



3410-11-P; 4310-55-P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[Docket No. FWS-R7-SM-2011-0015]

[FXFR13350700640L6-123-FF07J00000]

RIN 1018-AX64

Subsistence Management Regulations for Public Lands in Alaska—2013-14 and 2014-15

Subsistence Taking of Fish and Shellfish Regulations

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for fish and shellfish seasons, harvest limits, methods and means related to taking of fish and shellfish for subsistence uses during the 2013-2014 and 2014-2015 regulatory years. The Federal Subsistence Board (Board) is on a schedule of completing the process of revising subsistence taking of fish and shellfish regulations in odd-numbered years and subsistence taking of wildlife regulations in even-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable cycle. When final, the resulting rulemaking will replace the existing subsistence fish and shellfish

taking regulations. This proposed rule would also amend the general regulations on subsistence taking of fish and wildlife.

DATES: *Public meetings:* The Subsistence Regional Advisory Councils (Councils) will hold public meetings to receive comments and make proposals to change this proposed rule on several dates between February 7 and March 23, 2012, and then hold another round of public meetings to discuss and receive comments on the proposals, and make recommendations on the proposals to the Board, on several dates between August 14 and October 17, 2012. The Board will discuss and evaluate proposed regulatory changes during a public meeting in Anchorage, AK, in January 2013. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

Public comments: Comments and proposals to change this proposed rule must be received or postmarked by March 30, 2012.

ADDRESSES: *Public meetings:* The Federal Subsistence Board and the Subsistence Regional Advisory Councils' public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

Public comments: You may submit comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov> and search for FWS-R7-SM-2011-0015, which is the docket number for this rulemaking.
- *By hard copy:* U.S. mail or hand-delivery to: USFWS, Office of Subsistence Management, 1011 East Tudor Road, MS 121, Attn: Theo Matuskowitz, Anchorage, AK 99503-6199, or hand delivery to the Designated Federal Official attending any of the Federal Subsistence Regional Advisory Council public meetings. See

SUPPLEMENTARY INFORMATION for additional information on locations of the public meetings.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Review Process section below for more information).

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management; (907) 786-3888 or subsistence@fws.gov. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743-9461 or skessler@fs.fed.us.

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. The Secretaries published temporary regulations to carry out this program in the **Federal Register** on June 29, 1990 (55 FR 27114), and final regulations were published in the **Federal Register** on May 29, 1992 (57 FR 22940). The Program has subsequently amended these regulations a number of times. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, "Parks, Forests, and Public Property," and Title 50, "Wildlife and Fisheries," at 36 CFR 242.1-28 and 50 CFR 100.1-28, respectively. The regulations contain subparts as follows:

Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board is currently made up of:

- 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;
- The Alaska Regional Forester, U.S. Forest Service; and
- Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.

Through the Board, these agencies and public members participate in the development of regulations for subparts C and D, which, among other things, set forth program eligibility and specific harvest seasons and limits.

In administering the program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Subsistence Regional Advisory Council (Council). The 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 Federal public lands in Alaska. The Council members represent varied geographical, cultural, and user interests within each region.

Public Review Process—Comments, Proposals, and Public Meetings

The Regional Advisory Councils have a substantial role in reviewing this proposed rule and making recommendations for the final rule. The Federal Subsistence Board, through the Councils, will hold meetings on this proposed rule at the following locations in Alaska, on the following dates:

Region 1—Southeast Regional Council	Juneau	March 20, 2012
Region 2—Southcentral Regional Council	Anchorage	March 13, 2012
Region 3—Kodiak/Aleutians Regional Council	Kodiak	March 21, 2012
Region 4—Bristol Bay Regional Council	Naknek	March 6, 2012
Region 5—Yukon–Kuskokwim Delta Regional Council	Bethel	February 23, 2012
Region 6—Western Interior Regional Council	McGrath	February 28, 2012
Region 7—Seward Peninsula Regional Council	Nome	February 7, 2012
Region 8—Northwest Arctic Regional Council	Kotzebue	March 7, 2012
Region 9—Eastern Interior Regional Council	Fairbanks	February 29, 2012
Region 10—North Slope Regional Council	Barrow	February 15, 2012

During April 2012, the written proposals to change the subpart D, take of fish and shellfish regulations and subpart C, customary and traditional use determinations, will be compiled and distributed for public review. During the 30-day public comment period, which is presently scheduled to end on May 28, 2012, written public comments will be accepted on the distributed proposals.

