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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

[Docket No. FWS-R7-NWRS-2014-0003; FF07RKNA00 FXRS12610700000 167]

RIN 1018-AX56

Refuge-Specific Regulations; Public Use; Kenai National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are amending the regulations for Kenai National Wildlife Refuge (Kenai NWR or Refuge) that govern existing general public use and recreation. These changes will implement management direction and decisions from our June 2010 Kenai NWR revised comprehensive conservation plan and June 2007 Skilak Wildlife Recreation Area final revised management plan. The amendments to the regulations are designed to enhance natural resource protection, public use activities, and public safety on the Refuge; are necessary to ensure the compatibility of public use activities with the Refuge's purposes and the Refuge System's purposes; and ensure consistency with management policies and approved Refuge management plans.

DATES: This rule is effective **[insert date 30 days after date of publication in the Federal Register]**.

FOR FURTHER INFORMATION CONTACT: Andy Loranger, Refuge Manager, Kenai NWR, P.O. Box 2139; Ski Hill Rd., Soldotna, AK 99669; telephone: 907-262-7021; facsimile

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SUPPLEMENTARY INFORMATION:

Background

President Franklin D. Roosevelt established the Kenai National Moose Range (Moose Range) on December 16, 1941, for the purpose of “protecting the natural breeding and feeding range of the giant Kenai moose on the Kenai Peninsula, Alaska, which in this area presents a unique wildlife feature and an unusual opportunity for the study in its natural environment of the practical management of a big game species that has considerable local economic value” (Executive Order 8979; see 6 FR 6471, December 18, 1941).

Section 303(4) of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) (16 U.S.C. 3101 *et seq.*) substantially affected the Moose Range by modifying its boundaries and broadening its purposes from moose conservation to protection and conservation of a broad array of fish, wildlife, habitats, and other resources, and to providing educational and recreational opportunities. ANILCA also redesignated the Moose Range as the Kenai National Wildlife Refuge (NWR or Refuge) and increased the size of the Refuge to 1.92 million acres, of which approximately two-thirds were designated as Wilderness and made part of the National Wilderness Preservation System.

ANILCA sets out additional purposes for each refuge in Alaska; the purposes of Kenai NWR are set forth in section 303(4)(B) of ANILCA. The purposes identify some of the reasons why Congress established the Refuge and set the management priorities for the Refuge. The purposes are as follows:

(1) To conserve fish and wildlife populations and habitats in their natural diversity including, but not limited to, moose, bears, mountain goats, Dall sheep, wolves and other furbearers, salmonoids and other fish, waterfowl and other migratory and nonmigratory birds;

(2) To fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;

(3) To ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in (1), above, water quality and necessary water quantity within the Refuge;

(4) To provide, in a manner consistent with (1) and (2), above, opportunities for scientific research, interpretation, environmental education, and land management training; and

(5) To provide, in a manner compatible with these purposes, opportunities for fish and wildlife-oriented recreation.

The Wilderness Act of 1964 (16 U.S.C. 1131–1136) provides the following purposes for wilderness areas, including the Kenai wilderness area:

(1) To secure an enduring resource of wilderness;

(2) To protect and preserve the wilderness character of areas within the National Wilderness Preservation System; and

(3) To administer the areas for the use and enjoyment of the American people in a way that will leave the areas unimpaired for future use and enjoyment as wilderness.

Under our regulations implementing ANILCA in title 50 of the Code of Federal Regulations at part 36 (50 CFR part 36), all refuge lands in Alaska are open to public recreational activities as long as such activities are conducted in a manner compatible with the purposes for which the refuge was established (50 CFR 36.31). Such recreational activities

include, but are not limited to, sightseeing, nature observation and photography, hunting, fishing, boating, camping, hiking, picnicking, and other related activities (50 CFR 36.31(a)).

The National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997, defines “wildlife-dependent recreation” and “wildlife-dependent recreational use” as “hunting, fishing, wildlife observation and photography, or environmental education and interpretation” (16 U.S.C. 668ee(2)). We encourage these uses, and they receive emphasis in management of the public use on national wildlife refuges. All six of these priority uses have been determined to be compatible on the Refuge, subject to adherence to applicable State and Federal regulations.

Section 304(g) of ANILCA requires the Service to prepare refuge comprehensive conservation plans (CCPs) for all refuges in Alaska. The Service completed its first comprehensive management plan for the Kenai NWR in 1985, and a revised CCP was finalized and approved in 2010. These plans include management direction and specific actions related to administration of public uses on the Refuge. The refuge-specific public use regulations for Kenai NWR are set forth at 50 CFR 36.39(i). These regulations include provisions concerning the operation of aircraft, motorboats, off-road vehicles, and snowmobiles; hunting and trapping; camping; timber removal; personal property; use of non-motorized wheeled vehicles; canoeing; and area closures on the Refuge.

Proposed Rule

On May 21, 2015, we published a proposed rule (80 FR 29277) to amend the Refuge’s public use regulations. We accepted public comments on the proposed rule for 60 days, ending July 20, 2015. We also held two public hearings on the proposed rule, one on June 17, 2015, in Soldotna, Alaska, and one on June 18, 2015, in Anchorage, Alaska.

We developed the changes to existing Refuge public use regulations included in our May 21, 2015, proposed rule to meet our legal mandates; to ensure consistency with policy, directives, and approved management plans, including implementing management direction and/or specific actions in our 2010 revised Kenai NWR CCP and 2007 Skilak Wildlife Recreation Area (WRA) final revised management plan; and to ensure public safety. The proposed changes included: (1) Amending regulations affecting use of aircraft, motorboats, motorized vehicles, and snowmobiles in order to enhance resource protection and public use opportunities; (2) codifying restrictions on hunting and trapping within the Skilak WRA recently established (in 2013) in accordance with procedures set forth at 50 CFR 36.42 (public participation and closure procedures) and implementing our 2007 Skilak WRA final revised management plan; (3) expanding a prohibition on the discharge of firearms to include areas of intensive public use along the Russian and Kenai rivers in order to enhance public safety; (4) clarifying the intent of existing regulations that require a special use permit for hunting black bears over bait by specifying that only the take of black bears is authorized under this requirement; (5) amending regulations associated with camping, use of public use cabins and public use facilities, unattended equipment, livestock (including pack animals), and public gatherings to enhance resource protection and public use opportunities; (6) establishing permanent regulations for managing wildlife attractants in the Russian River Special Management Area to reduce potential for negative human-bear interactions, thereby enhancing public safety and resource protection; (7) establishing regulations allowing for noncommercial gathering of natural resources, including collection of edible wild foods and shed antlers; and (8) codifying existing restrictions on certain uses within areas of the Refuge under conservation easements and easements made under section

17(b) of the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601 *et seq.*; see 43 U.S.C. 1616(b)).

Response to Public Comments

We received 28 written comments on the May 21, 2015, proposed rule during the comment period, and four individuals and representatives of two organizations provided oral testimony at the public hearings. We reviewed and considered all substantive information we received during the comment period. In this final rule, we incorporate changes to the proposed rule as outlined in our responses below. As comments were often similar or covered multiple topics, we have grouped comments and responses by topic areas, which generally correspond to specific sections of the proposed Refuge public use regulations in the May 21, 2015, proposed rule.

Aircraft —50 CFR 36.39(i)(1)

(1) Comment: Some commenters expressed support for the changes to Refuge regulations opening additional areas of the Refuge for airplane use (Chickaloon Flats, lake in Kenai Wilderness) citing the benefits of expanded access to users; some commenters expressed opposition to these changes citing impacts to the quality of experience for users accessing wilderness areas using non-motorized means. Some commenters stated that the additional lake being opened in the Kenai Wilderness for hunters drawing Alaska Department of Fish and Game hunt permits should be open to all users. Some commenters expressed opposition to continued closures to airplane use on the Refuge under existing regulations, stating that they unnecessarily restricted access for hunters, and/or recommended that the Service expand areas of the Refuge open for aircraft use beyond that proposed to increase access opportunities. Some commenters inquired about the status of the Service's commitment to evaluate effects of the regulations that

restrict airplane access to lakes otherwise open based on the presence of nesting or brood-rearing trumpeter swans. One commenter requested that a legal description be included for the expanded area open to airplane use on the Chickaloon Flats.

Our Response: The changes to the Refuge aircraft regulations in this rule implement decisions from the Refuge's 2010 CCP and the record of decision (ROD) for its accompanying environmental impact statement. Regulations governing use of aircraft on the Refuge are in place to protect refuge resources, consistent with meeting Refuge purposes including the conservation of fish and wildlife populations in their natural diversity and its Wilderness purposes.

Consistent with its commitment in the ROD, the Service will complete an analysis of trumpeter swan use of Refuge wetlands and evaluate its effect on airplane access under the regulations. Any further changes to Refuge aircraft regulations would be the subject of a future rulemaking.

We added a legal description of the expanded area open to airplane use in the Chickaloon Flats to this final rule.

Motorboats —50 CFR 36.39(i)(2)

(2) *Comment:* Some commenters expressed support for changes to Refuge regulations establishing boat and motor restrictions for sections of the Kenai River and Skilak Lake within the Refuge. Some commenters requested that the Service reconsider the proposed 10 horsepower motor restriction for boat motors in selected Refuge lakes; one commenter supported this change.

Our Response: We proposed regulations establishing boat and motor restrictions for sections of the Kenai River and Skilak Lake within the Refuge to protect refuge resources and to

enhance consistency with existing State regulations for the Kenai River Special Management Area. We re-evaluated the need for a restriction in the proposed rule limiting boat motors to 10 horsepower or less in selected lakes. We will continue to rely on the existing “no wake” requirement in these lakes to minimize disturbance to wildlife and impacts to non-motorized boaters. We do not include the maximum horsepower requirement for the identified lakes in this final rule.

Off-road Vehicles—50 CFR 36.39(i)(3)

(3) *Comment:* One commenter requested that the Service consider allowing the use of off-road vehicles for ice fishing access during periods of adequate snow/ice cover. One commenter expressed support for clarifying where use of 4-wheel-drive vehicles is allowed on the Refuge. One commenter expressed opposition to the addition of jet skis and other personal watercraft to the list of prohibited watercraft; one commenter supported this change.

Our Response: Under the regulations, off-road vehicle use is prohibited on the Refuge. This prohibition is in place to prevent disturbance to wildlife and habitat degradation. The Service does not consider an exception to this prohibition for ice fishing to be warranted, as adequate motorized access, through use of highway vehicles and snowmobiles on identified lakes, is already provided for ice fishing under the regulations. The regulations prohibit operation of motorized watercraft with the exception of motorboats; specifying that jet skis and other personal watercraft are among prohibited watercraft adds clarity for the public. We did not make any changes to the rule in response to these comments.

Snowmobiles—50 CFR 36.39(i)(4)

(4) *Comment:* One commenter expressed support for increasing the allowable width of snowmobiles from 46 to 48 inches, and questioned why Watson Lake was not included in the list

of lakes that allow use of snowmobiles for ice fishing when such use is allowed on other lakes where highway vehicles are allowed for the same purpose. A commenter requested clarification on the need for a Refuge-specific prohibition on use of snowmobiles to pursue, chase, or herd wildlife, stating that this change was redundant with existing Federal regulations. Some commenters supported the snowmobile regulations as proposed.

