

(156.65 MHz) or VHF-FM channel 16 (156.8MHz) to seek permission to transit the area.

(3) All persons and vessels must comply with the instructions of the COTP or the designated on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state and federal law enforcement vessels.

(4) The COTP or his designated representative will notify the maritime community of periods during which these zones will be enforced. The COTP or his designated representative will identify escorted vessel transits by way of marine information broadcast. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the COTP or his designated representative.

(e) *Enforcement.* The COTP will enforce these zones and may enlist the aid and cooperation of any Federal, state, county, municipal, or private agency to assist in the enforcement of the regulation.

Dated: April 14, 2003.

**Mark P. O'Malley,**

*Commander, U.S. Coast Guard, Captain of the Port, Portland, Maine.*

[FR Doc. 03-10425 Filed 4-25-03; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 242

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 100

RIN 1018-A131

### **Subsistence Management Regulations for Public Lands in Alaska, Subpart D—Subsistence Taking of Fish, Customary Trade**

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

**ACTION:** Final rule.

**SUMMARY:** This rule revises regulations related to the customary trade of fish taken under Subsistence Management Regulations. The rulemaking is necessary because Title VIII of the Alaska National Interest Lands Conservation Act recognizes customary

trade as a use of subsistence-taken resources. However, the existing Federal regulations do not provide clear guidance as to what is or is not allowed in this regard. This rulemaking replaces a portion of the existing regulations included in the "Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2003 Subsistence Taking of Fish and Wildlife Resources," which expire on February 29, 2004.

**DATES:** This rule is effective May 28, 2003.

**FOR FURTHER INFORMATION CONTACT:** Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786-3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (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). On January 8, 1999, (64 FR 1276), the Departments

published a final rule to extend jurisdiction to include waters in which there exists a Federal reserved water right. This amended rule became effective October 1, 1999, and 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, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board (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 Federal Subsistence Management Regulations (Subparts A, B, C, and D).

The Board has reviewed and approved the publication of this final rule. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

#### **Applicability of Subparts A, B, and C**

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.24 and 36 CFR 242.1 to 242.24, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 will apply to regulations found in this subpart.

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

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (1999) and 50 CFR 100.11 (1999), and for the purposes identified therein, we divide Alaska 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 varied geographical areas, cultures, interests, and resource users within each region.

The Regional Councils had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, presented their Council's recommendations at the Board meeting in January 2003.

### Recognizing Customary Trade Practices

Title VIII of ANILCA specifically identifies customary trade as a recognized part of subsistence uses. The term "customary trade" is defined in these regulations as the " \* \* \* exchange for cash of fish and wildlife resources regulated in this part, not otherwise prohibited by Federal law or regulation, to support personal or family needs, and does not include trade which constitutes a significant commercial enterprise." The distinction between the terms "customary trade" and "barter" (which is also provided for in Title VIII) is that "customary trade" is the exchange of subsistence resources for cash, while "barter" is defined as the exchange of subsistence resources for something other than cash. While the exchange of subsistence resources as customary trade may involve fish, shellfish, or wildlife resources, this final rule only covers the customary trade of fish resources.

Prior to the expansion of the Federal program to include management on other waters on October 1, 1999, Federal Subsistence Board regulations applied only to subsistence fisheries in non-navigable waters. Those regulations contained the same definition for customary trade cited above, but also included the following regulatory language (in § \_\_.26(c)(1)): "No person may buy or sell fish, their parts, or their eggs which have been taken for subsistence uses, unless, prior to the sale, the prospective buyer or seller obtains a determination from the Federal Subsistence Board that the sale constitutes customary trade". During the development of the regulations for the expanded fisheries program, it was recognized that the customary trade of fisheries resources was ongoing in many parts of Alaska, but was not provided for in the existing Federal regulation nor in existing State regulations (except for the sale of herring roe on kelp in southeast Alaska). Therefore the general prohibition in § \_\_.26(c)(1) was replaced effective October 1, 1999, with the following language which generally permitted customary trade:

§ \_\_.26(c)(11) The limited exchange for cash of subsistence-harvested fish, their parts, or their eggs, legally taken under Federal subsistence management regulations to support personal and family needs is permitted as customary trade, so long as it does not constitute a significant commercial enterprise. The Board may recognize regional differences and define customary trade differently for separate regions of the State.

