activity in accordance with regulations specified for that community in subpart D of this part, and as required by any applicable permit conditions. Individuals may be responsible for particular reporting requirements in the conditions permitting a specific community's harvest. Failure to comply with these conditions is a violation of the regulations in this part. Community harvests are reviewed annually under the regulations in subpart D of this part.

(f) You may not make a fraudulent application for Federal or State licenses, permits, harvest tickets or tags or intentionally file an incorrect harvest report.

#### § \_\_\_\_\_.7 Restriction on use.

(a) You may not use fish or wildlife or their parts, taken pursuant to the regulations in this part, unless provided for in this part.

(b) You may not exchange in customary trade or sell fish or wildlife or their parts, taken pursuant to the regulations in this part, unless provided for in this part.

(c) You may barter fish or wildlife or their parts, taken pursuant to the regulations in this part, unless restricted in §§ \_\_\_\_\_.25, \_\_\_\_\_.26, \_\_\_\_\_.27, or \_\_\_\_\_.28.

#### § \_\_\_\_\_.8 Penalties.

If you are convicted of violating any provision of 50 CFR Part 100 or 36 CFR Part 242, you may be punished by a fine or by imprisonment in accordance with the penalty provisions applicable to the public land where the violation occurred.

#### § \_\_\_\_\_.9 Information collection requirements.

(a) The rules in this part contain information collection requirements subject to Office of Management and

Budget (OMB) approval under 44 U.S.C. 3501–3520. They apply to fish and wildlife harvest activities on public lands in Alaska. Subsistence users will not be required to respond to an information collection request unless a valid OMB number is displayed on the information collection form.

(1) Section \_\_\_\_\_.6, Licenses, permits, harvest tickets, tags, and reports. The information collection requirements contained in § \_\_\_\_\_.6 (Federal Subsistence Registration Permit or Federal Designated Harvester Permit forms) provide for permit-specific subsistence activities not authorized through the general adoption of State regulations. Identity and location of residence are required to determine if you are eligible for a permit and a report of success is required after a harvest attempt. These requirements are not duplicative with the requirements of paragraph (a)(3) of this section. The regulations in § \_\_\_\_\_.6 require this information before a rural Alaska resident may engage in subsistence uses on public lands. The Department estimates that the average time necessary to obtain and comply with this permit information collection requirement is 0.25 hours.

(2) Section \_\_\_\_\_.20, Request for reconsideration. The information collection requirements contained in § \_\_\_\_\_.20 provide a standardized process to allow individuals the opportunity to appeal decisions of the Board. Submission of a request for reconsideration is voluntary but required to receive a final review by the Board. We estimate that a request for reconsideration will take 4 hours to prepare and submit.

(3) The remaining information collection requirements contained in this part imposed upon subsistence users are those adopted from State regulations. These collection requirements would exist in the absence of Federal subsistence regulations and are not subject to the Paperwork Reduction Act. The burden in this situation is negligible, and information gained from these reports is systematically available to Federal managers by routine computer access requiring less than 1 hour.

(b) You may direct comments on the burden estimate or any other aspect of the burden estimate to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, N.W., MS 222 ARLSQ, Washington, D.C. 20240; and the Office of Management and Budget, Paperwork Reduction Project (Subsistence), Washington, D.C. 20503. Additional information requirements may be imposed if Local

Advisory Committees or additional Regional Councils, subject to the Federal Advisory Committee Act (FACA), are established under subpart B of this part. Such requirements will be submitted to OMB for approval prior to their implementation.

#### Subpart B—Program Structure

##### § \_\_\_\_\_.10 Federal Subsistence Board.

(a) The Secretary of the Interior and Secretary of Agriculture hereby establish a Federal Subsistence Board, and assign it responsibility for administering the subsistence taking and uses of fish and wildlife on public lands, and the related promulgation and signature authority for regulations of subparts C and D of this part. The Secretaries, however, retain their existing authority to restrict or eliminate hunting, fishing, or trapping activities which occur on lands or waters in Alaska other than public lands when such activities interfere with subsistence hunting, fishing, or trapping on the public lands to such an extent as to result in a failure to provide the subsistence priority.

(b) *Membership.* (1) The voting members of the Board are: a Chair to be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; Alaska Regional Director, National Park Service; Alaska Regional Forester, USDA Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Regional Director, Bureau of Indian Affairs. Each member of the Board may appoint a designee.