Our Response: Under the regulations, use of snowmobiles for ice fishing is allowed on the same lakes within the Skilak WRA that are open to highway vehicle use for ice fishing. Identifying specific lakes as open to snowmobile use for ice fishing is necessary within the Skilak WRA because this is an area of the Refuge that is otherwise closed to snowmobile use. Watson Lake lies within an area of the Refuge that is open to general snowmobile use when the Refuge has been opened to such use (based on a determination that adequate snow cover exists between the dates of December 1 and April 30), which in most years negates the need to include it in the list of lakes open to snowmobile use to provide access for ice fishing. On the rare occasions that the Refuge remains closed to snowmobiles because of inadequate snow cover but vehicular use of Watson Lake for ice fishing is possible, the Service can consider implementing a temporary opening to allow use of snowmobiles on Watson Lake for ice fishing.

In this final rule, we specify that snowmobile operation is prohibited to “herd, harass, haze, pursue, or drive wildlife” in order to clarify to the Refuge-specific regulations, which, before the effective date of this final rule (see **DATES**), simply prohibit “harassment of wildlife” using snowmobiles (50 CFR 36.39(i)(4)(viii)). The Service believes adding specificity and clarity to these regulations benefits the public and will lead to more effective resource protection on the Refuge, and that this change in regulatory language is warranted.

We did not make any changes to the rule in response to these comments.

Hunting and Trapping—50 CFR 36.39(i)(5) and 36.39(i)(6)

(5) *Comment:* Some commenters stated that the Service’s amendment of the Refuge public use regulations governing hunting and trapping, specifically those related to firearms discharge and hunting brown bears over bait, were not adequately vetted through a public process and were not adequately justified in the proposed rule, and therefore did not meet requirements under ANILCA for implementing Federal regulations for establishing closures and/or the requirements of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). Some commenters stated that the public could not meaningfully comment because of the lack of justification in the proposed rule. One commenter stated that the Service’s proposed amendments to the Refuge public use regulations governing hunting and trapping are outdated and that the Service has not adequately complied with NEPA for its rulemaking by failing to analyze the direct, indirect and cumulative impacts of hunting and trapping carnivores on the Refuge.

Our Response: Federal regulations implementing ANILCA at 50 CFR 36.42(b) provide that in making a determination to close an area or restrict an activity, the Refuge Manager will be guided by several factors, including public health and safety, resource protection, and other management considerations necessary to ensure an activity or area is being managed in a manner compatible with the purposes for which the Refuge was established. As we stated in the May 21, 2015, proposed rule (80 FR 29277), we proposed changes to the Refuge public use regulations (including amending regulations specific to hunting and trapping) to ensure management of public use in a manner such that these activities remain compatible with Kenai NWR’s establishment purposes and the Refuge System mission; to ensure consistency with Service

policy, directives, and approved management plans; to minimize conflicts between authorized users of the Refuge; and to protect public safety.

Federal regulations at 50 CFR 36.42(e) require that permanent closures or restrictions on national wildlife refuges in Alaska shall be made only after notice and public hearings in the affected vicinity and other locations as appropriate, and after publication in the **Federal Register**. The Service complied with this requirement. We published our proposed rule to amend the Refuge's public use regulations, including amending Refuge regulations for hunting and trapping, in the **Federal Register** on May 21, 2015. We provided a 60-day public comment period, ending July 20, 2015, on the proposed rule, and we held public hearings in Soldotna (June 17, 2015) and Anchorage (June 18, 2015), Alaska, on the proposed rule.

The Service analyzed its proposed rule amending the Refuge's public use regulations, including proposed changes to hunting and trapping regulations, in accordance with the criteria of NEPA and Department of the Interior policy in part 516 of the Departmental Manual (516 DM). We determined that the rule is considered a categorical exclusion under 516 DM 8.5(C)(3), which categorically excludes the "issuance of special regulations for public use of Service-managed land, which maintain essentially the permitted level of use and do not continue a level of use that has resulted in adverse environmental impacts." This rulemaking will result in small incremental changes in public use of the Refuge, both increasing and decreasing use, but overall will maintain permitted levels of use and will not continue a level of use that has resulted in adverse environmental impacts.

This rulemaking supports implementing the Service's management direction identified through approved Refuge management plans, including the 2010 Kenai NWR revised CCP and the 2007 Kenai NWR Skilak WRA revised final management plan. Specific to hunting and

trapping on the Refuge, the Service completed compatibility determinations in 2007, for hunting, hunting of black bears using bait, and trapping concurrent with development of the Refuge's 2010 revised CCP, which was accompanied by an environmental impact statement. These activities were determined to be compatible, subject to stipulations required to ensure compatibility that includes adherence to pertinent State and Federal regulations. The Service addressed hunting and trapping in the Skilak WRA in its 2007 Skilak WRA final revised management plan and its accompanying environmental assessment.

The Service is adopting the proposed regulations, as amended in this final rule (see **Table: Summary of Changes From Proposed Rule**, below), for the Refuge, specific to hunting and trapping, to meet its legal mandates; to ensure consistency with policy, directives, and approved management plans; and to ensure public safety. We did not make any changes to the rule in response to these comments.

(6) Comment: Some commenters stated that the changes to Refuge regulations governing hunting and trapping in the proposed rule, specifically those related to firearms discharge along the Russian and Kenai Rivers, use of bait for hunting brown bears, and/or hunting and trapping in the Skilak WRA, are not necessary to meet the Service's legal mandates for the Refuge, are counterproductive to meeting the Refuge's original establishment purpose as the Kenai National Moose Range, conflict with provisions of the ANILCA and the National Wildlife Refuge Administration Act, are an unjustified and unnecessary preemption of State of Alaska management of wildlife, and/or are inconsistent with provisions of the 1982 Master Memorandum of Understanding (MMOU) between the Service and the Alaska Department of Fish and Game.

Our Response: The National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd-668ee) recognizes six wildlife-dependent recreational uses as priority public uses of the Refuge System: hunting, fishing, wildlife observation and photography, and environmental education and interpretation. These uses are legitimate and appropriate public uses where compatible with the Refuge System mission and individual refuge purposes, and are to receive enhanced consideration over other uses in planning and management. All six of the priority public uses have been determined compatible and are authorized on the Refuge.

The Service considers our regulations governing hunting and trapping on the Refuge necessary to meeting our mandates under ANILCA to conserve healthy populations of wildlife in their natural diversity on the Refuge, to meet its Wilderness purposes, and to meet its purpose for providing compatible wildlife-oriented recreational opportunities, which include both consumptive and non-consumptive activities.

By law (National Wildlife Refuge System Administration Act of 1966, as amended; Alaska National Interest Lands Conservation Act of 1980), regulations (43 CFR part 24), and policy (the Service Manual at 605 FW 1 and 605 FW 2), the Service must, to the extent practicable, ensure that refuge regulations permitting hunting and fishing are consistent with State laws, regulations, and management plans. In recognition of the above, non-conflicting State general hunting and trapping regulations are usually adopted on refuges. Hunting and trapping, however, remain subject to legal mandates, regulations, and management policies pertinent to the administration and management of refuges.

Under the 1982 MMOU between the Service and the Alaska Department of Fish and Game, it is recognized that taking of fish and wildlife by hunting, trapping, or fishing on Service lands in Alaska is authorized under applicable State and Federal law unless State regulations are

found to be incompatible with documented refuge goals, objectives, or management plans. The MMOU commits the Service to utilize the State's regulatory process to the maximum extent allowed by Federal law in developing new or modifying existing Federal regulations or proposing changes in existing State regulations governing or affecting the taking of fish and wildlife on Service lands in Alaska. The MMOU also recognizes that the Service's responsibility for regulating human use on the Refuge.

The Service coordinated with the Alaska Department of Fish and Game in development of the Refuge's 2010 CCP and 2007 Skilak WRA final revised management plan, and during the development of the proposed and this final rule. The Service continues to actively participate in the State's regulatory process with the Alaska Board of Game on issues related to hunting and trapping on the Refuge, including recent coordination on hunting brown bears over bait and hunting in the Skilak WRA, both of which are subjects of this rulemaking. The Service remains committed to working with the State of Alaska and using State regulatory processes, consistent with the MMOU. We did not make any changes to the rule in response to these comments.

Hunting and Trapping, Discharge of Firearms—50 CFR 36.39(i)(5)(i)

(7) *Comment:* Some commenters expressed opposition to the proposed firearms discharge restriction within ¼ mile of the shorelines of the Kenai River and Russian River within the Refuge, citing one or more of the following:

- Discharge of firearms does not create public safety issues because very little hunting occurs in the area or because public use levels for fishing drastically fall as freeze-up approaches in late September; and
- There is no biological basis for, or data or scientific need justifying, the closure.

Some commenters expressed support for the Service's proposed firearms discharge prohibition along the Kenai and Russian rivers, citing its benefits to protection of public safety.

Our Response: Federal regulations at 50 CFR 36.42(b) provide that in making a determination to close an area or restrict an activity, the Refuge Manager shall be guided by several factors, including public health and safety. Specifically to address public safety issues, the regulations currently prohibit firearms discharge on the Refuge as follows: Firearms may not be discharged within ¼ mile of designated public campgrounds, trailheads, waysides, buildings or the Sterling Highway from the east Refuge boundary to east junction of the Skilak Loop Road (50 CFR 36.39(i)(5)(i)).

As stated in the May 21, 2015, proposed rule, we proposed the firearms discharge prohibition on lands within ¼ mile of the Kenai River shoreline upstream and downstream of Skilak Lake and the Russian River shoreline from its confluence with the Kenai River upstream to the Russian River Falls, with exceptions for the use of shotguns for waterfowl and small game hunting and firearms used while lawfully trapping, specifically to enhance public safety along these intensively used river corridors.

Field observations by Refuge staff and interactions with users and permitted fishing guides and outfitters have documented steadily increasing levels of public use, primarily for fishing but also for river floating (Kenai River only), and associated activities such as hiking and wildlife viewing, on and along the upper Kenai and Russian rivers within the Refuge, and that the timing of relatively heavy use for these activities now includes fall and spring months during ice-free periods. Highest periods of use in fall and spring for fishing occur from September through mid-October and late March through April, respectively. River floating on the upper Kenai River begins in May and extends through October, with highest use levels occurring from

June through September. Similarly, high levels of public use occur in the middle Kenai River below Skilak Lake within the Refuge during fall and spring, primarily for fishing. Much of the increased use of both the Kenai and Russian rivers during fall and spring months can be attributed to the increasing popularity of their rainbow trout fisheries.

Publicly available study reports corroborate these observations. For example, a recent recreation study of the Kenai River completed in 2010, by Drs. Douglas Whittaker and Bo Shelby for the Alaska Department of Natural Resources, Division of State Parks and Recreation (Kenai River Recreation Study, Major Findings and Implications, 2010), reported that perceived crowding on the Upper Kenai River (between Sportsman's Landing and Jim's Landing) in September (when the primary fish targeted are rainbow trout, Dolly Varden, and silver salmon) is as high as for some salmon fisheries occurring during the summer months.

Recent takes of brown bears along the Russian and Kenai rivers during the falls of 2013 and 2014 posed threats to public safety, as bears were shot in close proximity to other users fishing from shore, wading, or boating, and firearms and ammunition with substantial lethal distances were used in areas where sight distances are extremely limited due to vegetation and river meanders. These takes occurred on, along, or immediately adjacent to river shorelines and within the ¼-mile buffer distance established by this rule. In addition, discharge of firearms to "warn" or deter bears presents a growing threat to public safety along the Russian and Kenai rivers.

Recently enacted changes to State hunting regulations for brown bears on the Kenai Peninsula have increased the potential for firearms discharge to result in threats to public safety in these areas. Current brown bear hunting season dates of September 1 to May 31 substantially

overlap with periods of high public use along the Russian and Kenai rivers during fall and spring (in the 7 years prior to 2008, brown bear hunting season dates were October 15 to October 30).