(12) Individuals, businesses, or organizations may not purchase subsistence-taken fish, their parts, or their eggs for use in, or resale to, a significant commercial enterprise.

(13) Individuals, businesses, or organizations may not receive through barter subsistence-taken fish, their parts or their eggs for use in, or resale to, a significant commercial enterprise.

While detailed statistics are not available to show where customary trade transactions of fishery resources take place, we believe that the large majority of such transactions take place within rural villages or nonrural communities. Generally, the Federal subsistence regulations apply only within or adjacent to conservation system units and other Federal lands as described in § \_\_.3 of the regulations. We believe, however, that Federal regulations governing customary trade of subsistence-taken resources extend to any customary trade of legally taken subsistence fish regardless of where the actual cash transaction takes place.

We realized that those Federal regulations regarding customary trade needed to be refined. Much of the current discord and uncertainty associated with customary trade relates to the term "significant commercial enterprise," which is not defined in the regulations. Additionally, there was a concern that, by allowing customary trade without further regulatory clarification, a loophole is created for valuable subsistence resources to become a commodity on the commercial market for monetary gain by those who wish to take advantage of the system. Without a more specific definition of "significant commercial enterprise" or other regulatory modification, law enforcement personnel regarded the regulation unenforceable. Another concern expressed by the Regional Councils was a potential need for a regional approach to customary trade regulations to take into account differences among the Regions.

Recognizing these concerns, the Board initiated an agreement with the Alaska Department of Fish and Game to assemble information on contemporary customary trade. In December 2000, the

State submitted a report entitled "Sharing, Distribution, and Exchange of Wildlife Resources, An Annotated Bibliography of Recent Sources" documenting a wide range of continuing practices.

In late 2000, the Board established a Customary Trade Task Force composed of representatives of the 10 Regional Councils, fishery biologists, enforcement personnel, anthropologists, and others. This Task Force was charged with developing draft regulatory language defining the intent of customary trade as identified in ANILCA Title VIII. They met several times during 2001, requested, received, and considered public comments, and eventually developed preliminary draft regulatory language. The Task Force identified three different types of customary trade, with specific recommendations for each type. In the first, trade between rural residents was seen as involving relatively small amounts of fish and cash, and generally occurring within or between neighboring villages. Since this form of trade is relatively self-limiting, the Task Force recommended that unlimited cash exchange be permitted. For the second type, trade between rural residents and others (the term "others" is defined as "commercial entities other than fishery businesses or individuals other than rural residents"), the Task Force recommended that customary trade also be permitted but that a monetary cap be applied to the customary trade of salmon. The Task Force chose a cap of \$1,000 per household member per year for salmon as a starting point for discussion and potential modification by each Council. For the third type, customary trade or barter to fisheries businesses, the Task Force recommended that this activity not be permitted. This draft was circulated for review by all 10 Regional Councils, the 229 Federally recognized tribes, and for general public review. The Task Force met one more time to consider all comments received and eventually developed draft language that was presented to the Board on December 12, 2001, as Option 1 of six options for Board consideration. The preliminary draft language that was provided to the Regional Councils, 229 Federally recognized Tribal governments, and the general public was modified during the final meeting of the Task Force and then further modified by the Board at its December 2001 meeting.

Federal staff met with representatives of several villages, Tribal associations, and Regional Corporations. The consultation was conducted pursuant to the Department of the Interior, Alaska

Policy on Government to Government Relations with the Alaska Native Tribes. Three tribal governments submitted comments. Two of the Tribal governments concurred with the proposed regulatory language; the comments from the third tribal government were not specific to customary trade.

