

Saint Lawrence Seaway Development Corporation.

Albert S. Jacques,
Administrator.

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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; Changes to Seasons and Harvest Limits for Goat in Unit 5(A) and Moose in Unit 22(B)

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

ACTION: Temporary closure of season, temporary change in season and harvest quota, and temporary establishment of harvest priority.

SUMMARY: This provides notice of the Federal Subsistence Board's temporary closure to protect mountain goat populations in a portion of Unit 5(A) and changes in harvest season and quota and the establishment of a harvest priority to protect moose populations in Unit 22(B) West of the Darby Mountains. These regulatory adjustments and the closure provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the *Federal Register* on June 25, 2001. Those regulations established seasons, harvest limits, methods, and means relating to the taking of wildlife for subsistence uses during the 2001-2002 regulatory year.

DATES: The original emergency action for goats was effective October 17 through December 15, 2001. The extension of the emergency action (temporary closure) is effective December 16, 2001, through January 31, 2002. The temporary season establishment and harvest priority for moose in Unit 22(B) west of the Darby Mountains is effective January 1-31, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786-3888.

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 2001-2002 wildlife seasons, harvest limits, and methods and means were published on June 25, 2001 (66 FR 33744). Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Game (BOG), manages the general harvest 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.

The temporary changes for early closure of seasons are necessary to protect declining goat populations in the Yakutat area, and the establishment of a limited winter moose season on a portion of the Seward Peninsula is needed to provide harvest opportunity for those rural residents that have customary and direct dependence on the resource, while helping the declining moose populations recover. This temporary change is authorized by and in accordance with 50 CFR 100.19(e) and 36 CFR 242.19(e).

Unit 5(A) Goats

Goat harvest in the area of Unit 5(A), which drains into Russell and Nunatak Fiords between Hubbard and West Nunatak Glaciers, has increased significantly over the past 3 years. A harvest of 10 goats was recorded in 1998, a high of 16 were taken in 1999, and 8 goats were taken in 2000. Previous to these 3 years the reported goat harvest for this area has averaged 2.2 goats per year. Recent aerial survey information from 2000 and 2001 indicates a declining trend in the goat population in this area. The decline is possibly the result of an over harvest of mature females, affecting population recruitment.

A conservation concern, for this area, was first recognized in early December 2000 when the harvest exceeded 5% of the estimated population. Both the State of Alaska and the Federal Subsistence Board responded to the situation by closing the goat harvest seasons for the area of Unit 5(A) draining into Russell and Nunatak Fiords between Hubbard and West Nunatak Glaciers.

Following the 2001 aerial survey of the population, the Alaska Department of Fish and Game, through Emergency Order No. 01-03-01, closed the goat season in the areas of Unit 5(A) between Hubbard and West Nunatak Glaciers, on October 12, 2001. On October 16, 2001, the Federal Subsistence Board adopted a special action request submitted by the Tongass National Forest to similarly close the Federal harvest season. This emergency action, effective for 60 days

(October 17, 2001–December 15, 2001) closed the area draining into Russell and Nunatak Fiords between Hubbard and West Nunatak Glaciers to the taking of goats. The harvest season for the remainder of Unit 5(A) continued to have a harvest limit of 1 goat by Federal registration permit with the season from August 1–January 31.

On November 8, 2001, a public meeting was held in Yakutat, Alaska on behalf of the Federal Subsistence Board to obtain public comments on a possible extension of the existing emergency action through the remainder of the regulatory season. Public testimony at the meeting was unanimous in favor of extending the closure through the remainder of the regulatory season.

On November 30, 2001, the Forest Service biologists conducted another aerial survey of the subject goat population, the results of which indicated a continuing decline in the goat population.

On December 11, 2001, the Federal Subsistence Board, recognizing that a conservation concern still exists, approved the temporary action to continue the closure, through the remainder of the regulatory season. This regulatory action was intended to aid in the population recovery of the goat population in Unit 5(A).

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

Moose populations in Unit 22(B) west of the Darby Mountains have declined in recent years, along with moose populations throughout the management unit. Overall populations in Unit 22 ranged from 7,000 to 10,000 during the late 1980's to recent estimates of 5,000 to 7,000 animals. The declines are thought to be a result of winter mortality and lower calf survival, resulting in a population recruitment that has been below the annual harvest. Recruitment in 2000 for Unit 22(B) west of the Darby Mountains was estimated at only 48 moose, with a harvest of approximately 68 moose. The Federal subsistence moose harvest in Unit 22(B) was restricted to bulls by the Federal Subsistence Board in the fall of 2000 due to this declining local moose population and heavy hunting pressure.

On July 13, 2001, the Alaska Department of Fish and Game using their emergency authority, shortened, but did not close, moose hunting seasons in four portions of Unit 22, including Unit 22(B) west of the Darby Mountains. The State's justification for this action was that moose populations in the area cannot sustain recent harvest levels, and that recent surveys indicated

moose densities, recruitment rates, and bull:cow ratios are low and declining.

On July 31, 2001, the Federal Subsistence Board approved emergency action (effective for 60 days) to make similar adjustments in the Federal Subsistence Harvest Regulations. In addition, these areas of concern were closed to the taking of moose except by Federally-qualified subsistence users, as recommended by the Seward Peninsula Subsistence Regional Advisory Council. The specific changes for Unit 22(B) west of the Darby Mountains was to close the harvest season on September 14, and to close Federal public lands to the taking of moose except by Federally-qualified subsistence users.

