

**DEPARTMENT OF AGRICULTURE****Forest Service****36 CFR Part 242****DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 100**

RIN 1018-AD68

**Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, C, and D, Redefinition To Include Waters Subject to Subsistence Priority; Correcting Amendment**

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

**ACTION:** Correcting amendment.

**SUMMARY:** This correction amends the Subsistence Management Regulations for Public Lands in Alaska, published in the *Federal Register* on January 8, 1999, (64 FR 1276) redefining the area subject to the subsistence priority for rural residents of Alaska under Title VIII of the Alaska National Interest Lands Conservation Act of 1980. The January 8, 1999, final rule also established regulations for seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2000 regulatory year.

**DATES:** The correcting amendment to § \_\_.26 is effective June 28, 2000 through February 28, 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, Regional 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, 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). 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, 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 participated in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Proposed Subpart D regulations for the 2000 seasons and bag limits, and methods and means were published on December 17, 1998, in the *Federal Register* (62 FR 66216). A comment period providing for public review of the proposed rule was advertised by mail, radio, and newspaper. Following that comment period the Proposed Rule was modified to respond to comments and to make it coincide with State regulations wherever possible. Also, we removed regulations that were unnecessary because there were no areas of Federal jurisdiction present.

The final regulations, published on January 8, 1999, (64 FR 1276) reflect the joint efforts of the Federal agencies to simplify, clarify, and remove any extraneous provisions.

This correcting amendment is necessary because, in the effort to remove unnecessary provisions, one regulation protecting fish populations in the Cook Inlet Fishery Management Area was inadvertently and incorrectly omitted.

**Subpart D**

Both State subsistence regulations, as well as previous Federal subsistence regulations and the Proposed Rule, contained a prohibition on the use of gillnets in freshwater in the Cook Inlet Fishery Management Area. This prohibition, in place in Federal regulations since 1990, was necessary to protect freshwater species susceptible to serious overharvest with the use of gillnets. Without such a prohibition, populations of rainbow trout, steelhead, or other freshwater species could quickly be decimated in certain areas.

Reexamination of the comments that were received on the Proposed Rule and the preliminary drafts of the Final Rule revealed no specific intent to remove this gillnet prohibition. In our efforts to remove unnecessary regulations, we inadvertently removed the regulation prohibiting the use of gillnets in fresh water. This correcting amendment would reinsert that gillnet prohibition into 50 CFR 100.26(i)(10) and 36 CFR 242.26(i)(10).

The Board finds that additional public notice and comment requirements under the Administration Procedures Act (APA) for this correcting amendment are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate conservation measures could seriously affect the continued viability of fish 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)(B) to waive additional public notice and comment procedures prior to publication of this rule. The Board finds good cause under 5 U.S.C. 553(d)(3) to make this rule effective upon publication.

**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, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, decided 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.

#### *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 amendment 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 rule was not subject to 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 Departments determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

The rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, and gasoline dealers. The number of small entities affected is unknown; 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 harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However, we estimate that 2 million pounds of meat are harvested by the local subsistence users annually and, if given a dollar value of \$3.00 per pound, would equate to \$6 million Statewide.

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, these regulations have 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 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 no cost is

involved to any State or local entities or Tribal governments.

The Service has determined that this amendment meets the applicable standards provided in Section 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 management authority over 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) 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.

Drafting Information: William Knauer drafted this amendment under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Curt Wilson, 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.

#### **List of Subjects**

##### *36 CFR Part 242*

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

##### *50 CFR Part 100*

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board amends 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. Section \_\_\_\_\_.26 is amended by adding paragraph (i) (10) (v) to read as follows:

**§ \_\_\_\_\_.26 Subsistence taking of fish.**

\* \* \* \* \*

(i) \* \* \*

(10) \* \* \*

(v) You may not use gillnets in freshwater.

\* \* \* \* \*

Dated: June 19, 2000.

**Kenneth E. Thompson,**

*Acting Regional Forester, USDA—Forest Service.*

**Thomas H. Boyd,**

*Acting Chair, Federal Subsistence Board.*

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**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

**36 CFR Part 1228**

**RIN 3095–AA81**

**Agency Records Centers**

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Summary of comments received on final rule.

**SUMMARY:** This document describes the comments that the National Archives and Records Administration (NARA) received in response to the invitation for public comment on three sections of our final rule on agency records center storage standards, published December 2, 1999. We are publishing this document to inform the public of the comments and our disposition of the comments.