The Board, through the Councils, will hold a second series of meetings in August through October 2012, to receive comments on specific proposals and to develop recommendations to the Board at the following locations in Alaska, on the following dates:

Region 1—Southeast Regional Council	Sitka	September 26, 2012
Region 2—Southcentral Regional Council	TBA	October 2, 2012
Region 3—Kodiak/Aleutians Regional Council	Sand Point	September 5, 2012
Region 4—Bristol Bay Regional Council	TBA	TBA XX, 2012
Region 5—Yukon–Kuskokwim Delta Regional Council	Quinhagak	October 10, 2012
Region 6—Western Interior Regional Council	Aniak	October 10, 2012
Region 7—Seward Peninsula Regional Council	Nome	October 3, 2012
Region 8—Northwest Arctic Regional Council	TBA	August 21, 2012
Region 9—Eastern Interior Regional Council	Tanana	October 16, 2012
Region 10—North Slope Regional Council	TBA	August 14, 2012

A notice will be published of specific dates, times, and meeting locations in local and statewide newspapers prior to both series of meetings. Locations and dates may change based on weather or local circumstances. The amount of work on each Council’s agenda determines the length of each meeting.

The Board will discuss and evaluate proposed changes to the subsistence management regulations during a public meeting scheduled to be held in Anchorage, AK, in January 2013. The Council Chairs, or their designated representatives, will present their respective Councils’ recommendations at the Board meeting. Additional oral testimony may be provided on specific proposals before the Board at that time. At that public meeting, the Board will deliberate and take final action on proposals received that request changes to this proposed rule.

Proposals to the Board to modify the general fish and wildlife regulations, fish and shellfish harvest regulations, and customary and traditional use determinations must include the following information:

- a. Name, address, and telephone number of the requestor;
- b. Each section and/or paragraph designation in this proposed rule for which changes are suggested, if applicable;
- c. A description of the regulatory change(s) desired;
- d. A statement explaining why each change is necessary;
- e. Proposed wording changes; and
- f. Any additional information that you believe will help the Board in evaluating the proposed change.

The Board immediately rejects proposals that fail to include the above information, or proposals that are beyond the scope of authorities in § ____.24, subpart C (the regulations governing customary and traditional use determinations), and §§ ____.25, ____.27, and ____.28, subpart D (the general and specific regulations governing the subsistence take of fish and shellfish). During the January 2013 meeting, the Board may defer review and action on some proposals to allow time for cooperative planning efforts, or to acquire additional needed information. The Board may elect to defer taking action on any given proposal if the workload of staff, Councils, or the Board becomes excessive. These deferrals may be based on recommendations by the affected Council(s) or staff members, or on the basis of the Board's intention to do least harm to the subsistence user and the resource involved. A proponent of a proposal may withdraw the proposal provided it has not been presented to a Council for action. The Board may consider and act on alternatives that address the intent of a proposal while differing in approach.

Tribal Consultation and Comment

As expressed in Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” the Federal officials that have been delegated authority by the Secretaries are committed to honoring the unique government-to-government political relationship that exists between the Federal Government and Federally Recognized Indian Tribes (Tribes) as listed in 75 FR 60810 (October 1, 2010). Consultation with Alaska Native corporations is based on Public Law 108-199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108-447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: “The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.”

The Alaska National Interest Lands Conservation Act does not provide rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, because tribal members are affected by subsistence fishing, hunting, and trapping regulations, the Secretaries, through the Board, will provide Federally recognized Tribes and Alaska Native corporations an opportunity to consult on this proposed rule.

The Board will engage in outreach efforts for this proposed rule, including a notification letter, to ensure that Tribes and Alaska Native corporations are advised of the mechanisms by which they can participate. The Board provides a variety of opportunities for consultation: proposing changes to the existing rule; commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Council meetings; engaging in dialogue at the Board’s meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process. The Board will commit to efficiently and adequately providing an

opportunity to Tribes and Alaska Native corporations for consultation in regard to subsistence rulemaking.