The Service considers adoption of this rule necessary to reduce threats to public safety posed by discharge of firearms along the Russian and Kenai rivers during periods of high visitation for activities including fishing, river floating, hiking, and wildlife observation. We did not make any changes to the rule in response to these comments.

(8) Comment: Some commenters stated that the closure affects the taking of wildlife on Service lands, and consistent with the MMOU between the Service and the Alaska Department of Fish and Game, should be first submitted by the Service to the Alaska Board of Game under the State regulatory process for consideration. Some commenters stated that the area affected by the proposed firearms discharge prohibition is a traditional moose and bear hunting area and the rule will negatively impact these users.

Our Response: The Service proposed the amendments to the regulations to enhance public safety along the Kenai and Russian rivers during periods of intensive public use. The rule is not intended to affect taking of wildlife on the Refuge, and will have negligible impacts on hunting opportunity and harvest levels for the reasons noted below.

This rule allows for continued use of shotguns for waterfowl and small game hunting, and use of firearms while lawfully trapping, along the Kenai and Russian rivers. Waterfowl hunting along the Kenai River currently accounts for the vast majority of hunting activity in the affected area, as it has historically. This rule will have negligible impacts on overall hunting opportunity and harvest levels of black bears, brown bears, and moose on the Refuge, as most hunting activity for these species occurs outside of these river corridors. This rule expands the restriction on discharge of firearms on the Refuge by just under 4,000 acres, or approximately

0.2 per cent of lands in the Refuge currently open to hunting of moose, black bear, and brown bear (totaling over 1.9 million acres). In addition, reasonable opportunities to hunt these species with firearms in the vicinity of the Russian and Kenai rivers for those wishing to do so will continue to be available outside of the ¼-mile river corridors established by this rule.

The MMOU recognizes that the Service has responsibility for regulating human use on refuges in Alaska. Protection of public safety is a critically important responsibility of the Service in managing public use on refuge lands, and the Service deems this rule necessary to enhance public safety on and along these intensively used rivers. The Service remains committed to the terms of the MMOU and will continue to coordinate with the Alaska Board of Game and Alaska Department of Fish and Game on proposals whose intent is to affect the take of fish and wildlife on Service lands. We did not make any changes to the rule in response to these comments.

(9) Comment: Some commenters stated that the Service proposed firearms discharge prohibition is not consistent, or does not enhance consistency, with State regulations on firearms discharge with the Kenai River Special Management Area (KRSMA) because it extends beyond KRSMA boundaries, is not date specific, and/or because the State's KRSMA regulations are contingent on the location of developed facilities or dwellings and do not apply to the entire length of the Kenai and Russian rivers. Some commenters requested that the Service consider less restrictive regulations for the discharge of firearms around buildings such as public use cabins in remote areas that are only accessible via boat, snowmobile, or float plane because firearm discharge closer to the cabin does not pose a safety concern.

Our Response: While applying to lands and waters within the Refuge and outside of the KRSMA, this rule (including the clarification that the prohibition around buildings includes

Refuge public use cabins) is consistent with, and complements, State firearms regulations for the KRSMA. State regulations (11 Alaska Administrative Code (AAC) 20.850) allow the use and discharge of a weapon for the purpose of lawful hunting or trapping in the KRSMA only on Skilak Lake and Kenai Lake, except that shotguns may be discharged below Skilak Lake for purpose of lawful hunting or trapping, from September 1 to April 30 annually. In addition, the discharge of any firearm within the KRSMA is prohibited within ½ mile of a developed facility or dwelling, except that discharge of a shotgun using steel shot no larger than size T is allowed at a distance of no less than ¼ mile from a developed facility or dwelling.

Consistent with State regulations, the Service's proposed firearms discharge prohibition along the Kenai and Russian rivers does not apply to firearms discharge on or along Skilak Lake. With very few, if any, exceptions, shotguns are used within the KRSMA to hunt waterfowl. Similarly, our regulations allow the use of shotguns for waterfowl hunting (and small game hunting), and allow use of any firearm while lawfully trapping, within the area of the Refuge to which the regulations apply. Allowances for these activities under our proposed rule, and in this final rule, span the season dates (September 1 to April 30) specified in the State regulations, negating a need to specify season dates.

The Service's firearms discharge prohibition along the Russian River is also consistent with and complements U.S. Forest Service regulations restricting use of weapons in the vicinity of recreational facilities, and which apply to an adjoining area of similar size, in the Chugach National Forest from the Russian River's confluence with the Kenai River upstream to the Russian River Falls (36 CFR 261.10(d)). In 2015, the U.S. Forest Service expanded the weapons discharge prohibition in this area to address public safety concerns associated with use of

weapons for bear hunting along the Russian River during periods of high public use (36 CFR 261.53(e)).

The prohibition on discharge of firearms within ¼ mile of buildings in the current regulations (50 CFR 36.39(i)(5)(i)) is meant to ensure public safety around buildings used by the public or administratively by Service personnel, and is unrelated to the building's location or the means of transportation used by the public to travel to the building.

Similar to the basis for the Service's regulations, enhancing public safety was the basis for promulgation of State and Federal regulations restricting use of weapons on and/or along the Kenai and Russian rivers adjacent to the Refuge. We did not make any changes to the rule in response to these comments.

(10) Comment: Some commenters stated that the Service's proposed rule is contradictory or does not adequately explain why discharging firearms for waterfowl and small game hunting or use of archery equipment does not pose a safety hazard when the use of firearms to take big game does, and that by omission, it appears the Service may be using public safety as justification to preclude a particular form of hunting.

Our Response: While restricting the use of firearms, this rule allows for continued use of shotguns for waterfowl and small game hunting and use of firearms to dispatch animals while lawfully trapping. Waterfowl hunting is currently and has historically been the primary hunting activity conducted in the affected area, and it occurs primarily along the Kenai River below Skilak Lake. The use of shotguns in the areas traditionally used for waterfowl (and small game hunting) along the Kenai River poses minimal public safety concerns because of the locations and manner in which these activities are conducted and due to the more limited travel distances of shotgun ammunition used for waterfowl and small game hunting. Trapping seasons do not

overlap with periods of high visitation, as the river corridors receive substantially less public use during winter. The Service therefore does not consider prohibitions on firearms discharge for these activities to be warranted. The Service also believes that use of archery equipment poses negligible risks to public safety in the affected area. We did not make any changes to the rule in response to these comments.

(11) Comment: Some commenters expressed concern that the firearms discharge prohibition along the Kenai and Russian rivers would preclude use of firearms for personal protection, and suggested modification to allow for such use.

Our Response: Neither the Service's current regulations nor this rule prohibiting firearms discharge in certain areas of the Refuge preclude the possession and/or use of firearms to take game in defense of life and property as defined under State law (5 AAC 92.410). We have amended this final rule to specifically state that the firearms discharge prohibition does not preclude the use of firearms to take game in defense of life and property as defined under State law.

Hunting and Trapping Over Bait—50 CFR 36.39(i)(5)(ii)

(12) Comment: Some commenters stated that the Service has not provided adequate information or justification nor completed required administrative processes necessary to preempt a recently adopted State regulation that allows for take of brown bears at black bear bait stations; the Service also has not explained adequately how it used the State's regulatory process in a manner consistent with the Master Memorandum of Understanding between the Service and the Alaska Department of Fish and Game. A commenter noted this prohibition in the proposed rule is an unnecessary replication of an existing Refuge special use permit stipulation.

Our Response: Federal regulations at 50 CFR 36.42(b) provide that in making a determination to close an area or restrict an activity, the Refuge Manager shall be guided by several factors, including public health and safety, resource protection, and other management considerations necessary to ensure an activity or area is being managed in a manner compatible with the purposes for which the Refuge was established.

As stated in the May 21, 2015, proposed rule (80 FR 29277), current Refuge regulations (50 CFR 36.39(i)(5)(ii)) specify that hunting black bears over bait on the Refuge requires a special use permit (FWS Form 3-1383-G). This requirement was promulgated in the 1980s (51 FR 32297) in recognition of issues associated with use of bait for hunting black bears on the Refuge, and the need to further regulate this method of take to ensure compatibility of this activity. The intent of this requirement has always been, and continues to be, to authorize the use of bait for the take of black bears only. This restriction is explicitly stated in the terms and conditions of the current Refuge special use permit issued for black bear baiting: “Hunting over bait is prohibited on the Kenai National Wildlife Refuge, with the exception of hunting black bears as authorized under the terms and conditions of this Special Use Permit.”

The Service considers the clarification concerning hunting over bait that we are making in this final rule at 50 CFR 36.39(i)(5)(ii) necessary to meeting our mandates under ANILCA to conserve healthy populations of wildlife in their natural diversity on the Refuge, to meet the Refuge’s Wilderness purposes, and to meet the Refuge’s purpose for providing compatible wildlife-oriented recreational opportunities (both consumptive and non-consumptive). Specific to use of bait to take brown bears, the Service considers allowance of this method to be inconsistent with these mandates due to its potential to result in overharvest of this species, with accompanying population-level impacts, due to its high degree of effectiveness as a harvest

method and the species' low reproductive potential. The Service also believes that baiting of brown bears has potential to modify bear behavior and increase human-bear conflicts, and that allowance of this method to take brown bears on the Refuge would result in increased baiting activity and pose an increased risk to public safety. These issues are further discussed in our response to Comment (13), below.

In 2013, the Service formally communicated its regulatory requirement limiting hunting over bait to the take of black bears, and our intent to maintain this requirement, to the State of Alaska in advance of the Alaska Board of Game's adoption of a State regulation that allows take of brown bears at black bear bait stations on the Kenai Peninsula. In addition, the Service requested that Refuge lands be excluded should this State regulation be adopted.

Codifying the Service's special use permit stipulation that prohibits hunting over bait with one exception for hunting of black bears provides additional notice to the public of this restriction, clarifies our longstanding intent to authorize only the take of black bears at permitted bait stations on the Refuge, and is consistent with meeting Refuge purposes under ANILCA. The Service deems this additional notice and clarification necessary in light of the Alaska Board of Game's 2013 adoption of a regulation allowing the take of brown bears at registered black bear baiting stations on the Kenai Peninsula. We did not make any changes to the rule in response to these comments.

(13) Comment: Some commenters expressed opposition to prohibiting harvest of brown bears over bait, stating that it is not biologically justified because the Refuge brown bear population is higher than the Service believes it is, that baiting allows for selective harvest of bears, and that studies have shown that baiting does not result in food-conditioning of bears. Some commenters stated that baiting for bears (brown and black) can be conducted under

recognized principles of sustained yield management; that adequate protections exist under State management, including reporting requirements and limiting harvest of female bears, to minimize the potential for overharvest; and that the sex composition of the recent brown bear harvest at bait stations on the Kenai Peninsula, which was predominantly male bears, further supported that hunting brown bears over bait was consistent with sustained yield management.

Our Response: Allowance of take of brown bears at black bear baiting stations was one of several changes that substantially liberalized State regulations for sport hunting of brown bears on the Kenai Peninsula beginning in 2012. Harvest levels, and overall human-caused mortalities, of brown bears increased substantially following the changes in State hunting regulations enacted in 2012 and 2013, with resulting impacts on the Kenai Peninsula's brown bear population. On average, 21 brown bear human-caused mortalities (hunting and nonhunting) occurred annually on the Kenai Peninsula from 1995 through 2011. From 2012 to 2014, the annual average nearly tripled to 61 bears. Human-caused mortalities during this period totaled 184 brown bears, 148 of which were taken by hunters. Human-caused mortalities in 2013 (71) and 2014 (69) were over 6 times the 50-year annual average of 11 brown bears killed from 1961 through 2011.