On September 26, 2001, a public meeting was held in Nome, Alaska, to obtain public comments on a request from the Seward Peninsula Regional Advisory Council to continue the existing emergency action through the remainder of the regulatory season. The Regional Council also requested that Federal public lands in Unit 22(B) west of the Darby Mountains be closed to the taking of moose except by residents of Unit 22(B), and that a harvest quota be established for a winter hunt to take place January 1–31, 2002.

On September 27, 2001, the Federal Subsistence Board approved temporary action to reduce the length of the harvest season in most Unit 22 subunits, as requested by the Seward Peninsula Regional Advisory Council. The resulting action for Unit 22(B) west of the Darby Mountains, however, was to identify a—"No Federal open season." The Federal Subsistence Board expressed its intention to consider additional action prior to January 2002, to provide for a winter harvest season in Unit 22(B) west of the Darby Mountains, following an analysis of the Council's proposal to restrict the taking of moose to only residents of the subunit.

On November 16, 2001 the Federal Subsistence Board adopted temporary action to open a winter harvest season (January 1–31, 2002) for moose in Unit 22(B) west of the Darby Mountains with a harvest quota of 6 bulls. The harvest will be implemented through the use of Federal registration permits, and Federal public lands will be closed to the taking of moose except by residents of Unit 22(B) west of the Darby Mountains (residents of White Mountain and Golovin). The Board's decision was based upon the application of the criteria set forth in Section 804 of ANILCA. The analysis concluded that good documentation exists that indicates the rural residents of Unit 22(B) are and historically have been the primary users of the moose in

Unit 22(B). Specifically, the residents of White Mountain and Golovin are the primary users of moose in Unit 22(B) west of the Darby Mountains. These rural residents also live closest to the resource in question. In the winter, the residents of White Mountain and Golovin rely almost exclusively on the moose in Unit 22(B) west of the Darby Mountains. It is extremely difficult and hazardous for them to travel elsewhere in winter for this important primary resource. The Federal Subsistence Board recognized that the residents of Nome hunt a considerable number of moose in Unit 22(B); however, they also hunt moose in a wide variety of other areas and their primary moose hunting during the winter season takes place in Unit 22(D). Therefore, a restriction that applies to the winter hunt should have little or no effect on Nome residents, as Nome resident use of Unit 22(B) west of the Darby Mountains is primarily in the fall. The Board also recognized that many Nome residents are involved in the cash economy and have access to a wide variety of other resources.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these emergency actions are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of wildlife populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the **DATES** section.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing

regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999 (64 FR 1276).

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an

annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

Paperwork Reduction Act—This notice 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 requirements are approved by OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018-0075, which expires July 31, 2003. 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.

Currently, information in the Subsistence Management Program 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 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 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 (hours)	Estimated annual response	Estimated annual burden (hours)	Hourly cost for respondent	Financial burden on respondents
Federal Subsistence Registration Permit.	5,000	¼	5,000	1,250	\$20.00	\$5.00 each or \$25,000 total.
Designated Harvester Application	2,000	¼	2,000	500	20.00	\$5.00 each or \$10,000 total.

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 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (Subsistence), Washington, DC 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.

Other Requirements

These temporary changes have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant economic impact 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 gun and ammunition dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the temporary changes will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the temporary changes 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 the temporary changes 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.

These actions are not significant regulatory actions under Executive

Order 12866, nor will they raise novel legal or policy issues.

The Secretaries have determined that the temporary changes meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the temporary changes do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over fish and wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when

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

Drafting Information

Daniel LaPlant drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, 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: January 15, 2002.

Timothy R. Jennings,

Acting Chair, Federal Subsistence Board.

Dated: January 15, 2002.

Calvin H. Casipit,

Acting Subsistence Program Leader, USDA-Forest Service.

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Emergency Action—Klawock River and Lake

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Emergency action.

SUMMARY: This provides notice of the Federal Subsistence Board's in-season management action to protect coho salmon escapement in the Klawock River and Lake. This regulatory adjustment provides an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on February 13, 2001. Those regulations established seasons, harvest limits, methods, and

means relating to the taking of fish and shellfish for subsistence uses during the 2001 regulatory year.

DATES: This closure is effective November 2, 2001, through December 31, 2001.

FOR FURTHER INFORMATION CONTACT:

Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, 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 provides 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 2001 fishing seasons, harvest limits and methods and means were published on February 13, 2001, (66 FR 10142). Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of 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.

This emergency action was necessary because of predictions of low returns of coho salmon in the Klawock River and Lake. This emergency action is authorized and in accordance with 50 CFR 100.19(d) and 36 CFR 242.19(d).

Klawock River and Lake

To date, the total return has been 4,381 coho salmon. This represents approximately 75% of the escapement objective of 6,000 coho salmon. Coho salmon are still entering the system and have been seen in the system as late as February. Fishing pressure at this time is low. Along with an Emergency Order issued by the Alaska Department of Fish and Game closing sport fishing, reducing the daily harvest coho salmon while conserving stocks needed to reach spawning escapement goals.

On November 2, 2001, the Federal Subsistence Board, acting through the delegated field official, initiated a coho salmon action reducing the daily harvest limit to two fish in the Klawock River and Lake for the period from November 2, 2001, through December 31, 2001. This action was necessary due to low coho salmon returns.

This regulatory action was necessary to assure the continued viability of the coho salmon runs and provide a long-term subsistence priority during a period of limited harvest opportunity.

The Board finds that additional public notice and comment requirements