(2) [Reserved]

(c) Liaisons to the Board are: a State liaison, and the Chairman of each Regional Council. The State liaison and the Chairman of each Regional Council may attend public sessions of all Board meetings and be actively involved as consultants to the Board.

(d) *Powers and duties.* (1) The Board shall meet at least twice per year and at such other times as deemed necessary. Meetings shall occur at the call of the Chair, but any member may request a meeting.

(2) A quorum consists of four members.

(3) No action may be taken unless a majority of voting members are in agreement.

(4) The Board is empowered, to the extent necessary, to implement Title VIII of ANILCA, to:

(i) Issue regulations for the management of subsistence taking and

uses of fish and wildlife on public lands;

(ii) Determine which communities or areas of the State are rural or non-rural;

(iii) Determine which rural Alaska areas or communities have customary and traditional subsistence uses of specific fish and wildlife populations;

(iv) Allocate subsistence uses of fish and wildlife populations on public lands;

(v) Ensure that the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes;

(vi) Close public lands to the non-subsistence taking of fish and wildlife;

(vii) Establish priorities for the subsistence taking of fish and wildlife on public lands among rural Alaska residents;

(viii) Restrict or eliminate taking of fish and wildlife on public lands;

(ix) Determine what types and forms of trade of fish and wildlife taken for subsistence uses constitute allowable customary trade;

(x) Authorize the Regional Councils to convene;

(xi) Establish a Regional Council in each subsistence resource region and recommend to the Secretaries, appointees to the Regional Councils, pursuant to the FACA;

(xii) Establish Federal Advisory Committees within the subsistence resource regions, if necessary, and recommend to the Secretaries that members of the Federal Advisory Committees be appointed from the group of individuals nominated by rural Alaska residents;

(xiii) Establish rules and procedures for the operation of the Board, and the Regional Councils;

(xiv) Review and respond to proposals for regulations, management plans, policies, and other matters related to subsistence taking and uses of fish and wildlife;

(xv) Enter into cooperative agreements or otherwise cooperate with Federal agencies, the State, Native organizations, local governmental entities, and other persons and organizations, including international entities to effectuate the purposes and policies of the Federal subsistence management program;

(xvi) Develop alternative permitting processes relating to the subsistence taking of fish and wildlife to ensure continued opportunities for subsistence;

(xvii) Evaluate whether hunting, fishing, or trapping activities which occur on lands or waters in Alaska other than public lands interfere with

subsistence hunting, fishing, or trapping on the public lands to such an extent as to result in a failure to provide the subsistence priority, and after appropriate consultation with the State of Alaska, the Regional Councils, and other Federal agencies, make a recommendation to the Secretaries for their action;

(xviii) Identify, in appropriate specific instances, whether there exists additional Federal reservations, Federal reserved water rights or other Federal interests in lands or waters, including those in which the United States holds less than a fee ownership, to which the Federal subsistence priority attaches, and make appropriate recommendation to the Secretaries for inclusion of those interests within the Federal Subsistence Management Program; and

(xix) Take other actions authorized by the Secretaries to implement Title VIII of ANILCA.

(5) The Board may implement one or more of the following harvest and harvest reporting or permit systems:

(i) The fish and wildlife is taken by an individual who is required to obtain and possess pertinent State harvest permits, tickets, or tags, or Federal permit (Federal Subsistence Registration Permit);

(ii) A qualified subsistence user may designate another qualified subsistence user (by using the Federal Designated Harvester Permit) to take fish and wildlife on his or her behalf;

(iii) The fish and wildlife is taken by individuals or community representatives permitted (via a Federal Subsistence Registration Permit) a one-time or annual harvest for special purposes including ceremonies and potlatches; or

(iv) The fish and wildlife is taken by representatives of a community permitted to do so in a manner consistent with the community's customary and traditional practices.

(6) The Board may delegate to agency field officials the authority to set harvest and possession limits, define harvest areas, specify methods or means of harvest, specify permit requirements, and open or close specific fish or wildlife harvest seasons within frameworks established by the Board.