The Kenai brown bear population was estimated in 2010 through a joint field study conducted by the Refuge and U.S. Forest Service. This DNA-based mark-recapture study generated a Kenai Peninsula-wide brown bear population estimate of 582 bears (95 percent lognormal confidence interval of 479 to 719 bears). This study and its results were peer-reviewed and recently published in the *Journal of Wildlife Management* (Morton *et al.* 2016). The Service considers this to be the best available scientific estimate of this population.

Population modeling by the Service (using the model Vortex 9.9) suggested that known human-caused mortality of Kenai Peninsula brown bears from 2012 to 2014, following changes in State brown bear hunting regulations, reversed the previous increasing trajectory of the brown bear population and resulted in a decline of approximately 18 percent (a modeled decline from the 2010 population estimate of 582 bears to 478 bears).

In 1998, due to concerns about population status, habitat loss and increasing levels of human-caused mortality, the Alaska Department of Fish and Game classified the Kenai brown bear population as a “population of special concern.” Using the 2010 population estimate and brown bear demographic data obtained from ongoing telemetry studies, modeling (Vortex 9.9) also suggested that similar levels of human-caused mortality of brown bears documented from 2012–2014 (primarily resulting from sport hunting) would continue to reduce the brown bear population to levels similar to those which in the recent past posed conservation concerns. The Service deemed this rapid reduction of the Kenai Peninsula brown bear population, along with the potential for continued decline, to be inconsistent with meeting its legal mandates to conserve healthy wildlife populations (including brown bears) in their natural diversity on the Refuge, to provide for wildlife-oriented recreational opportunities that include both consumptive and non-consumptive activities, and to meet the Refuge’s Wilderness purposes; therefore, the Service implemented closures to brown bear sport hunting on the Refuge in 2013 and 2014. Additional information regarding the Service’s recent management of sport hunting of brown bears on the Refuge, which also provides greater detail on Kenai brown bear management history, population status and dynamics, and modeling results, is available as part of the rulemaking administrative record, available at Kenai National Wildlife Refuge.

Annual harvests of brown bears in 2013 and 2014 in Game Management Unit (GMU) 7

on the Kenai Peninsula demonstrate the increased effectiveness of hunting this species over bait. According to Alaska Department of Fish and Game harvest statistics, the 2013 harvest of brown bears in GMU 7 prior to baiting being legalized was 12 bears during a 198-day season. In 2014, harvest during a 189-day season was 38 brown bears, of which 28 (77 percent) were harvested over bait. Since becoming legal for the first time in spring 2014, harvest of brown bears at bait stations has accounted for the majority of brown bear harvest on the Kenai Peninsula. In 2014, 62 percent (40 of 65) of bears harvested were taken over bait. As of January 2016, preliminary 2015 harvest statistics available from the Alaska Department of Fish and Game indicate that 89 percent (16 of 18) of bears taken in spring and 59 percent (16 of 27) of bears legally taken by sport hunters overall have been harvested over bait.

Adherence to harvest caps for adult female bears and overall human-caused mortality can help ensure sustainability of harvests. However, based on our modeling (using Vortex 9.9), human-caused mortality of brown bears at current harvest caps (maximums of 12 adult female bears and 60 bears overall), provided in formal direction to the Alaska Department of Fish and Game by the Alaska Board of Game in 2015, would result in a continued reduction of the Kenai brown bear population. Based on best available scientific information and population modeling using the Vortex 9.9 model, the Service believes that allowance of take of brown bears over bait on the Refuge would increase human-caused mortality of Kenai brown bears to levels which would continue to reduce the population, with potential to result in conservation concerns for this population. We also note that the sex and age composition of the brown bears harvested over bait on the Kenai Peninsula in 2014 and 2015 represents a small and short term sample, and may not be representative of harvest composition over a longer period of time.

The Service believes that a cautious approach to management of Kenai Peninsula brown

bears is scientifically warranted due to several factors. The Service must consider these factors in ensuring that hunting is administered on the Refuge in a manner that ensures that the Service's legal mandates are met, and they underlie our decision to maintain existing regulations that restrict harvest over bait to take of black bears only. Black bears occur in much higher densities than brown bears on the Kenai Peninsula, have higher reproductive potential than brown bears, and as such can support higher harvest levels and are less susceptible to overharvest. Conversely, brown bears have one of the lowest reproductive potentials of any North American mammal, and at current densities, the Kenai brown bear population remains a relatively small population (Morton *et al.* 2016) that is highly sensitive to adult female and overall human-caused mortality levels. Genetics studies have determined that Kenai brown bears comprise an insular population (reported in the Canadian Journal of Zoology in 2008 by Jackson *et al.*), which means that immigration from mainland Alaska will not assist in sustaining the population, and that Kenai brown bears have very low haplotypic genetic diversity (Jackson *et al.* 2008), which has unknown but potentially important conservation implications. The Kenai brown bear population will continue to be strongly influenced by habitat loss and fragmentation and multiple potential sources of human-caused mortality as the human population continues to grow on the Kenai Peninsula and recreational use of public lands increases. Finally, timely and accurate monitoring of the status of the Kenai Peninsula brown bear population is extremely difficult at best, costs associated with monitoring are high, and funding for monitoring is usually limited and never guaranteed. This is important given that the increased effectiveness of harvesting brown bears over bait would likely mask the effects of reduced bear densities on harvest success, thereby increasing potential for overharvest in the absence of adequately rigorous population monitoring.

Maintaining our existing limits on hunting over bait is also intended to minimize the potential for public safety issues associated with conditioning brown bears to human foods commonly used at bait stations. While baiting for black bears is currently allowed on the Refuge and has potential to create food-conditioned bears, we would expect increased baiting activity and increased potential for human-bear conflicts if take of brown bears over bait were allowed. The number of permitted black bear baiting stations on the Kenai Peninsula increased from roughly 300 in years prior to, to just over 400 bait stations each year following (2014 and 2015), adoption of State regulations allowing harvest of brown bears over bait. It is well documented that food-conditioning of bears results in increased potential for negative human-bear encounters and increased risk to public safety (as reported by Herrero in 1985 in the book *Bear attacks: their causes and avoidance*, and by Herrero and Fleck in 1990 in *Bears: Their Biology and Management, Volume 8, A Selection of Papers from the Eighth International Conference on Bear Research and Management*) There is also an increased likelihood that food-conditioned bears would be killed by agency personnel or in defense of life or property. Consistent with Service policy on managing recreational uses in a manner that helps ensure public safety, the Service actively promotes food storage and other practices aimed specifically at reducing the potential for human-bear conflicts.

We did not make any changes to the rule in response to these comments.

(14) *Comment:* Some commenters expressed support for prohibiting take of brown bears at bait stations, citing one or more of the following:

- Legalization of this practice by the State in support of predator control is not appropriate on refuges;
- The practice is unethical and conflicts with principles of “fair chase” hunting; and

- The practice poses a threat to public safety.

Most of these commenters also noted that the Service should also prohibit baiting of black bears on the Refuge for the same reasons.

Our Response: Codifying this prohibition as part of the Refuge’s public use regulations provides additional notice to and clarification for the public of the Service’s longstanding intent to authorize only the take of black bears at permitted bait stations on the Refuge. The Service last evaluated black bear baiting through a 2007 compatibility determination, and found the activity to be compatible. We did not make any changes to the rule in response to these comments.

Hunting and Trapping in Skilak Wildlife Recreation Area—50 CFR 36.39(i) (6)

(15) Comment: Some commenters expressed opposition to the Service’s proposed hunting and trapping regulations for the Skilak WRA, citing one or more of the following:

- State-managed hunting and trapping in the Skilak WRA is compatible with Service public use objectives to provide opportunities for wildlife viewing in the area;
- The Service has not provided biological data demonstrating the need for the closures to meet these objectives;
- The closures are inconsistent with ANILCA and/or Service policy governing management of wildlife-dependent recreational uses because they inappropriately favor one compatible use (wildlife viewing) over another (hunting);
- The closures set a precedent that the Refuge would be the only National Wildlife Refuge in Alaska that has an area set aside for one user group;
- The closures violate ANILCA by creating a conservation area within an existing conservation unit;

- Limitations on wildlife viewing in the Skilak WRA were more dependent upon terrain, weather, season, time of day, and other factors than sustainable harvests of wildlife; and
- Hunting of predators is needed to balance wildlife populations, prevent the area's moose population from being overrun, and provide visitors with opportunities to enjoy a wider variety of wildlife.

Some commenters expressed support for the Service's proposed hunting and trapping regulations for the Skilak WRA, citing one or more of the following:

- Managed as it currently is, the Skilak WRA is an extremely valuable public asset;
- The Skilak WRA is an outstanding opportunity for the Refuge to fulfill its wildlife viewing, photography, and environmental education and interpretation mandates on the Refuge, but only if harvest is restricted. Additional hunting in the Skilak WRA would degrade, undermine, and conflict with public opportunities for other recreation and education that have been provided for 30 years; and
- The proposed regulations are necessary to meet goals and objectives of approved refuge management plans and legal mandates to maintain healthy populations of wildlife on refuges.

Our Response: The Skilak WRA is a 44,000-acre area of the Refuge that has, since 1985, been managed with a primary emphasis on providing the public enhanced opportunities for wildlife viewing, and environmental education and interpretation. The Service has worked extensively with the Alaska Department of Fish and Game and the Alaska Board of Game over the years in planning and implementing management direction, including management of hunting and trapping, in the Skilak WRA.

In 1985, the Service released a record of decision for the Refuge's first comprehensive management plan. A directive of this plan was the establishment of a special area, the "Skilak Loop Special Management Area," that would be managed to increase opportunities for wildlife viewing, and environmental education and interpretation. In December 1986, the Service, working closely with the Alaska Department of Fish and Game, identified specific goals for providing wildlife viewing and interpretation opportunities, and hunting and trapping opportunities were restricted so that wildlife would become more abundant, less wary, and more easily observed. Regulatory proposals that prohibited trapping, allowed taking small game by archery only, and provided a moose hunt by special permit were developed and approved by the Alaska Board of Game in 1987. Hunting of all other species was prohibited. These State of Alaska regulations remained in effect until 2013, with modifications to allow for a youth-only firearm small game hunt in a portion of the area in 2007, and for the use of falconry to take small game in 2012.

In 2005, the Alaska Board of Game adopted a proposal to allow firearms hunting of small game and fur animals (as practical matter in the area, fur animals would include lynx, coyote, beaver, red fox and squirrel), but subsequently put that State regulation on hold pending the Service's development of an updated management plan for the area. The Service initiated a public planning process with a series of public workshops in November 2005, and evaluated management alternatives through an environmental assessment, which was made available for public review and comment in November 2006.

The Service released a finding of no significant impact, and the Kenai NWR Skilak WRA revised final management plan was released in June 2007. This plan reaffirmed the overall management direction for the Skilak WRA as a special area to be managed primarily for

enhanced opportunities for wildlife viewing and environmental education and interpretation, while allowing other non-conflicting wildlife-dependent recreational activities. The plan maintained longstanding restrictions on hunting (including hunting of fur animals) and a trapping closure, with the exception of adding a “youth-only” small game firearms hunt in the western portion of the area. In 2007, the Alaska Board of Game adopted State regulations maintaining the closures and restrictions, and opening the “youth-only” small game firearm hunt.