During the review of the draft Task Force recommendation by the Regional Councils, seven of the ten Councils made specific regional recommendations. Included as part of the Task Force draft language was a \$1,000 cap per household member per year for the exchange of salmon for cash between rural residents and others. The Regional Council comments generally agreed with a monetary cap but also suggested regional needs and differences. Some Regional Councils thought the \$1,000 cap too high; others thought it too low. Several Council members expressed concern about allowing sales of subsistence-taken salmon in areas experiencing subsistence shortages and limited fishing opportunities. In recent years, areas such as the Yukon and Kuskokwim Rivers have had poor salmon returns requiring managers to reduce subsistence fishing schedules and, in some instances, close subsistence fishing. Some Regional Councils also were concerned that the draft language restricted barter between rural residents and others.

After the Council, tribal government, and public review, the Task Force met one more time to consider comments received during that review. In general there was concurrence with the Task Force recommendations for unlimited customary trade between rural residents and a prohibition against customary trade between rural residents and fisheries businesses. (Two exceptions to this concurrence were the Bristol Bay Regional Council recommendations for a \$1,000 limit on customary trade between rural residents in the Bristol Bay and Chignik Areas.) Based on concerns expressed at this Task Force meeting about the enforceability of a monetary cap on the exchange between rural residents and others, the Task Force added a permitting requirement to this section.

At its December 2001 meeting, the Board considered six options for a proposed rule regarding customary trade. After hearing the report of the Task Force, the six options, and comments from Regional Council Chairs, ADF&G, Alaska Department of Environmental Conservation, and other members of the public, the Board decided to initiate a formal rulemaking

process with a proposed rule, as follows:

Publish the proposed rule for public comment with the draft regulatory language, as recommended by the Customary Trade Task Force, except maintain the status quo for transactions between rural residents and others. Through the development and review of draft regulatory language for customary trade by the Task Force and the Regional Advisory Councils, there was general support and consensus for unlimited transactions between rural residents and the prohibition of transactions with fisheries businesses. Many of the concerns raised have been directed at the transactions between a rural resident and others. The proposed rule would maintain the status quo for transactions between a rural resident and others, prohibit transactions with State-licensed fisheries businesses, and allow further discussions and analyses to occur before proposing further restrictions on the transactions between a rural resident and others in a proposed rule.

To continue the rulemaking process, the Board published a proposed rule on February 27, 2002 (67 FR 8919). The Board invited comments on the proposed rule, the six options considered by the Board at their December 2001 meeting, and the regional recommendations provided by the Regional Councils. The Board also expanded public awareness of the proposed rule and the opportunity to comment through targeted mailouts to interested parties, news releases, additional Tribal consultation, and by posting on the Office of Subsistence Management Web site at <http://alaska.fws.gov/asm/home.html>. The Board expected to deliberate and take final action on this rule in May 2002.

In response to public requests, the Board members, at their May 2002 meeting, deferred action on the proposed rule for customary trade until January 2003. They took this action for several reasons:

- There were many public requests for a delay;
- The June Board meeting occurred during the peak of the rural subsistence fishing season so many subsistence users were unable to provide comments; and
- Any decision the Board made in June would not have been in effect until the 2003 fishing season.
- Also, this additional time provided further opportunity for discussion and input from the public.

In the meantime, the Board analyzed public comments and issued a summary of the comments in August 2002. This document was distributed to the public, tribal governments, 10 Federal Regional Advisory Councils, and other State and Federal agencies.

As a result of the initial comment period, the extended comment period, and the opportunity to testify at the January 14, 2003, public meeting, the Board received 102 written comments, recommendations from the Regional Councils, and public testimony from 10 others.

Comments were received from Federal and State agencies, Tribal organizations, sportsmen's associations, commercial fisheries business owners and organizations, and individuals. The comments generally fall into three categories:

- There should be no cash sale of subsistence-caught fish.
- There should be no regulations made by Federal or State governments that would limit customary trade.
- The final rule should be deferred.