(7) The Board shall establish a Staff Committee for analytical and administrative assistance composed of members from the U.S. Fish and Wildlife Service, National Park Service, U.S. Bureau of Land Management, Bureau of Indian Affairs, and USDA Forest Service. A U.S. Fish and Wildlife Service representative shall serve as Chair of the Staff Committee.

(8) The Board may establish and dissolve additional committees as necessary for assistance.

(9) The U.S. Fish and Wildlife Service shall provide appropriate administrative support for the Board.

(10) The Board shall authorize at least two meetings per year for each Regional Council.

(e) *Relationship to Regional Councils.*

(1) The Board shall consider the reports and recommendations of the Regional Councils concerning the taking of fish and wildlife on public lands within their respective regions for subsistence uses. The Board may choose not to follow any Regional Council recommendation which it determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, would be detrimental to the satisfaction of subsistence needs, or in closure situations, for reasons of public safety or administration or to assure the continued viability of a particular fish or wildlife population. If a recommendation is not adopted, the Board shall set forth the factual basis and the reasons for the decision, in writing, in a timely fashion.

(2) The Board shall provide available and appropriate technical assistance to the Regional Councils.

#### § 11 Regional advisory councils.

(a) The Board shall establish a Regional Council for each subsistence resource region to participate in the Federal subsistence management program. The Regional Councils shall be established, and conduct their activities, in accordance with the FACA. The Regional Councils shall provide a regional forum for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife resources on public lands. The Regional Councils shall provide for public participation in the Federal regulatory process.

(b) *Establishment of Regional Councils; membership.* (1) The number of members for each Regional Council shall be established by the Board, and shall be an odd number. A Regional Council member must be a resident of the region in which he or she is appointed and be knowledgeable about the region and subsistence uses of the public lands therein. The Board shall accept nominations and make recommendations to the Secretaries for representatives on the Regional Councils. Appointments to the Regional Councils shall be made by the Secretaries.

(2) Regional Council members shall serve 3-year terms and may be reappointed. Initial members shall be appointed with staggered terms up to 3 years.

(3) The Chair of each Regional Council shall be elected by the applicable Regional Council, from its membership, for a 1-year term and may be reelected.

(c) *Powers and Duties.* (1) The Regional Councils are authorized to:

(i) Hold public meetings related to subsistence uses of fish and wildlife within their respective regions, after the Chair of the Board or the designated Federal Coordinator has called the meeting and approved the meeting agenda;

(ii) Elect officers;

(iii) Review, evaluate, and make recommendations to the Board on proposals for regulations, policies, management plans, and other matters relating to the subsistence take of fish and wildlife under the regulations in this part within the region;

(iv) Provide a forum for the expression of opinions and recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife within the region;

(v) Encourage local and regional participation, pursuant to the provisions of the regulations in this part in the decisionmaking process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses;

(vi) Prepare and submit to the Board an annual report containing—

(A) An identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(B) An evaluation of current and anticipated subsistence needs for fish and wildlife populations from the public lands within the region;

(C) A recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs related to the public lands; and

(D) Recommendations concerning policies, standards, guidelines, and regulations to implement the strategy;

(vii) Appoint members to each Subsistence Resource Commission within their region in accordance with the requirements of Section 808 of ANILCA;

(viii) Make recommendations on determinations of customary and traditional use of subsistence resources;

(ix) Make recommendations on determinations of rural status;

(x) Make recommendations regarding the allocation of subsistence uses among

rural Alaska residents pursuant to § \_\_\_\_\_.17;

(xi) Develop proposals pertaining to the subsistence taking and use of fish and wildlife under the regulations in this part, and review and evaluate such proposals submitted by other sources;

(xii) Provide recommendations on the establishment and membership of Federal Advisory Committees.

(2) The Regional Councils shall:

(i) Operate in conformance with the provisions of FACA and comply with rules of operation established by the Board;

(ii) Perform other duties specified by the Board.

(3) The Regional Council recommendations to the Board should be supported by substantial evidence, be consistent with recognized principles of fish and wildlife conservation, and not be detrimental to the satisfaction of subsistence needs.

#### § \_\_\_\_\_.12 Local advisory committees.

(a) The Board shall establish such local Federal Advisory Committees within each region as necessary at such time that it is determined, after notice and hearing and consultation with the State, that the existing State fish and game advisory committees do not adequately provide advice to, and assist, the particular Regional Council in carrying out its function as set forth in § \_\_\_\_\_.11.