Consistent with its 2007 Skilak WRA final revised management plan, the Service enacted a permanent closure restricting hunting and closing trapping in the Skilak WRA in November 2013 (see 78 FR 66061, November 4, 2013), which mimicked State of Alaska hunting and trapping regulations for the area in effect prior to 2013. The Service implemented this current closure in response to action taken by the Alaska Board of Game in March 2013, which opened the Skilak WRA to taking of lynx, coyote, and wolf within the area under State hunting regulations. Under this new State regulation, which became effective July 1, 2013, taking of these species is allowed during open hunting seasons from November 10 to March 31. In advance of this action, the Service requested that the Alaska Board of Game not adopt the proposal establishing these regulations because it would be inconsistent with Refuge management objectives for the area, and advised that doing so would require the Service to maintain restrictions on the hunting of these species under its own authorities.

A primary basis for the Service’s decision to issue this permanent closure was first recognized in the original 1986 management goals and specific management objectives for furbearers, which led to the closure of hunting and trapping of these species in the Skilak WRA. Furbearers such as wolves, coyote, and lynx occur in relatively low densities, and are not as easily observed as more abundant and/or less wary wildlife species. Annual removal of

individual wolves, coyote, or lynx from the Skilak WRA, and/or a change in their behavior, due to hunting (or trapping) would reduce opportunities for the public to view or photograph or otherwise experience these species. While we concur that factors such as terrain, vegetation, and time of day affect wildlife viewing, visitors to the Skilak WRA experience and learn about these species in a variety of ways, such as observing tracks, hearing vocalizations, or observing other signs of the species. Similarly, Refuge environmental education and interpretation programs that benefit from enhanced opportunities provided in the area to view or otherwise experience these species would be negatively impacted. Even in the absence of area-specific scientific studies and data, it is a reasonable conclusion that annual harvest would maintain reduced densities, and/or affect behavior, of these species in the Skilak WRA and degrade opportunities for wildlife observation, photography, and environmental education and interpretation, given the area's small size, its accessibility by road, proximity to population centers, and likely hunting (or trapping) pressure.

Minimizing conflicts between non-consumptive and consumptive users of the Skilak WRA and ensuring public safety also continue to be important considerations for how hunting and trapping is managed in the area. While highest levels of public use in the Skilak WRA occur in the summer months, observations by Refuge staff and records of use of Refuge public use cabins indicate that fall and winter recreational use of the area for many activities, including hiking, general nature observation and photography, night sky observation, cross country skiing, and winter camping, is substantial and increasing. Given this increased public use during winter, the Service believes that allowing hunting (or trapping) of wolves, coyotes, and lynx during winter months in the Skilak WRA would increase the potential for conflicts between users and safety issues.

Providing environmental education and interpretation for the public, and for “wildlife-oriented” recreational uses, which includes non-consumptive activities such as wildlife viewing as well as hunting and fishing, are legally mandated Refuge purposes under ANILCA. These two purposes are in fact unique purposes to this Refuge among all refuges in Alaska. Meeting Refuge public use objectives in the Skilak WRA is consistent with and directly supports meeting these Refuge purposes. Regulating non-conflicting hunting activities and the use of firearms in the Skilak WRA in a manner that supports meeting all Refuge purposes, minimizes conflicts among user groups, and enhances public safety is necessary to ensure the compatibility of hunting as an authorized use on the Kenai NWR.

Management that provides for emphasis on non-consumptive uses in the Skilak WRA, while allowing for non-conflicting hunting activities and enhancing public safety, is also consistent with Service policy at 605 FW 1 for managing wildlife-dependent recreational uses on National Wildlife Refuges. Hunting and trapping of lynx, coyote, and wolves under State of Alaska regulations remains authorized on over 97 percent of the Refuge (over 1.9 million acres).

The final rule codifies the Service’s November 2013 permanent hunting restrictions and trapping closure, established in accordance with 50 CFR 36.42, in the Skilak WRA (78 FR 66061, November 4, 2013). This rule supports implementation of the Service’s 2007 final revised management plan for the Skilak WRA, which reaffirmed management objectives for the area established under the Refuge’s 1985 Comprehensive Management Plan. We did not make any changes to the rule in response to these comments.

(16) Comment: Some commenters stated that the Service’s hunting and trapping closures would not improve wildlife viewing opportunities in the Skilak WRA because the

Service has failed to fully implement its facilities and habitat plans for the area, or that additional infrastructure would benefit wildlife viewing opportunities.

Our Response: To further development of wildlife viewing, and environmental education and interpretation opportunities, in 1988, the Service prepared a step-down plan for public use facility management and development, and renamed the area the Skilak WRA. Over \$5 million in improvements to existing, and development of new, visitor facilities occurred in ensuing years as funding permitted, and included new and improved roads, scenic turn-outs, campgrounds, hiking trails, interpretive panels and information kiosks, viewing platforms, and boat launches. While not all planned developments have been completed, the Refuge currently maintains 8 facility access roads, 8 public campgrounds, 3 public use cabins, 10 hiking trails (totaling just over 20 miles), 3 scenic overlooks, 11 boat launches, 12 informational kiosks and numerous interpretive panels, and 13 developed parking areas within the Skilak WRA in support of meeting its public use management objectives for the area. The Service has also implemented small-scale habitat management projects within the Skilak WRA. The Service will continue to develop recreational infrastructure and habitat projects in the area, consistent with approved management plans, as allowed by available funding and staffing. We did not make any changes to the rule in response to these comments.

Fishing—50 CFR 36.39(i)(7)

(17) *Comment:* A commenter requested that dates of a fishing closure for an area 100 feet upstream and downstream of the Russian River Ferry dock on the south shore of the Kenai River be changed from June 1 to August 15 to June 11 to August 20 to provide consistency with State sport fishing regulations. One commenter opposed the closure stating it was unnecessary.

Our Response: In this final rule, we eliminate those fishing closure dates and specify that the closure is in effect during hours of operation of the Russian River Ferry. Ferry operations open concurrent with the opening day of recreational fishing for salmon and resident fish species in the area in June, and operations typically continue through Labor Day. We believe this change simplifies the rule while continuing to meet the intent of the existing regulations to enhance public safety in the vicinity of the Ferry dock and landing area.

Public Use Cabin and Camping Area Management—50 CFR 36.39(i)(8)

(18) *Comment:* Several commenters expressed opposition to the Service’s proposal to prohibit dispersed camping in an area within 100 yards of the banks of the Kenai River along two sections of the River within the Refuge (upper Kenai River and Middle Kenai River), citing loss of traditional camping opportunity, impacts to visitor safety and increased risks to personal property, and expansion of habitat impacts from new trail and campsite development and use; some commenters supported this prohibition, citing the benefits of riverbank habitat protection. Some commenters stated the need for this prohibition was not adequately justified. Some commenters noted that while the prohibition was addressed for the upper Kenai River in the Refuge 2010 CCP, a similar prohibition for the Middle Kenai River had not been previously considered by the Service through a public process and additional evaluation, and public input was needed.

Our Response: The prohibition on dispersed camping within 100 yards of the banks of the upper Kenai River in this rule implements decisions from the Refuge’s 2010 CCP and the record of decision for its accompanying environmental impact statement. River bank closures along the Kenai River are commonly used by resource agencies to protect sensitive riparian vegetation, which is subject to trampling, resulting in degradation of salmon rearing habitat. In

the May 21, 2015, proposed rule, the Service proposed to implement this decision with a modification to allow for some dispersed camping along the upper Kenai River at designated sites. We chose this approach to enhance natural resource protection by reducing camping impacts along the upper Kenai River while allowing for some historical along-river camping use to continue. We have completed an evaluation of existing camping sites along the upper Kenai River and have identified 10 sites that will be designated for dispersed camping. These sites are identified on a map available on <http://www.regulations.gov> under Docket No. FWS-R7-NWRS-2014-0003 as a supporting document for this rulemaking. This map will also be available to the public electronically on the Refuge website (<http://www.fws.gov/refuge/kenai/>) and at the Refuge Headquarters.

The May 21, 2015, proposed rule included the same camping restrictions for the Middle Kenai River within the Refuge. We have decided not to address dispersed camping along the Middle Kenai River within the Refuge in this rulemaking. The Service will continue coordination with the State on management issues affecting the Middle Kenai River, and will monitor and evaluate camping along the upper Kenai River and use the results of monitoring to inform a future public planning process. This final rule reflects this decision.

Other Uses and Activities—50 CFR 36.39(i)(9)

(19) *Comment:* A commenter stated that the proposed restriction on group size to 15 people in the Swanson River and Swan Lake Canoe routes was a substantive change to current management and is not adequately justified in the proposed rule. Some commenters stated that the rule should be modified to reflect that larger group sizes may be permitted at the discretion of the Refuge Manager, consistent with a decision in the 2010 Refuge CCP.

Our Response: Group size in the Swanson River and Swan Lakes Canoe Routes is limited to 15 people under current Refuge regulations (see 50 CFR 36.39(i)(7)(vii)). In this final rule, we amend the regulations to state that larger group sizes may be allowed at the discretion of the Refuge Manager through issuance of a special use permit.

(20) *Comment:* A commenter requested that the Service consider allowing use of bicycles and wheeled game carts on Refuge trails open to horses or snowmobiles; another commenter stated that industrial roads should be opened to bicycle use. A commenter was opposed to the allowance of wheeled game carts on industrial roads.

Our Response: Use of non-motorized wheeled vehicles, which includes bicycles, are allowed only on roads open to public vehicular access under current Refuge regulations (see 50 CFR 36.39(i)(7)(v)). Use of bicycles on industrial roads within the Refuge is prohibited to protect public safety given the year-round use of these roads by large trucks and heavy equipment. In the proposed rule, the Service proposed to allow the use of wheeled game carts on industrial roads by hunters using these roads on foot for hunting access. We consider this a minor and reasonable change with little potential to impact habitats and/or public safety. Bicycle and/or game cart use of hiking trails and backcountry areas pose more substantive issues because of their potential to impact habitats, create conflicts between trail users, and pose public safety issues. In 2007, the Service evaluated compatibility of several Refuge activities involving general public access, recreation, and transport methods that are non-motorized, including bicycling. In that evaluation, we determined that, subject to Refuge regulations that restrict it to maintained roads open to public vehicular access, which are in place to prevent harm to refuge resources, bicycling was a compatible activity. We did not make any changes to the rule in response to these comments.

(21) *Comment:* One commenter stated that additional Refuge trails, including trails in the Skilak Lake area, should be closed to horseback riding and packstock use.

Our Response: We proposed, and in this rule make final, a prohibition that horses or other packstock are not allowed on the Fuller Lakes Trail and on all trails within the Skilak WRA and the Refuge Headquarters area. We did not make any changes to the rule in response to this comment.

(22) *Comment:* Some commenters stated that amending Refuge regulations to allow for noncommercial collection of natural resources (berries, edible plants, shed antlers) is not necessary, as commercial harvest is already prohibited on Alaska refuges and recreational activities are authorized as long as they are compatible with Refuge purposes. The commenters recommended that these uses be addressed through a compatibility determination, as has been the done on other Alaska refuges. A commenter stated that daily and annual limits on the number of shed antlers that could be collected were unnecessary and overly restrictive.

Our Response: Recreational activities, including but not limited to hunting, fishing, nature observation, photography, boating, camping, hiking, picnicking, and other related activities are generally authorized, if compatible (50 CFR 36.31(a)) on refuges in Alaska. This is a regulatory interpretation to implement apparent Congressional intent of ANILCA and often is referred to “Alaska Refuges are open unless closed.”