**DATES:** The final rule was effective January 3, 2000, except §§ 1228.234, 1228.236, and 1228.238 which were effective March 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** Nancy Allard at (301) 713–7360, ext. 226.

**SUPPLEMENTARY INFORMATION:** NARA published its final rule, Agency Records Centers, on December 2, 1999 (64 FR 67634). In that final rule, we delayed the effective date of three new provisions concerning exceptions and waivers to the facility standards to allow a 60-day public comment period. These three new provisions are intended to make it easier for facilities to gain certification. We received timely comments from two offices in the Veterans Administration, an individual, Iron Mountain, United Mine Workers of America (UMWA), Contract Services Association of

America (CSA), and PRISM International (PRISM). We also considered late comments from the Deputy Under Secretary of Defense for Acquisition Reform (DoD) and the Coalition for Government Procurement (Coalition).

One of the agencies stated that they had no comment and the individual commented that the reasoning behind the waiver is understandable. A discussion of the other major comments follows, organized by subject. Most of these comments reiterated comments raised earlier in the rulemaking and addressed in the final rule.

**Timing of Approvals of Waivers**

The UMWA endorsed the three sections with one recommended modification to § 1228.238(c). That provision applies to waiver of roof requirements for underground storage facilities. It states that NARA will normally grant the waiver and notify the requesting agency within 10 work days if the agency has not also requested a waiver of a different requirement under § 1228.236. If the agency has another waiver request pending for the same facility, NARA will respond to all of the waiver requests at the same time and within the longest time limits.

UMWA argued that approval of one waiver for a facility should not be delayed because another waiver is received unless the initial waiver would be impacted by the new filing for a waiver. While a waiver of roof requirements can be considered independently from waivers addressed by § 1228.236, a facility that requires a waiver of another NARA requirement cannot be approved to store Federal records until the requested waiver of the other provision(s) is approved. We would prefer to make one notification when all waivers are approved and we expect that agencies will submit all waiver requests for a facility at one time.

**Limit the Scope of the Regulation to Permanent/Archival Records**

Iron Mountain, PRISM, CSA, and the Coalition recommended revising § 1228.222(a) to limit the entire regulation to permanent archival Federal records. We rejected this proposal because (1) recommendations to change other sections of the regulation were outside the scope of the request for comment on § 1228.234, 1228.236, and 1228.238, and (2) NARA had previously addressed comments on our position that all Federal records, not just permanent records, require a minimum level of protection (see 64 FR 67634). We also note that permanent archival records are those records that

have been transferred to NARA's legal custody, not records still in the creating agency's custody. The regulation covers permanent and temporary records that are in the creating agency's custody.

As we stated in the preamble to the proposed rule (64 FR 23504), in our initial regulatory flexibility analysis (64 FR 50028), and again in the final rule, Federal records provide essential documentation of the Federal Government's policies and transactions and protect rights of individuals. The Government has an obligation to protect and preserve these records for their entire retention period, even if that retention period is only a few years, as is the case with IRS income tax returns or invoice payments. NARA believes that records storage facilities should be structurally sound, protect against unauthorized access, and protect against fire and water damage to the records, whether the records are temporary or permanent. Only in the area of environmental conditions is the length of time the records are retained a significant consideration in setting standards.

**NARA's Facility Standards are Inconsistent With Commercial Standards and Best Practices**

Iron Mountain, CSA, the Coalition, and DoD expressed concern that we did not "baseline" the standards against current commercial best practices and standards. These comments argued that adherence to local building codes and selected National Fire Protection Association (NFPA) standards provide sufficient protection for records in commercial records centers. We did not accept these comments, which also had been made in response to the proposed rule and initial regulatory flexibility analysis. In the preamble to the December 2, 1999, final rule, we discussed at some length why we did not share their views (see 64 FR 67635 and 67639–67640). In brief, the local fire-safety components of building codes are designed to protect the life and safety of occupants, mitigate against the spread of a fire to adjacent structures, and to protect fire fighters, not to limit the loss of valuable contents. The NFPA standards cited by the industry comments pertain to the protection of facilities storing bulk quantities of blank or waste paper, not records. NARA's standards supplement the building codes to provide a safety level for the items stored.

The commercial records storage industry does not currently have any widely accepted or ANSI-approved standards. Unfortunately, they do have a record of disastrous fires, each with