(b) Local Federal Advisory Committees, if established by the Board, shall operate in conformance with the provisions of the FACA, and comply with rules of operation established by the Board.

#### § \_\_\_\_\_.13 Board/agency relationships.

(a) *General.* (1) The Board, in making decisions or recommendations, shall consider and ensure compliance with specific statutory requirements regarding the management of resources on public lands, recognizing that the management policies applicable to some public lands may entail methods of resource and habitat management and protection different from methods appropriate for other public lands.

(2) The Board shall issue regulations for subsistence taking of fish and wildlife on public lands. The Board is the final administrative authority on the promulgation of subparts C and D regulations relating to the subsistence taking of fish and wildlife on public lands.

(3) Nothing in the regulations in this part shall enlarge or diminish the authority of any agency to issue regulations necessary for the proper management of public lands under their

jurisdiction in accordance with ANILCA and other existing laws.

(b) Section 808 of ANILCA establishes National Park and Park Monument Subsistence Resource Commissions. Nothing in the regulations in this part affects the duties or authorities of these commissions.

#### § \_\_\_\_\_.14 Relationship to State procedures and regulations.

(a) State fish and game regulations apply to public lands and such laws are hereby adopted and made a part of the regulations in this part to the extent they are not inconsistent with, or superseded by, the regulations in this part.

(b) The Board may close public lands to hunting, trapping, or fishing, or take actions to restrict the taking of fish and wildlife when necessary to conserve healthy populations of fish and wildlife, or pursuant to other applicable Federal law. The Board may review and adopt State openings, closures, or restrictions which serve to achieve the objectives of the regulations in this part.

(c) The Board may enter into agreements with the State in order to coordinate respective management responsibilities.

(d) Petition for repeal of subsistence rules and regulations. (1) The State of Alaska may petition the Secretaries for repeal of the subsistence rules and regulations in this part when the State has enacted and implemented subsistence management and use laws which:

(i) Are consistent with sections 803, 804, and 805 of ANILCA; and

(ii) Provide for the subsistence definition, preference, and participation specified in sections 803, 804, and 805 of ANILCA.

(2) The State's petition shall:

(i) Be submitted to the Secretary of the Interior, U.S. Department of the Interior, Washington, D.C. 20240, and the Secretary of Agriculture, U.S. Department of Agriculture, Washington, D.C. 20240;

(ii) Include the entire text of applicable State legislation indicating compliance with sections 803, 804, and 805 of ANILCA; and

(iii) Set forth all data and arguments available to the State in support of legislative compliance with sections 803, 804, and 805 of ANILCA.

(3) If the Secretaries find that the State's petition contains adequate justification, a rulemaking proceeding for repeal of the regulations in this part will be initiated. If the Secretaries find that the State's petition does not contain

adequate justification, the petition will be denied by letter or other notice, with a statement of the ground for denial.

#### § \_\_\_\_\_.15 Rural determination process.

(a) The Board shall determine if an area or community in Alaska is rural. In determining whether a specific area of Alaska is rural, the Board shall use the following guidelines:

(1) A community or area with a population of 2,500 or less shall be deemed to be rural unless such a community or area possesses significant characteristics of a non-rural nature, or is considered to be socially and economically a part of an urbanized area.

(2) Communities or areas with populations above 2,500 but not more than 7,000 will be determined to be rural or non-rural.

(3) A community with a population of more than 7,000 shall be presumed non-rural, unless such a community or area possesses significant characteristics of a rural nature.

(4) Population data from the most recent census conducted by the United States Bureau of Census as updated by the Alaska Department of Labor shall be utilized in this process.

(5) Community or area characteristics shall be considered in evaluating a community's rural or non-rural status. The characteristics may include, but are not limited to:

(i) Use of fish and wildlife;

(ii) Development and diversity of the economy;

(iii) Community infrastructure;

(iv) Transportation; and

(v) Educational institutions.

(6) Communities or areas which are economically, socially, and communally integrated shall be considered in the aggregate.

(b) The Board shall periodically review rural determinations. Rural determinations shall be reviewed on a 10-year cycle, commencing with the publication of the year 2000 U.S. census. Rural determinations may be reviewed out-of-cycle in special circumstances. Once the Board makes a determination that a community has changed from rural to non-rural, a waiting period of 5 years shall be required before the non-rural determination becomes effective.