These categories are not mutually exclusive. Some commentators who clearly oppose the proposed rule offer modifications that might lessen the effects of the proposed regulations. Others who clearly oppose the proposed rule urge the Board to defer action. Many do not state any position on the proposed rule, but recommend deferral of any action to allow for further research on use patterns, to confer with elders, and to consult with Tribal governments.

The suggested modifications to the proposed rule are as follows and may represent more than one commentator.

*Paragraph (11):* With few exceptions, those who commented on paragraph (11) believe that there should be no restrictions on trade between rural residents. The following modifications were recommended:

- Modify to include the words “\* \* \* exchange for cash between rural residents.\* \* \*”
- No cash transactions should be allowed.
- Modify to require at least 50 percent of subsistence-caught fish must be retained for personal and family consumption.

We have revised the rule to include the words “for cash” to reflect the formal definition of customary trade. We did not modify the rule to require a certain amount of harvest be retained by the harvester. Because the exchange and use will be by rural residents, we felt this restriction was unnecessary and would require rather cumbersome record keeping.

*Paragraph (12):* Of the proposed regulations, paragraph (12) elicited the most comment. The comments tended to be regional with a few that would apply statewide. The following

comments and modifications were offered:

- Customary trade should be restricted to transactions between rural residents only.
- Customary trade outside of the local area is unknown in Yup'ik culture and should not be allowed now.
- There should be no limit set for the Seward Peninsula region.
- Some tribal entities stated that their trade patterns did not and do not include cash transactions. Traditional harvest and trade should continue under traditional management without interference from Federal or State governments.
- Allow only the sale of unprocessed fish.
- If escapement goals will not be met in a given year, customary trade of those fish stocks should be limited or prohibited.
- The monetary limit in northern Alaska should be \$3,000 to \$5,000 because of the higher cost of living.
- The monetary limit should be a range between \$400 and \$1,000 to be determined by region.
- Research should be conducted before setting a dollar limit on rural to urban customary trade.
- Eggs should not be sold at all.
- At least 50 percent of subsistence harvest of fish should be used for personal and family consumption.

We considered all of these comments and developed revised wording. The revisions allow sale to the end user only and will allow further regulatory adjustment by region.

*Paragraph (13):* This section was generally accepted. The following recommendations were offered:

- Modify to allow those who have commercial limited entry fishing permits to participate in subsistence trade and barter.
- Modify to include sales to those businesses that have filed the yearly "Intent to Operate" form with the State or those that operate retail sales establishments.
- Modify to read, "No business or organization may purchase or barter for or solicit to barter for subsistence-taken fish, their parts, or their eggs."

We have modified the wording of this section from the proposed rule to better cover the potential sale to or purchase by a commercial business. We believe, as do the Regional Councils, that subsistence-taken resources should not enter the commercial arena.

*General Comments:* In addition to these comments and recommendations, almost all the written public comments expressed concerns about topics within and surrounding customary trade.

*Issue:* These comments indicate that a significant number of the writers appear to have limited understanding of customary trade and the effects of the proposed regulation. Their comments imply that they believe the final rule will create a new practice and that subsistence hunting and fishing should only feed one's immediate family. These comments recommended the most restrictions or complete prohibition of customary trade.

*Response:* Customary trade in exchange for cash is recognized in Title VIII of ANILCA. Therefore, we must provide that opportunity for subsistence users. This regulation provides that opportunity while still providing a regulatory framework to avoid abuses.

*Issue:* Comments from those engaged in commercial fisheries and commercial sport fisheries expressed their fears that the proposed regulations will create a new commercial subsistence fishery that will substantially impact their businesses. They note that Alaska's fish stocks are already fully allocated and that the opportunity to generate cash from subsistence resources will result in additional harvest and pressure. They are concerned that the subsistence priority will reallocate fish to the detriment of established commercial and sport fisheries. They would either prohibit customary trade or would impose strict limits and reporting procedures.