However, 50 CFR part 36, the Alaska National Wildlife Refuge regulations, are supplemental to other National Wildlife Refuge System (NWRS) regulations. All other NWRS regulations also apply to Alaska refuges unless they are specifically modified or superseded by ANILCA (50 CFR 36.1(a)). ANILCA does not specifically address collection of natural resources. It does address sport hunting, trapping, fishing, commercial fishing, subsistence

activities, and traditional means of access. The regulations at 50 CFR 27.51 prohibit the collecting of any plant or animal on any national wildlife refuge without a permit (the definition for animals, specifically fish and wildlife, includes any part of the animal (50 CFR 25.12(a))). 50 CFR 27.61 prohibits the unauthorized removal of natural objects from any national wildlife refuge.

Legal sport hunting, fishing and trapping are not at issue in that they are authorized through licenses, permits, and established regulatory processes. Subsistence take of fish and wildlife is likewise authorized by statute and implementing regulations. Subsistence use of timber and plant material is generally authorized, subject to certain restrictions, at 50 CFR 36.15. 50 CFR 36.15(b) specifically allows for “the noncommercial gathering by local rural residents of fruits, berries, mushrooms, and other plant materials for subsistence uses, and the noncommercial gathering of dead or downed timber for firewood” without a permit. While many refuges in Alaska have determined personal gathering of berries and other natural resources to be compatible, recreational users are not afforded the same authorization under regulations for similar activities on refuges in Alaska (with the exception of firewood gathering by campers at Kenai NWR (50 CFR 36.39(i)(7)(i)(E))). The personal collection, without permit, of animal parts such as bones, skulls, horns, and antlers is also currently not authorized for any member of the public.

Personal, noncommercial use of berries and other edible plant materials, and collection of naturally shed moose and caribou antlers, on some Alaska refuges are desired activities by many visitors. The Service has chosen to authorize this activity, subject to reasonable limitations for the collection of shed antlers, on the Kenai NWR under this rulemaking in recognition of the extent of recreational visitation and scope of this use on this Refuge. The Service may consider

authorization of this use on other refuges in Alaska in the future. We did not make any changes to the rule in response to these comments.

Russian River Special Management Area—50 CFR 36.39(i)(11)

(23) *Comment:* One commenter opposed the proposed food storage requirements, which include required use of bear proof containers, citing high cost of such containers. Some commenters supported the proposed requirements as a means of reducing human-bear conflicts and due to the need for consistency between U.S. Forest Service and Refuge regulations in the Russian River area.

Our Response: Food and retained fish storage regulations have been an integral component of interagency efforts to enhance public safety and wildlife resource conservation by managing wildlife attractants in order to reduce the potential for negative human-bear interactions in the Russian River Special Management Area. This rule codifies and makes permanent food and retained fish storage regulations issued by the Service as temporary restrictions in recent years, and provides consistency with U.S. Forest Service food storage regulations applying to adjacent Chugach National Forest lands (36 CFR 261.58). We did not make any changes to the rule in response to these comments.

General Comments

(24) *Comment:* One commenter stated that failure by the Service to announce the dates and locations of public meetings and hearings to be held, or of the Service's intention to hold the meetings and hearings, in the **Federal Register** may have unduly limited public engagement. The commenter further stated that the proposed rule does not meet the intent of ANILCA's implementing regulations and the Administrative Procedure Act (APA; 5 U.S.C. subchapter II),

which specifically recognizes the importance of public meetings associated with rulemaking and of announcing those meetings in the **Federal Register**.

Our Response: To meet regulatory requirements (50 CFR 36.42) for providing notice and public hearings for this rulemaking, the Service held two public hearings during the open public comment period. Hearings were held on June 17, 2016, in Soldotna, Alaska, and on June 18, 2016, in Anchorage, Alaska. The Service published announcements of the dates, locations, and times of scheduled public hearings to be held in Alaska on the proposed rule following the proposal’s publication in the **Federal Register** on May 21, 2015 (80 FR 29277). Written notice of the dates, locations, and times of the public hearings were posted on the Refuge website immediately following publication of the proposed rule in the **Federal Register**, along with associated information on the proposed rule and its availability for public comment. The public meetings and hearings were also subsequently announced through news releases sent to local (Kenai Peninsula) and Statewide (Anchorage) media outlets including newspaper, radio, and television outlets, and through publication of Legal Notices, which published in local (Peninsula Clarion) and Statewide (Alaska Dispatch News) newspapers.

Table: Summary of Changes From Proposed Rule

What we proposed in the May 21, 2015, proposed rule (80 FR 29277)	What we are making final in this final rule
Aircraft	
We did not include a legal description of expanded Chickaloon Flats area.	We are adding a legal description of expanded Chickaloon Flats area.
Boating	
We proposed that operation of motors with a total propshaft horsepower rating of greater than 10 horsepower would be prohibited on selected lakes.	We are not including that prohibition.

Firearms Discharge	
We did not include language on discharge of firearms in defense of life and property.	We are adding language that the firearms discharge regulations do not preclude use of firearms for taking game in defense of life and property as defined under State law.
Fishing	
We proposed that fishing would be prohibited from June 1 through August 15 during hours of operation of the Russian River Ferry along the south bank of the Kenai River from a point 100 feet upstream to a point 100 feet downstream of the ferry dock.	We are removing the dates from the statement.
Camping	
We proposed that camping within 100 yards of the Upper Kenai River and the Middle Kenai River downstream of Skilak Lake (river mile 50 to river mile 45) would be restricted to designated sites.	We are retaining this restriction for the Upper Kenai River, but we are not including it for the Middle Kenai River. We have added information on the availability of a map denoting designated sites.
Maximum Group Size on Canoe Routes	
We proposed to retain a requirement that the maximum group size on the canoe routes is 15 people.	Under this final rule, the Refuge Manager may authorize larger groups under the terms and conditions of a special use permit (FWS Form 3-1383-G).
Leash Length in Campgrounds	
We proposed that pets in developed campgrounds and parking lots must be on a leash that is no longer than 6 feet in length.	We are adopting the current maximum leash length which requires that pets in developed campgrounds and parking lots be on a leash that is no longer than 9 feet in length.

Plain Language Mandate

In this rule, we made some of the revisions to comply with a Presidential mandate to use plain language in regulations; as such, these particular revisions do not modify the substance of the previous regulations. These types of changes include using “you” to refer to the reader and “we” to refer to the Refuge System, using the word “allow” instead of “permit” when we do not

require the use of a permit for an activity, and using active voice (*i.e.*, “We restrict entry into the refuge” vs. “Entry into the refuge is restricted”).

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must

exceed a threshold for “significant impact” and a threshold for a “substantial number of small entities.” See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

As described above and in the May 21, 2015, proposed rule (80 FR 29277), the changes in this rule will impact visitor use for wildlife-dependent recreation on the Refuge. Modifying the visitor use regulations will have small incremental changes on total visitor use days associated with particular activities. For example, visitor use associated with aircraft motorboats and collection of natural resources may increase slightly. However, visitor use associated with camping may decline slightly. We estimate that the overall change in recreation use-days will represent less than 1 percent of the average recreation use-days on the Refuge (1 million visitors annually).

Small businesses within the retail trade industry (such as hotels, gas stations, etc.) (NAIC 44) and accommodation and food service establishments (NAIC 72) may be impacted by spending generated by Refuge visitation. Seventy-six percent of establishments in the Kenai Peninsula Borough qualify as small businesses. This statistic is similar for retail trade establishments (72 percent) and accommodation and food service establishments (65 percent). Due to the negligible change in average recreation days, this final rule will have a minimal effect on these small businesses.

With the negligible change in overall visitation anticipated from this final rule, it is unlikely that a substantial number of small entities will have more than a small economic effect. Therefore, we certify that this final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act. A

regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act

This final rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

- a. Will not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers; individual industries; federal, State, or local government agencies; or geographic regions.
- c. Will 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.

Unfunded Mandates Reform Act

As this rule applies to public use on a federally owned and managed Refuge, it will not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule will not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with E.O. 12630, this rule will not have significant takings implications. This rule affects only visitors at Kenai NWR and describes what they can do while on the Refuge.

Federalism (E.O. 13132)

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections, above, this rule will not have sufficient federalism summary impact statement

implications to warrant the preparation of a federalism summary impact statement under E.O. 13132. In preparing this rule, we worked with State governments.

Civil Justice Reform (Executive Order. 12988)

This final rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- a. Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- b. Meet criteria of section 3(b) (2) requiring that all regulations be written in clear language and contain clear legal standards.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, or use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under E.O. 12866, and we do not expect it to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951 (May 4, 1994)), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments; 65 FR 67249 (November 9, 2000)), and the Department of the Interior Manual, 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We also complied with 512 DM 4 under

Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations, August 10, 2012. We did seek Tribes' and Corporations' input in evaluating the proposed rule. In December 2014, we invited formal consultation in writing to seven Tribes and seven Native Corporations and asked for their input during development of the proposed rule. Concurrently, we provided information on the proposed rule and offered to meet informally to provide additional information. We also sent written correspondence via email to the Tribes and Native Corporations prior to publication of the proposed rule in May 2015, to again offer opportunity for formal consultation and/or informal information exchange, to request input, and to provide notice of the proposal's upcoming publication and the public comment period. We did not receive any requests for government-to-government consultation. We informally discussed the proposed rule as part of meetings with representatives of the Ninilchik Traditional Council and Ninilchik Native Association held primarily to discuss subsistence hunting and fishing on the Refuge, and corresponded via telephone and email with representatives of the Tyonek Native Corporation who had specific questions on the proposed rule.

Paperwork Reduction Act

This rule does not contain any information collection requirements other than those already approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Numbers 1018–0102 (expires June 30, 2017), 1018–0140 (expires May 31, 2018), and 1018–0153 (expires December 31, 2018). An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Endangered Species Act Section 7 Consultation

We complied with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), when we developed the Kenai NWR comprehensive conservation plan.

National Environmental Policy Act

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), 43 CFR part 46, and 516 Departmental Manual (DM) 8.

A categorical exclusion from NEPA documentation applies to publication of this final rule and ensuing regulations because they are technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (43 CFR 46.210 and 516 DM 8). We have determined that this final rule is considered a categorical exclusion under 516 DM 8.5(C)(3), which categorically excludes the “issuance of special regulations for public use of Service-managed land, which maintain essentially the permitted level of use and do not continue a level of use that has resulted in adverse environmental impacts.”

This final rule supports the Service’s management direction identified through approved Refuge management plans, including the 2010 Kenai NWR revised CCP and the 2007 Kenai NWR Skilak WRA revised final management plan.

For the CCP, we prepared a draft revised CCP and a draft environmental impact statement (DEIS) under NEPA, and made them available for comment for public comment on May 8, 2008 (73 FR 26140). The public comment period on those draft documents began on May 8, 2008, and ended on September 1, 2008. We then prepared our final revised CCP and final EIS, and made them available for public comment for 30 days, beginning August 27, 2009

(74 FR 43718). We announced the availability of the record of decision for the final revised CCP and final EIS on January 11, 2010 (75 FR 1404).

We completed a draft management plan and draft environmental assessment (EA) under NEPA for the Skilak WRA management plan in October 2006. We distributed approximately 2,500 copies to individuals, businesses, agencies, and organizations that had expressed an interest in receiving Kenai NWR planning-related documents. We also announced the availability of these documents through radio stations, television stations, and newspapers on the Kenai Peninsula and in the city of Anchorage. An electronic version of the plan was made available on the Kenai NWR planning website, and a Skilak email address was created to facilitate public comment on the draft plan. Presentations were made to the Alaska Board of Game and the Friends of Alaska National Wildlife Refuges. The draft plan and draft environmental assessment (EA) were made available for public review and comment during a 30-day period ending November 17, 2006. We signed a finding of no significant impact (FONSI) for the final revised management plan first on December 6, 2006, and then later (as corrected) on May 11, 2007.