(c) Current determinations are listed at § \_\_\_\_\_.23.

#### § \_\_\_\_\_.16 Customary and traditional use determination process.

(a) The Board shall determine which fish stocks and wildlife populations have been customarily and traditionally used for subsistence. These

determinations shall identify the specific community's or area's use of specific fish stocks and wildlife populations. For areas managed by the National Park Service, where subsistence uses are allowed, the determinations may be made on an individual basis.

(b) A community or area shall generally exhibit the following factors, which exemplify customary and traditional use. The Board shall make customary and traditional use determinations based on application of the following factors:

(1) A long-term consistent pattern of use, excluding interruptions beyond the control of the community or area;

(2) A pattern of use recurring in specific seasons for many years;

(3) A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics;

(4) The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from, the community or area;

(5) A means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate;

(6) A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values, and lore from generation to generation;

(7) A pattern of use in which the harvest is shared or distributed within a definable community of persons; and

(8) A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area.

(c) The Board shall take into consideration the reports and recommendations of any appropriate Regional Council regarding customary and traditional uses of subsistence resources.

(d) Current determinations are listed in § \_\_\_\_\_.24.

**§ \_\_\_\_\_.17 Determining priorities for subsistence uses among rural Alaska residents.**

(a) Whenever it is necessary to restrict the subsistence taking of fish and wildlife on public lands in order to protect the continued viability of such populations, or to continue subsistence uses, the Board shall establish a priority among the rural Alaska residents after

considering any recommendation submitted by an appropriate Regional Council.

(b) The priority shall be implemented through appropriate limitations based on the application of the following criteria to each area, community, or individual determined to have customary and traditional use, as necessary:

(1) Customary and direct dependence upon the populations as the mainstay of livelihood;

(2) Local residency; and

(3) The availability of alternative resources.

(c) If allocation on an area or community basis is not achievable, then the Board shall allocate subsistence opportunity on an individual basis through application of the criteria in paragraphs (b)(1) through (3) of this section.

(d) In addressing a situation where prioritized allocation becomes necessary, the Board shall solicit recommendations from the Regional Council in the area affected.

**§ \_\_\_\_\_.18 Regulation adoption process.**

(a) Proposals for changes to the Federal subsistence regulations in subparts C or D of this part shall be accepted by the Board according to a published schedule. The Board may establish a rotating schedule for accepting proposals on various sections of subpart C or subpart D regulations over a period of years. The Board shall develop and publish proposed regulations in the **Federal Register** and publish notice in local newspapers. Comments on the proposed regulations in the form of proposals shall be distributed for public review.

(1) Proposals shall be made available for at least a thirty (30) day review by the Regional Councils. Regional Councils shall forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted in the time period as specified by the Board or as a part of the Regional Council's annual report described in § \_\_\_\_\_.11, whichever is earlier.

(2) The Board shall publish notice throughout Alaska of the availability of proposals received.

(3) The public shall have at least thirty (30) days to review and comment on proposals.

(4) After the comment period the Board shall meet to receive public testimony and consider the proposals. The Board shall consider traditional use patterns when establishing harvest levels and seasons, and methods and means. The Board may choose not to

follow any recommendation which the Board determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation approved by a Regional Council is not adopted by the Board, the Board shall set forth the factual basis and the reasons for its decision in writing to the Regional Council.

(5) Following consideration of the proposals the Board shall publish final regulations pertaining to subparts C and D of this part in the **Federal Register**.

(b) Proposals for changes to subparts A and B of this part shall be accepted by the Secretary of the Interior in accordance with 43 CFR part 14.

**§ \_\_\_\_\_.19 Special actions.**

(a) The Board may restrict, close, or reopen the taking of fish and wildlife for non-subsistence uses on public lands when necessary to assure the continued viability of a particular fish or wildlife population, to continue subsistence uses of a fish or wildlife population, or for reasons of public safety or administration.

(b) The Board may open, close, or restrict subsistence uses of a particular fish or wildlife population on public lands to assure the continued viability of a fish or wildlife population, to continue subsistence uses of a fish or wildlife population, or for reasons of public safety or administration.