*Response:* Because most customary trade among rural subsistence users occurs between local users and involves only small amounts of fish, the Board does not believe that this rule will create an incentive for additional harvest of the resources nor result in additional fish being sold in the commercial markets.

*Issue:* Other writers recommended that the Federal Subsistence Board initiate a public education process to help develop understanding and dispel current controversies. Some rural and Native comments centered on the tenet that subsistence is a right, not a privilege established by any non-Native government. They expressed concern that subsistence, as protected by ANILCA, may be diminished over time by the administrative fiat of bureaucrats. They are worried about the inevitable destructive impacts of the proposed regulations on centuries-old trade networks and, subsequently, on subsistence as a whole.

*Response:* This concern is not of a regulatory nature. However, we have a Web site that provides information relative to the Federal Subsistence Management Program and information

to others relative to subsistence uses and resources.

*Issue:* There are those who are concerned about the inclusion of barter in these proposed regulations. They state that to include barter in any wording in this proposed rule sends a message that barter also needs to be controlled.

*Response:* We have removed any reference to barter from this rule.

*Issue:* Many writers expressed concern that the proposed rule has no permitting or recordkeeping requirement to make the regulation enforceable. They recommend accountability of harvests and sales to ensure evaluation for impacts to the resource and prevent increased harvests. Others recommend that the current recording of subsistence harvests done by ADF&G is sufficient.

*Response:* We have restructured the rule so that permitting and recordkeeping are unnecessary. We believe that total subsistence salmon harvests, including the portions kept for direct consumption and the portions shared, bartered, or exchanged in customary trade, are currently relatively well reported through subsistence fishing calendars and permits in most parts of rural Alaska. Should a problem surface in future years, we will consider adding a permitting or recordkeeping requirement.

*Issue:* There is also concern that public health safety standards must be assured by requiring that subsistence-caught fish sold to the public be processed under the State food handling and processing regulations.

*Response:* Nothing in this proposed rule would displace, supersede, or preempt State or Federal food and health safety laws and regulations governing the processing, handling, or sale of fish. In our public booklet version of these rules, we have specifically stated that sellers must conform to applicable public health and safety standards and regulations.

*Issue:* A majority of the letters, including those from State and Tribal agencies as well as from individuals, question the accelerated schedule the Board has set for addressing this matter and express varying degrees of uneasiness. Sufficient time has not been allowed to consider the effects the proposed regulations will have on individual lives, culture, or to develop collaborative management by Federal, State, and Tribal government agencies. More time is needed to conduct research to determine use patterns and needs and to consider the far-reaching effects of the proposed regulations. It was noted that Congress took 10 years to enact

subsistence protection regulations after ANCSA, so taking quality time to address customary trade should be acceptable to the Board. These writers urge the Board to proceed with care and caution and recommend deferring action.

*Response:* Recognizing some concerns relative to timing, we extended the comment period by nearly 7 months. The current regulations focus on protecting traditional practices of customary trade of subsistence-harvested fish, while minimizing the potential for commercialization of subsistence fish. These regulations create a baseline upon which additional region-specific regulations can be added. Also, we note that this rule is subject to annual review and potential revision, should it be necessary.

*Regional Council Comments:* In general, the Regional councils supported the unlimited exchange between rural residents and the prohibition on sale to or purchase by a business entity. Most Regional Council comments revolved around region-specific dollar limits on the sale of subsistence-taken resources to individuals other than rural residents. These dollar limits ranged from about \$200 to \$1,000. A few Regional Councils felt that there should be no limits or regulations.

*Response:* Because of this large variance among regions and because this is the first year under these regulations, we believe it is appropriate at this time to have standard language that applies statewide. We have, however, included recognition of a potential future need to adjust the regulations on a regional basis.

The Board discussed and evaluated proposed changes to this rule during a public meeting held in Anchorage, January 14, 2003. Following public testimony and after hearing Regional Council recommendations, the Board deliberated and took final action on requested changes to the proposed rule resulting in the final rule as set forth in this document.