You can obtain copies of the CCP/EIS and the revised final management plan for the Skilak WRA either on the Federal eRulemaking Portal, <http://www.regulations.gov>, under Docket No. FWS-R7-NWRS-2014-0003, or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Primary Author

Andy Loranger, Refuge Manager, Kenai NWR, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 36

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

Regulation Promulgation

For the reasons set forth in the preamble, we amend 50 CFR part 36 as follows:

PART 36—ALASKA NATIONAL WILDLIFE REFUGES

1. The authority citation for part 36 continues to read as follows:

Authority: 16 U.S.C. 460(k) *et seq.*, 668dd-668ee, 3101 *et seq.*

2. Amend § 36.2 by adding, in alphabetical order, definitions for “Operate” and “Structure” to read as follows:

§ 36.2 What do these terms mean?

* * * * *

Operate means to manipulate the controls of any conveyance, such as, but not limited to, an aircraft, snowmobile, motorboat, off-road vehicle, or any other motorized or non-motorized form of vehicular transport as to direct its travel, motion, or purpose.

* * * * *

Structure means something temporarily or permanently constructed, built, or placed; and constructed of natural or manufactured parts including, but not limited to, a building, shed, cabin, porch, bridge, walkway, stair steps, sign, landing, platform, dock, rack, fence, telecommunication device, antennae, fish cleaning table, satellite dish/mount, or well head.

* * * * *

3. Amend § 36.39 by revising paragraph (i) to read as follows:

§ 36.39 Public use.

* * * * *

(i) *Kenai National Wildlife Refuge.* Maps of designated areas open to specific public use activities on the refuge are available from Refuge Headquarters at the following address: 1 Ski Hill Road, Soldotna, AK.

(1) *Aircraft.* Except in an emergency, the operation of aircraft on the Kenai National Wildlife Refuge is authorized only in designated areas, as described in this paragraph (i)(1).

(i) We allow the operation of airplanes within the Kenai Wilderness on the following designated lakes, and under the restrictions noted:

(A) *Dave Spencer (Canoe Lakes) Unit.* (1) Bedlam Lake.

(2) Bird Lake.

(3) Cook Lake.

(4) Grouse Lake.

(5) King Lake.

(6) Mull Lake.

(7) Nekutak Lake.

(8) Norak Lake.

(9) Sandpiper Lake.

(10) Scenic Lake.

(11) Shoepac Lake.

(12) Snowshoe Lake.

(13) Taiga Lake.

(14) Tangerra Lake.

(15) Vogel Lake.

(16) Wilderness Lake .

(17) Pepper, Gene, and Swanson lakes are open to operation of airplanes only to provide access for ice fishing.

(B) *Andrew Simons Unit.* (1) Emerald Lake.

(2) Green Lake.

(3) Harvey Lake.

(4) High Lake.

(5) Iceberg Lake.

(6) Kolomin Lakes.

(7) Lower Russian Lake.

(8) Martin Lake.

(9) Pothole Lake.

(10) Twin Lakes.

(11) Upper Russian Lake.

(12) Windy Lake.

(13) Dinglestadt Glacier terminus lake.

(14) Wosnesenski Glacier terminus lake.

(15) Tustumena Lake and all lakes within the Kenai Wilderness within 1 mile of the shoreline of Tustumena Lake.

(16) All unnamed lakes in sections 1 and 2, T. 1 S., R. 10 W., and sections 4, 5, 8, and 9, T. 1 S., R. 9 W., Seward Meridian.

(17) An unnamed lake in sections 28 and 29, T. 2 N., R. 4 W., Seward Meridian: The Refuge Manager may issue a special use permit (FWS Form 3-1383-G) for the operation of airplanes on this lake to successful applicants for certain State of Alaska, limited-entry, drawing permit hunts. Successful applicants should contact the Refuge Manager to request information.

(C) *Mystery Creek Unit.* An unnamed lake in section 11, T. 6 N., R. 5 W., Seward Meridian.

(ii) We allow the operation of airplanes on all lakes outside of the Kenai Wilderness, except that we prohibit aircraft operation on:

(A) The following lakes with recreational developments, including, but not limited to, campgrounds, campsites, and public hiking trails connected to road waysides, north of the Sterling Highway:

(1) Afonasi Lake.

(2) Anertz Lake.

(3) Breeze Lake.

(4) Cashka Lake.

(5) Dabbler Lake.

(6) Dolly Varden Lake.

(7) Forest Lake.

(8) Imeri Lake.

(9) Lili Lake.

(10) Mosquito Lake.

(11) Nest Lake.

(12) Rainbow Lake.

(13) Silver Lake.

(14) Upper Jean Lake.

(15) Watson Lake.

(16) Weed Lake.

(B) All lakes within the Skilak Wildlife Recreation Area (south of Sterling Highway and north of Skilak Lake), except for Bottenintnin Lake (open to airplanes year-round) and Hidden Lake (open to airplanes only to provide access for ice fishing).

(C) Headquarters Lake (south of Soldotna), except for administrative purposes. You must request permission from the Refuge Manager.

(iii) Notwithstanding any other provisions of this part, we prohibit the operation of aircraft from May 1 through September 10 on any lake where nesting trumpeter swans or their broods or both are present.

(iv) We prohibit the operation of wheeled airplanes, with the following exceptions:

(A) We allow the operation of wheeled airplanes, at the pilot's risk, on the unmaintained Big Indian Creek Airstrip; on gravel areas within ½ mile of Wosnesenski Glacier terminus lake; and within the SE1/4, section 16 and SW1/4, section 15, T. 4 S., R. 8 W., Seward Meridian.

(B) We allow the operation of wheeled airplanes, at the pilot's risk, within designated areas of the Chickaloon River Flats, including all of sections 5 and 6 and parts of sections 2, 3, 4, 7, 8, 9, 11, and 16, T. 9 N., R. 4 W.; all of section 1 and parts of sections 2, 3, 4, 5, 11, and 12, T. 9 N., R. 5 W.; all of sections 33 and 34 and parts of sections 24, 25, 26, 27, 28, 29, 31, 32, and 35, T. 10 N., R. 4 W.; all of section 33 and parts of sections 19, 27, 28, 29, 30, 32, 34, 35, and 36, T. 10 N., R. 5 W., Seward Meridian.

(v) We allow the operation of airplanes on the Kasilof River, on the Chickaloon River (from the outlet to mile 6.5), and on the Kenai River below Skilak Lake (from June 15 through March 14). We prohibit aircraft operation on all other rivers on the refuge.

(vi) We prohibit the operation of unlicensed aircraft anywhere on the refuge except as authorized under terms and conditions of a special use permit (FWS Form 3-1383-G) issued by the Refuge Manager.

(vii) We prohibit air dropping any items within the Kenai Wilderness except as authorized under terms and conditions of a special use permit (FWS Form 3-1383-G) issued by the Refuge Manager.

(2) *Motorboats.* (i) We allow motorboat operation on all waters of the refuge, except that:

(A) We prohibit motorboat operation within the Dave Spencer (Canoe Lakes) Unit of the Kenai Wilderness, including those portions of the Moose and Swanson rivers within this Unit, except that we allow motorboat operation on those lakes designated for airplane operations as provided in paragraph (i)(1) of this section and shown on a map available from Refuge Headquarters.

(B) We prohibit motorboat operation on the Kenai River from the eastern refuge boundary near Sportsmans Landing and the confluence of the Russian River downstream to Skilak Lake. You may have a motor attached to your boat and drift or row through this section, provided the motor is not operating.

(C) We prohibit motorboat operation on the Kenai River from the outlet of Skilak Lake (river mile 50) downstream for approximately 3 miles (river mile 47) between March 15 and June 14, inclusive. You may have a motor attached to your boat and drift or row through this section, provided the motor is not operating.

(D) We prohibit the operation of motors with a total propshaft horsepower rating greater than 10 horsepower on the Moose, Swanson, Funny, Chickaloon (upstream of river mile 7.5), Killey, and Fox rivers.

(E) On the Kenai River downstream of Skilak Lake (river mile 50) to the refuge boundary (river mile 45.5), we restrict motorboat operation to only those motorboats with 4-stroke or direct fuel injection motors with a total propshaft horsepower rating of 50 horsepower or less, and that are up to 21 feet in length and up to 106 inches in width. On Skilak Lake, we restrict motorboat operation to only those motorboats with 4-stroke or direct fuel injection motors.

(F) A “no wake” restriction applies to the entire water body of Engineer, Upper and Lower Ohmer, Bottenintnin, Upper and Lower Jean, Kelly, Petersen, Watson, Imeri, Afonasi, Dolly Varden, and Rainbow lakes.

(ii) Notwithstanding any other provisions of these regulations, we prohibit the operation of motorboats from May 1 through September 10 on any lake where nesting trumpeter swans or their broods or both are present.

(3) *Off-road vehicles.* (i) We prohibit the operation of all off-road vehicles, as defined at § 36.2, except that four-wheel drive, licensed, and registered motor vehicles designed and legal for highway use may operate on designated roads, rights-of-way, and parking areas open to public vehicular access. This prohibition applies to off-road vehicle operation on lake and river ice. At the operator’s risk, we allow licensed and registered motor vehicles designed and legal for highway use on Hidden, Engineer, Kelly, Petersen, and Watson lakes only to provide access for ice fishing. You must enter and exit the lakes via existing boat ramps.

(ii) We prohibit the operation of air cushion watercraft, air-thrust boats, jet skis and other personal watercraft, and all other motorized watercraft except motorboats.

(iii) The Refuge Manager may issue a special use permit (FWS Form 3-1383-G) for the operation of specialized off-road vehicles and watercraft for certain administrative activities (to include fish and wildlife-related monitoring, vegetation management, and infrastructure maintenance in permitted rights-of-way).

(4) *Snowmobiles.* We allow the operation of snowmobiles only in designated areas and only under the following conditions:

(i) We allow the operation of snowmobiles from December 1 through April 30 only when the Refuge Manager determines that there is adequate snow cover to protect underlying vegetation and soils. During this time, the Refuge Manager will authorize, through public notice (a combination of any or all of the following: Internet, newspaper, radio, and/or signs), the use of snowmobiles less than 48 inches in width and less than 1,000 pounds (450 kg) in weight.

(ii) We prohibit snowmobile operation:

(A) In all areas above timberline, except the Caribou Hills.

(B) In an area within sections 5, 6, 7, and 8, T. 4 N., R. 10 W., Seward Meridian, east of the Sterling Highway right-of-way, including the Refuge Headquarters complex, the environmental education/cross-country ski trails, Headquarters and Nordic lakes, and the area north of the east fork of Slikok Creek and northwest of a prominent seismic trail to Funny River Road.

(C) In an area including the Swanson River Canoe Route and portages, beginning at the Paddle Lake parking area, then west and north along the Canoe Lakes wilderness boundary to the Swanson River, continuing northeast along the river to Wild Lake Creek, then east to the west shore of Shoepac Lake, south to the east shore of Antler Lake, and west to the beginning point near Paddle Lake.

(D) In an area including the Swan Lake Canoe Route and several road-connected public recreational lakes, bounded on the west by the Swanson River Road, on the north by the Swan Lake Road, on the east by a line from the east end of Swan Lake Road south to the west bank of the Moose River, and on the south by the refuge boundary.

(E) In the Skilak Wildlife Recreation Area, except on Hidden, Kelly, Petersen, and Engineer lakes only to provide access for ice fishing. You must enter and exit these lakes via the existing boat ramps and operate exclusively on the lakes. Within the Skilak Wildlife Recreation Area, only Upper and Lower Skilak Lake campground boat launches may be used as access points for snowmobile use on Skilak Lake.