(c) The Board will accept a request for a change in seasons, methods and means, harvest limits and/or restrictions on harvest under this § \_\_\_\_\_.19 only if there are extenuating circumstances necessitating a regulatory change before the next annual subpart D proposal cycle. Extenuating circumstances include unusual and significant changes in resource abundance or unusual conditions affecting harvest opportunities that could not reasonably have been anticipated and that potentially could have significant adverse effects on the health of fish and wildlife populations or subsistence uses. Requests for Special Action that do not meet these conditions will be rejected; however, a rejected Special Action request will be deferred, if appropriate, to the next annual regulatory proposal cycle for consideration, after coordination with the submitter. In general, changes to Customary and Traditional Use Determinations will only be considered through the annual subpart C proposal cycle.

(d) In an emergency situation, the Board may immediately open, close,

liberalize, or restrict subsistence uses of fish and wildlife on public lands, or close or restrict non-subsistence uses of fish and wildlife on public lands, if necessary to assure the continued viability of a fish or wildlife population, to continue subsistence uses of fish or wildlife, or for public safety reasons. Prior to implementing an emergency action, the Board shall consult with the State. The emergency action shall be effective when directed by the Board, may not exceed 60 days, and may not be extended unless it is determined by the Board, after notice and public hearing, that such action should be extended. The Board shall, in a timely manner, provide notice via radio announcement or personal contact of the emergency action and shall publish notice and reasons justifying the emergency action in newspapers of any area affected, and in the **Federal Register** thereafter.

(e) After consultation with the State, the appropriate Regional Advisory Council(s), and adequate notice and public hearing, the Board may make or direct a temporary change to close, open, or adjust the seasons, to modify the harvest limits, or to modify the methods and means of harvest for subsistence uses of fish and wildlife populations on public lands. An affected rural resident, community, Regional Council, or administrative agency may request a temporary change in seasons, harvest limits, or methods or means of harvest. In addition, a temporary change may be made only after the Board determines that the proposed temporary change will not interfere with the conservation of healthy fish and wildlife populations, will not be detrimental to the long-term subsistence use of fish or wildlife resources, and is not an unnecessary restriction on non-subsistence users. The decision of the Board shall be the final administrative action. The temporary change shall be effective when directed by the Board following notice in the affected area(s). This notice may include publication in newspapers or announcement on local radio stations. The Board shall publish notice and reasons justifying the temporary action in the **Federal Register** thereafter. The length of any temporary change shall be confined to the minimum time period or harvest limit determined by the Board to be necessary to satisfy subsistence uses. A temporary opening or closure will not extend beyond the regulatory year for which it is promulgated.

(f) Regulations authorizing any individual agency to direct temporary or emergency closures on public lands

managed by the agency remain unaffected by the regulations in this part, which authorize the Board to make or direct restrictions, closures, or temporary changes for subsistence uses on public lands.

(g) You may not take fish and wildlife in violation of a restriction, closure, opening, or temporary change authorized by the Board.

#### § \_\_\_\_\_.20 Request for reconsideration.

(a) Regulations in subparts C and D of this part published in the **Federal Register** are subject to requests for reconsideration.

(b) Any aggrieved person may file a request for reconsideration with the Board.

(c) To file a request for reconsideration, you must notify the Board in writing within sixty (60) days of the effective date or date of publication of the notice, whichever is earlier, for which reconsideration is requested.

(d) It is your responsibility to provide the Board with sufficient narrative evidence and argument to show why the action by the Board should be reconsidered. The Board will accept a request for reconsideration only if it is based upon information not previously considered by the Board, demonstrates that the existing information used by the Board is incorrect, or demonstrates that the Board's interpretation of information, applicable law, or regulation is in error or contrary to existing law. You must include the following information in your request for reconsideration:

- (1) Your name, and mailing address;
- (2) The action which you request be reconsidered and the date of **Federal Register** publication of that action;
- (3) A detailed statement of how you are adversely affected by the action;
- (4) A detailed statement of the facts of the dispute, the issues raised by the request, and specific references to any law, regulation, or policy that you believe to be violated and your reason for such allegation;
- (5) A statement of how you would like the action changed.