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

#### *National Environmental Policy Act Compliance*

A Draft Environmental Impact Statement (DEIS) 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 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, implemented 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; amended January 8, 1999, 64 FR 1276; June 12, 2001, 66 FR 31533; and May 7, 2002, 67 FR 30559) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

An environmental assessment was prepared in 1997 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 determined that the expansion of Federal jurisdiction did 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*

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 may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

#### *Paperwork Reduction Act*

These proposed amendments do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. We will not conduct or sponsor, and you are not required to respond to, a collection of information request unless it displays a currently valid OMB control number.

#### *Other Requirements*

This rule is not significant under E.O. 12866. This rule will not have an annual economic effect of \$100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The rule will not create inconsistencies with other agencies' actions; materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; or raise novel legal or policy issues.

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 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.

This rulemaking will impose no significant costs on small entities; however, 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 tackle, boat, 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 traded under this rule will be consumed by local rural residents and do not result in a dollar benefit to the economy. However, we estimate that 24 million pounds of fish

(including 8.3 million pounds of salmon) are harvested by the local subsistence users annually and, if given a dollar value of \$3.00 per pound for salmon [Note: this is actually much higher than the current commercial ex-vessel value for salmon.] and \$ 0.58 per pound for other fish, would equate to about \$34 million in food value Statewide. We anticipate that only a very small portion of this harvest might be used in customary trade and most of that would remain in the local village or region.

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. For this reason, 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 no cost is involved to any State or local entities or Tribal governments.

The Secretaries have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988 on Civil Justice Reform.

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.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), 512 DM 2, and E.O. 13175, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no significant adverse effects. During the development of this proposed rule, the Board initiated Tribal consultation with 229 Federally recognized Tribes. All of the comments that were received were consistent with the Task Force's recommended language. The Board will continue with Tribal consultation during the comment period through directed mailings and special meetings with Tribal entities. 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 energy action and no Statement of Energy Effects is required.

#### Drafting Information

William Knauer drafted these regulations 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; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Dr. Glenn Chen, 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.

#### Subpart D—Subsistence Taking of Fish and Wildlife

■ 2. In subpart D of 36 CFR part 242 and 50 CFR part 100, § \_\_.27(c)(11) through (13) is revised to read as follows:

##### §. 27 Subsistence taking of fish.

\* \* \* \* \*

(c) \* \* \*

(11) *Transactions between rural residents.* Rural residents may exchange

in customary trade subsistence-harvested fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from other rural residents. The Board may recognize regional differences and define customary trade differently for separate regions of the State.

(12) *Transactions between a rural resident and others.* In customary trade, a rural resident may trade fish, their parts, or their eggs, legally taken under the regulations in this part, for cash from individuals other than rural residents if the individual who purchases the fish, their parts, or their eggs uses them for personal or family consumption. If you are not a rural resident, you may not sell fish, their parts, or their eggs taken under the regulations in this part. The Board may recognize regional differences and define customary trade differently for separate regions of the State.

(13) *No sale to, nor purchase by, fisheries businesses.*

(i) You may not sell fish, their parts, or their eggs taken under the regulations in this part to any individual, business, or organization required to be licensed as a fisheries business under Alaska Statute, AS 43.75.011 or to any other business as defined under Alaska Statute 43.70.110(1) as part of its business transactions.

(ii) If you are required to be licensed as a fisheries business under Alaska Statute AS 43.75.011 or are a business as defined under Alaska Statute 43.70.110(1), you may not purchase, receive, or sell fish, their parts, or their eggs taken under the regulations in this part as part of your business transactions.

\* \* \* \* \*

Dated: March 24, 2003.

**Thomas H. Boyd,**

*Acting Chair, Federal Subsistence Board.*

Dated: March 25, 2003.

**Kenneth E. Thompson,**

*Regional Subsistence Group Leader, USDA—Forest Service.*

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