The Board will consider Tribes' and Alaska Native corporations' information, input, and recommendations, and address their concerns as much as practicable.

Prior to the start of the public regulatory meeting in January, 2013, the Board will provide Federally recognized Tribes and Alaska Native corporations a specific opportunity to consult on this proposed rule. Federally recognized Tribes and Alaska Native corporations will be notified by mail and telephone and will be given the opportunity to attend the consultation in person or via teleconference.

Developing the 2013–14 and 2014–15 Fish/Shellfish Seasons and Harvest Limit Regulations

Subpart C and D regulations are subject to periodic review and revision. The Board currently completes the process of revising subsistence take of fish and shellfish regulations in odd-numbered years and wildlife regulations in even-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable cycle.

The text of the final rule published March 8, 2011 (76 FR 12564) for the 2011–13 subparts C and D regulations is the text of this proposed rule. These regulations will remain in effect until subsequent Board action changes elements as a result of the public review process outlined above in this document.

Compliance with Statutory and Regulatory Authorities

National Environmental Policy Act

A Draft Environmental Impact Statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7,

1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA § 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final § 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly. During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of the periodic subparts C and D rules was conducted in accordance with § 810; that evaluation also supported the Secretaries' determination that these rules will not reach the "may significantly restrict" threshold that would require notice and hearings under ANILCA §810(a).

Paperwork Reduction Act

An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This proposed rule does not contain any new collections of information that require OMB approval. OMB has reviewed and approved the following collections of information associated with the subsistence regulations at 36 CFR 242 and 50 CFR 100:

Subsistence hunting and fishing applications, permits, reports, and Federal Subsistence Regional Advisory Council Membership Application/Nomination and Interview Forms (OMB Control No. 1018–0075 expires January 31, 2013).

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget has determined that this proposed rule is not significant and has not reviewed this proposed rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

- (a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.
- (b) Whether the rule will create inconsistencies with other agencies' actions.
- (c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.
- (d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

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. In general, the resources to be harvested under this proposed rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. Therefore, the Departments certify 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.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.), this proposed 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.

Executive Order 12630

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

Unfunded Mandates Reform Act

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 proposed rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

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

Executive Order 13132

In accordance with Executive Order 13132, the proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

The Alaska National Interest Lands Conservation Act does not provide rights to tribes for the subsistence taking of wildlife, fish, and shellfish. However, the Board will provide Federally recognized Tribes and Alaska Native corporations an opportunity to consult on this proposed rule. Consultation with Alaska Native corporations are based on Public Law 108-199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108-447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: "The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175."

The Secretaries, through the Board, will provide a variety of opportunities for consultation: commenting on proposed changes to the existing rule; engaging in dialogue at the Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process.

Executive Order 13211

This Executive Order requires agencies to prepare Statements of Energy Effects when

undertaking certain actions. However, this proposed rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these regulations under the guidance of Peter J. Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by:

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service;
- Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Jerry Berg, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Steve Kessler, Alaska Regional Office, U.S. Forest Service.

List of Subjects

36 CFR Part 242

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

50 CFR Part 100

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

Proposed Regulation Promulgation

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR 242 and 50 CFR 100 for the 2013–14 and 2014–15 regulatory years. The text of the proposed amendments to 36 CFR 242.24, 242.27, and 242.28 and 50 CFR 100.24, 100.27, and

100.28 is the final rule for the 2011–13 regulatory period (76 FR 12564; March 8, 2011), and the text of the proposed amendments to 36 CFR 242.25 and 50 CFR 100.25 is the final rule for the 2010--11 and 2011--12 wildlife regulatory period (75 FR 37918; June 30, 2010), as modified by any subsequent Federal Subsistence Board action during meetings held February 7 through March 23, 2012.

January 12, 2012

January 12, 2012

Peter J. Probasco,	Date	Steve Kessler,	Date
Acting Chair,		Subsistence Program Leader,	
Federal Subsistence Board.		USDA–Forest Service.	

[FR Doc. 2012-2008 Filed 02/01/2012 at 8:45 am; Publication Date: 02/02/2012]