(e) Upon receipt of a request for reconsideration, the Board shall transmit a copy of such request to any appropriate Regional Council and the Alaska Department of Fish and Game (ADFG) for review and recommendation. The Board shall consider any Regional Council and ADFG recommendations in making a final decision.

(f) If the request is justified, the Board shall implement a final decision on a request for reconsideration after

compliance with 5 U.S.C. 551–559 (APA).

(g) If the request is denied, the decision of the Board represents the final administrative action.

#### § \_\_\_\_\_.21 [Reserved]

### Subpart C—Board Determinations

3. Amend subpart C of 36 CFR part 242 and 50 CFR part 100 by revising §§ \_\_\_\_\_.22 and \_\_\_\_\_.23 to read as follows:

#### § \_\_\_\_\_.22 Subsistence resource regions.

(a) The Board hereby designates the following areas as subsistence resource regions:

- (1) Southeast Region;
- (2) Southcentral Region;
- (3) Kodiak/Aleutians Region;
- (4) Bristol Bay Region;
- (5) Yukon-Kuskokwim Delta Region;
- (6) Western Interior Region;
- (7) Seward Peninsula Region;
- (8) Northwest Arctic Region;
- (9) Eastern Interior Region;
- (10) North Slope Region.

(b) You may obtain maps delineating the boundaries of subsistence resource regions from the U.S. Fish and Wildlife Service, 3601 C Street, Suite 1030, Anchorage, Alaska 99503.

#### § \_\_\_\_\_.23 Rural determinations.

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

Adak;  
Fairbanks North Star Borough;  
Homer area—including Homer, Anchor Point, Kachemak City, and Fritz Creek;  
Juneau area—including Juneau, West Juneau, and Douglas;  
Kenai area—including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kasilof, and Clam Gulch;  
Ketchikan area—including Ketchikan City, Clover Pass, North Tongass Highway, Ketchikan East, Mountain Point, Herring Cove, Saxman East, Pennock Island, and parts of Gravina Island;  
Municipality of Anchorage;  
Seward area—including Seward and Moose Pass, Valdez, and  
Wasilla area—including Palmer, Wasilla, Sutton, Big Lake, Houston, and Bodenbergt Butte.

You may obtain maps delineating the boundaries of non-rural areas from the U.S. Fish and Wildlife Service.

(b) [Reserved]

4. Amend § \_\_\_\_\_.24 by revising paragraph (a) introductory text to read as follows:

**§ 24 Customary and traditional use determinations.**

(a) The Federal Subsistence Board has determined that rural Alaska residents of the listed communities, areas, and individuals have customary and traditional use of the specified species on Federal public land in the specified areas. Persons granted individual customary and traditional use determinations will be notified in writing by the Board. The Fish & Wildlife Service and the local NPS Superintendent will maintain the list of individuals having customary and traditional use on National Parks and Monuments. A copy of the list is available upon request. When there is a determination for specific communities or areas of residence in a Unit, all other communities not listed for that species in that Unit have no Federal subsistence priority for that species in that Unit. If no determination has been made for a species in a Unit, all rural Alaska residents are eligible to harvest fish or wildlife under this part.

\* \* \* \* \*

Dated: April 19, 2002.

**Gale Norton,**

*Secretary of the Interior.*

Dated: January 14, 2002.

**Dennis E. Bschor,**

*Regional Forester, USDA—Forest Service.*

[FR Doc. 02–11319 Filed 5–6–02; 8:45 am]

BILLING CODE 3410–11–P

## POSTAL SERVICE

### 39 CFR Part 111

#### Realignment of Buffalo and Pittsburgh Postal Facilities for Deposit of DBMC Rate Standard Mail and Package Services Machinable Parcels

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule sets forth the Domestic Mail Manual (DMM) standards adopted by the Postal Service requiring mailers to deposit, at the Pittsburgh Bulk Mail Center (BMC), Standard Mail machinable parcels and Package Services machinable parcels, currently required to be taken to the Buffalo, New York, Auxiliary Service Facility (ASF), in order to claim destination bulk mail center (DBMC) rates. This mail, where applicable, will be required to be zoned from the Pittsburgh BMC.

