

**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 Harvest Limits for Moose in Units 21(D) and 24, Muskox in Unit 26(C), and Caribou in Unit 17(A) and (C)**

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

**ACTION:** Change in harvest limits.

**SUMMARY:** This provides notice of the Federal Subsistence Board's change in harvest limits to protect moose populations in Units 21(D) and 24, muskox populations in Unit 26(C), and caribou populations in Units 17(A) and (C). This regulatory change provides an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on June 28, 2002. Those regulations established seasons, harvest limits, methods, and means relating to the taking of wildlife for subsistence uses during the 2002–2003 regulatory year.

**DATES:** The emergency action on moose was effective August 27 through September 25, 2002. The temporary action on muskox is effective September 15, 2002, through March 31, 2003. The temporary action on caribou is effective December 1, 2002, through March 31, 2003.

**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 May 7, 2002, (67 FR 30559), 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 2002–2003 wildlife seasons, harvest limits, and methods and means were published on June 28, 2002, (67 FR 43710). 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.

*Units 21(D) and 24 (portion)—Moose*

Analysis of results from trend surveys conducted by ADF&G in Units 21(D) and 24 between 1985 and 1999, reveal significant declines in calf production and yearling bull recruitment. Trend count surveys conducted in 2000 and 2001 show that these declines continue. Current Federal regulations provide opportunities to harvest antlerless moose in Units 21(D) and 24. While increased cow harvest levels have provided additional opportunity and have served to stabilize moose populations in past years, prolonged harvest at the current levels may contribute to further declines in productivity and recruitment. As current management objectives prescribe more conservative sustained yields than the current harvest regimes, regulatory changes are needed to decrease the total cow harvest and to maintain productivity and recruitment. Moose harvests in Units 21(D) and 24 have not declined for any local resident hunting for subsistence purposes. Subsistence hunter days in the field are minimal and are not increasing. Results from household surveys conducted by ADF&G in 10 Middle Yukon and Koyukuk River communities reflect that local subsistence harvest rates for moose are high. Therefore, the reduced harvest limit from any moose to one bull is expected to stabilize the moose populations in Units 21(D) and 24 at current levels while still providing continued opportunity for subsistence users.

*Unit 26(C)—Muskox*

Muskoxen were reestablished in and near the Arctic National Wildlife Refuge in Unit 26(C) in 1969 and 1970. For several years after their release, numbers of muskoxen increased rapidly and began expanding into regions east (Canada) and west (Unit 26B) of the Refuge. After reaching a peak of 399 animals in 1986, numbers of muskoxen in Unit 26(C) were relatively stable from 1987–1998, but have declined sharply in the past two years.

A conservation concern was recognized when less than 70 muskoxen were counted during aerial surveys made in late June/early July 2002. Reasons for the decline include poor calf recruitment, emigration of muskoxen from Unit 26(C) into regions east and west of the Refuge, and increased predation. Until more calves are born and survive or muskoxen move back into the Refuge, numbers are likely to remain low and could continue to decline. The low number of calves seen in 2000 and 2001 is likely related to

severe weather (fall icing conditions, deep snow and a prolonged snow season). Changes in distribution also has affected the number of muskoxen in the Refuge. Between 2000 and 2002, mixed-sex groups with 3 radio-collared animals dispersed eastward into Canada and at least 1 group with a radio-collared animal moved west off the Refuge. Muskoxen may also have dispersed southward into the mountains.

On July 11, 2002 the Federal Subsistence Board, acting through the delegated official and at the request of the North Slope Muskox Working Group, delayed the opening of the muskox season in Unit 26(C), from July 15 to September 15. Delaying the start of the season until September 15 allowed biologists time to conduct additional surveys and to recommend a more permanent course of action to address the population decline of muskoxen in Unit 26(C). That recommendation, which the Board adopted effective September 15, 2002, reduced the muskox harvest quota to two bulls.

#### *Unit 17(A) and (C), Nushagak Peninsula—Caribou*

Caribou from the Northern Alaska Peninsula Herd were reintroduced to the Nushagak Peninsula in February 1988, after an absence for over 100 years. This herd grew rapidly during the first six years following reintroduction with an average annual growth rate of 38%. During the mid to late 1990's, the caribou population remained relatively stable at around 1,200–1,300 animals. Since 1999, the caribou population has undergone a decline. The current population estimate is approximately 700 caribou. Causes for the decline are not fully understood, but are likely related to a decline in habitat condition, increase in predation, and unreported human harvest. The herd is managed according to the guidelines of the Nushagak Peninsula Caribou Management Plan, prepared by the Nushagak Peninsula Caribou Management Planning Committee. The management plan sets a harvest level of not more than 10 percent when the population is between 600 and 1000 caribou. Management recommendations include continued population and range monitoring, and continued law enforcement efforts necessary to promote hunter compliance.

This emergency special action reduced the harvest limit from 2 caribou to 1 caribou for the first 60 days of the winter hunt. Subsequent Board action, following a scheduled January 10 local public meeting, extended the action

through the remainder of the season (March 31). Reducing the harvest limit will mean fewer caribou for subsistence users but will help the current estimated population of 700 from decreasing below the 600 animal threshold identified in the management plan as the population needed to allow continued hunting. It also allows additional hunters to participate in the hunt. The special action also provides the Refuge Manager the authority to close the harvest season if the harvest reaches the limit of 50 caribou as recommended by the Committee.

The emergency and temporary changes are necessary to protect declining moose, muskox, and caribou populations in the three areas described above. These changes are authorized and in accordance with 50 CFR 100.19(d–e) and 36 CFR 242.19(d–e).

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for this emergency action is 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) 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*

This emergency change does not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

#### *Other Requirements*

This emergency change has been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as gun, hunting gear, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on

competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the emergency change has no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the emergency change will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the emergency change meets the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the emergency change does 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; Warren Eastland, 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: December 24, 2002.

**Peggy Fox,**

*Acting Chair, Federal Subsistence Board.*

Dated: January 6, 2003.

**Calvin H. Casipit**

*Acting Subsistence Program Leader, USDA-Forest Service.*

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