**DATES:** *Effective.* Compliance is optional as of May 7, 2002. Compliance will be required on January 5, 2003.

**FOR FURTHER INFORMATION CONTACT:** OB Akinwole, (703) 292–3643 or Cheryl Beller (703) 292–3747.

**SUPPLEMENTARY INFORMATION:** On January 17, 2002, the Postal Service published, for public comment, a notice in the **Federal Register** (67 FR 2388), proposing to realign permissible points for mailer deposit of Standard Mail machinable parcels and Package Services machinable parcels currently required, by DMM Standard, to be entered at the Buffalo, New York, Auxiliary Service Facility (ASF) in order to be claimed at destination bulk mail center (DBMC) rates.

Mailers will now be required to enter mail, addressed for delivery within the ZIP Code range of the Buffalo ASF service area, as defined for the appropriate class of mail in DMM Exhibit E650.5.1 and Exhibit E751.1.3, at the Pittsburgh BMC to claim the DBMC rates. As part of this final rule, all machinable and nonmachinable parcels (Parcel Post, Parcel Select, and Bound Printed Matter) deposited at the Pittsburgh BMC are also required to be zoned from Pittsburgh using Postal Service zone chart 150. As an option, mailers may also deposit nonmachinable parcels for the Buffalo ASF service area ZIP Codes listed in DMM labeling list L602 at the Pittsburgh BMC, provided that these nonmachinable parcels are commingled in bedloads with the DBMC rate machinable parcels. These nonmachinable parcels would also be eligible for the DBMC rates. Otherwise, nonmachinable parcels must continue to be deposited at the Buffalo ASF in order to be eligible for the DBMC rates. Barcoded machinable parcels for the Buffalo ASF service will be eligible for the parcel barcode discount when entered at the Pittsburgh BMC. Under this final rule, entry of Standard Mail, Parcel Select, and Bound Printed Matter machinable parcels sorted to the 5-digit ZIP Codes within the Buffalo sectional center facility (SCF) service area, as defined in DMM L005, would continue to be required to be deposited at the Buffalo SCF in order to qualify for the destination sectional center facility (DSCF) rate. Standard Mail machinable parcels claimed at DSCF rates and entered at Buffalo will continue to be eligible for a parcel barcode discount.

Currently, all machinable parcels entered at the Buffalo ASF are sorted manually by the Postal Service to the first three digits of the delivery address ZIP Codes. Those parcels destined to addresses within the Buffalo ASF service area are either further sorted to the Buffalo SCF or transported to SCFs in

Rochester, Syracuse, Elmira, and Utica. At the SCFs, the parcels are sorted by 5-digit ZIP Code to the associated delivery offices and subsequently transported to those delivery offices.

In contrast to this manual operation in Buffalo, the Pittsburgh BMC sorts machinable parcels on parcel sorting machines (PSMs) and finalizes the parcels to 5-digit ZIP Codes in one or two passes. Parcels destined for the Buffalo ASF service area are then transported directly from the Pittsburgh BMC to the appropriate SCFs. This rule change will minimize more costly and slower manual processing and provide more direct transportation of such parcels. The Postal Service believes that this realignment of ZIP Codes for DBMC rate eligibility between the Pittsburgh BMC and the Buffalo ASF will provide consistent customer service by eliminating at least one step in the transportation process.

This rule change will eliminate any confusion concerning the applicable standards for the deposit of DBMC machinable parcels in the affected service areas. This final rule contains the DMM standards adopted by the Postal Service after review of the comments that were submitted.

#### Evaluation of Comments From the Proposed Rule

The Postal Service received written comments on the January 17 proposed rule from three mailers and one mailer association.

One commenter questioned the accuracy of the statement in the proposed rule that “current records indicate that more than three years have passed since the Buffalo ASF has received any drop shipments.”

The Postal Service acknowledges that the statement should have read “current records indicate that more than three years have passed since the Buffalo ASF has received any drop shipments of machinable parcels.”

The same commenter suggested that the exception to allow mailers to divert machinable parcels from the Buffalo ASF to the Pittsburgh BMC is the real issue to be addressed. According to this commenter, mailers not party to the exception should not be penalized.

This final rule formally designates the Pittsburgh BMC as the appropriate deposit point for machinable parcels claimed at DBMC rates destined for the Buffalo ASF service area. Moreover, the Postal Service believes that this change will ensure a fair and uniform rate application to all mailers depositing machinable parcels at the Pittsburgh BMC. Many of those mailers have been depositing machinable parcels destined