(F) On maintained roads within the refuge. Snowmobiles may cross a maintained road after stopping.

(G) For racing, or to herd, harass, haze, pursue, or drive wildlife.

(5) *Hunting and trapping.* We allow hunting and trapping on the refuge in accordance with State and Federal laws and consistent with the following provisions:

(i) You may not discharge a firearm within ¼ mile of designated public campgrounds, trailheads, waysides, buildings including public use cabins, or the Sterling Highway from the east Refuge boundary to the east junction of the Skilak Loop Road. You may not discharge a firearm within ¼ mile of the west shoreline of the Russian River from the upstream extent of the Russian River Falls downstream to its confluence with the Kenai River, and from the shorelines of the Kenai River from the east refuge boundary downstream to Skilak Lake and from the outlet of Skilak Lake downstream to the refuge boundary, except that firearms may be used in these areas to dispatch animals while lawfully trapping and shotguns may be used for waterfowl and

small game hunting along the Kenai River. These firearms discharge regulations do not preclude use of firearms for taking game in defense of life and property as defined under State law.

(ii) We prohibit hunting over bait, with the exception of hunting for black bear, and then only as authorized under the terms and conditions of a special use permit (FWS Form 3-1383-G) issued by the Refuge Manager.

(iii) We prohibit hunting big game with the aid or use of a dog, with the exception of hunting for black bear, and then only as authorized under the terms and conditions of a special use permit (FWS Form 3-1383-G) issued by the Refuge Manager.

(iv) We prohibit hunting and trapping within sections 5, 6, 7, and 8, T. 4 N., R. 10 W., Seward Meridian, encompassing the Kenai Refuge Headquarters, Environmental Education Center, Visitor Center Complex, and associated public use trails. A map of closure areas is available at Refuge Headquarters.

(v) The additional provisions for hunting and trapping within the Skilak Wildlife Recreation Area are set forth in paragraph (i)(6) of this section.

(6) *Hunting and trapping within the Skilak Wildlife Recreation Area.* (i) The Skilak Wildlife Recreation Area is bound by a line beginning at the easternmost junction of the Sterling Highway and the Skilak Loop Road (Mile 58), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Campground, then northerly along the Lower Skilak campground road and the Skilak Loop Road to its westernmost junction with the Sterling Highway (Mile 75.1), then easterly along the Sterling Highway to the point of origin.

(ii) The Skilak Wildlife Recreation Area (Skilak Loop Management Area) is closed to hunting and trapping, except as provided in paragraphs (i)(6)(iii) and (iv) of this section.

(iii) You may hunt moose only with a permit issued by the Alaska Department of Fish and Game and in accordance with the provisions set forth in paragraph (i)(5) of this section.

(iv) You may hunt small game in accordance with the provisions set forth in paragraph (i)(5) of this section and:

(A) Using falconry and bow and arrow only from October 1 through March 1; or

(B) If you are a youth hunter 16 years old or younger, who is accompanied by a licensed hunter 18 years old or older who has successfully completed a certified hunter education course (if the youth hunter has not), or by someone born on or before January 1, 1986. Youth hunters must use standard .22 rimfire or shotgun, and may hunt only in that portion of the area west of a line from the access road from the Sterling Highway to Kelly Lake, the Seven Lakes Trail, and the access road from Engineer Lake to Skilak Lake Road, and north of the Skilak Lake Road. The youth hunt occurs during each weekend from November 1 to December 31, including the Friday following Thanksgiving. State of Alaska bag limit regulations apply.

(7) *Fishing.* We allow fishing on the refuge in accordance with State and Federal laws, and consistent with the following provisions:

(i) We prohibit fishing during hours of operation of the Russian River Ferry along the south bank of the Kenai River from a point 100 feet upstream to a point 100 feet downstream of the ferry dock.

(ii) Designated areas along the Kenai River at the two Moose Range Meadows public fishing facilities along Keystone Drive are closed to public access and use. At these facilities, we allow fishing only from the fishing platforms and by wading in the Kenai River. To access

the river, you must enter and exit from the stairways attached to the fishing platforms. We prohibit fishing from, walking or placing belongings on, or otherwise occupying designated areas along the river in these areas.

(8) *Public use cabin and camping area management.* We allow camping and use of public use cabins on the refuge in accordance with the following conditions:

(i) Unless otherwise further restricted, camping may not exceed 14 days in any 30-day period anywhere on the refuge.

(ii) Campers may not spend more than 7 consecutive days at Hidden Lake Campground or in public use cabins.

(iii) The Refuge Manager may establish a fee and registration permit system for overnight camping at designated campgrounds and public use cabins. At all of the refuge's fee-based campgrounds and public use cabins, you must pay the fee in full prior to occupancy. No person may attempt to reserve a refuge campsite by placing a placard, sign, or any item of personal property on a campsite. Reservations and a cabin permit are required for public use cabins, with the exception of the Emma Lake and Trapper Joe cabins, which are available on a first-come, first-served basis. Information on the refuge's public use cabin program is available from Refuge Headquarters and online at <http://www.recreation.gov>.

(iv) Campers in developed campgrounds and public use cabins must follow all posted campground and cabin occupancy rules.

(v) You must observe quiet hours from 11:00 p.m. until 7:00 a.m. in all developed campgrounds, parking areas, and public use cabins.

(vi) Within developed campgrounds, we allow camping only in designated sites.

(vii) *Campfires*. (A) Within developed campgrounds, we allow open fires only in portable, self-contained, metal fire grills, or in the permanent fire grates provided. We prohibit moving a permanent fire grill or grate to a new location.

(B) Campers and occupants of public use cabins may cut only dead and down vegetation for campfire use.

(C) You must completely extinguish (put out cold) all campfires before permanently leaving a campsite.

(viii) While occupying designated campgrounds, parking areas, or public use cabins, all food (including lawfully retained fish, wildlife, or their parts), beverages, personal hygiene items, odiferous refuse, or any other item that may attract bears or other wildlife, and all equipment used to transport, store, or cook these items (such as coolers, backpacks, camp stoves, and grills) must be:

(A) Locked in a hard-sided vehicle, camper, or camp trailer; in a cabin; or in a commercially produced and certified bear-resistant container; or

(B) Immediately accessible to at least one person who is outside and attending to the items.

(ix) We prohibit deposition of solid human waste within 100 feet of annual mean high water level of any wetland, lake, pond, spring, river, stream, campsite, or trail. In the Swan Lake and Swanson River Canoe Systems, you must bury solid human waste to a depth of 6 to 8 inches.

(x) We prohibit tent camping within 600 feet of each public use cabin, except by members and guests of the party registered to that cabin.

(xi) Within 100 yards of the Kenai River banks along the Upper Kenai River from river mile 73 to its confluence with Skilak Lake (river mile 65), we allow camping only at designated

primitive campsites. Campers can spend no more than 3 consecutive nights at the designated primitive campsites.

(xii) We prohibit camping in the following areas of the refuge:

(A) Within ¼ mile of the Sterling Highway, Ski Hill, or Skilak Loop roads, except in designated campgrounds.

(B) On the two islands in the lower Kenai River between mile 25.1 and mile 28.1 adjacent to the Moose Range Meadows Subdivision.

(C) At the two refuge public fishing facilities and the boat launching facility along Keystone Drive within the Moose Range Meadows Subdivision, including within parking areas, and on trails, fishing platforms, and associated refuge lands.

(9) *Other uses and activities--(i) Must I register to canoe on the refuge?* Canoeists on the Swanson River and Swan Lake Canoe Routes must register at entrance points using the registration forms provided. The maximum group size on the Canoe Routes is 15 people. The Refuge Manager may authorize larger groups under the terms and conditions of a special use permit (FWS Form 3-1383-G).

(ii) *May I use motorized equipment within designated Wilderness areas on the refuge?* Within the Kenai Wilderness, except as provided in this paragraph (i), we prohibit the use of motorized equipment, including, but not limited to, chainsaws; generators; power tools; powered ice augers; and electric, gas, or diesel power units. We allow the use of motorized wheelchairs, when used by those whose disabilities require wheelchairs for locomotion. We allow the use of snowmobiles, airplanes, and motorboats in designated areas in accordance with the regulations in this paragraph (i).

(iii) *May I use non-motorized wheeled vehicles on the refuge?* Yes, you may use bicycles and other non-motorized wheeled vehicles, but only on refuge roads and rights-of-way designated for public vehicular access. In addition, you may use non-motorized, hand-operated, wheeled game carts, specifically manufactured for such purpose, to transport meat of legally harvested big game on designated industrial roads closed to public vehicular access. Information on these designated roads is available from Refuge Headquarters. Further, you may use a wheelchair if you have a disability that requires its use for locomotion.

(iv) *May I ride or use horses, mules, or other domestic animals as packstock on the refuge?* Yes, as authorized under State law, except on the Fuller Lakes Trail and on all trails within the Skilak Wildlife Recreation Area and the Refuge Headquarters area. All animals used as packstock must remain in the immediate control of the owner, or his/her designee. All hay and feed used on the refuge for domestic stock and sled dogs must be certified under the State of Alaska's Weed Free Forage certification program.

(v) *Are pets allowed on the refuge?* Yes, pets are allowed, but you must be in control of your pet(s) at all times. Pets in developed campgrounds and parking lots must be on a leash that is no longer than 9 feet in length. Pets are not allowed on hiking and ski trails in the Refuge Headquarters area.

(vi) *May I cut firewood on the refuge?* The Refuge Manager may open designated areas of the refuge for firewood cutting. You may cut and/or remove firewood only for personal, noncommercial use, and only as authorized under the terms and conditions of a special use permit (FWS Form 3-1383-G) issued by the Refuge Manager.

(vii) *May I cut Christmas trees on the refuge?* You may cut one spruce tree per household per year no larger than 20 feet in height from Thanksgiving through Christmas Day.

Trees may be taken anywhere on the refuge, except that we prohibit taking trees from within the 2-square-mile Refuge Headquarters area on Ski Hill Road. Trees must be harvested with hand tools, and must be at least 150 feet from roads, trails, campgrounds, picnic areas, and waterways (lakes, rivers, streams, or ponds). Stumps from harvested trees must be trimmed to less than 6 inches in height.

(viii) *May I pick berries and other edible plants on the refuge?* You may pick and possess unlimited quantities of berries, mushrooms, and other edible plants for personal, noncommercial use.

(ix) *May I collect shed antlers on the refuge?* You may collect and keep up to eight (8) naturally shed moose and/or caribou antlers annually for personal, noncommercial use. You may collect no more than two (2) shed antlers per day.

(x) *May I leave personal property on the refuge?* You may not leave personal property unattended longer than 72 hours unless in a designated area or as authorized under the terms and conditions of a special use permit (FWS Form 3-1383-G) issued by the Refuge Manager. However, refuge visitors involved in approved, extended overnight activities, including hunting, fishing, and camping, may leave personal property unattended during their continuous stay, but in no case longer than 14 days.

(xi) *If I find research marking devices, what do I do?* You must return any radio transmitter collars, neck and leg bands, ear tags, or other fish and wildlife marking devices found or recovered from fish and wildlife on the refuge within 5 days of leaving the refuge to the Refuge Manager or the Alaska Department of Fish and Game.

(xii) *Are there special regulations for alcoholic beverages?* In addition to the provisions of 50 CFR 27.81, anyone under the age of 21 years may not knowingly consume, possess, or control alcoholic beverages on the refuge in violation of State of Alaska law or regulations.

(xiii) *Are there special regulations for public gatherings on the refuge?* In addition to the provisions of 50 CFR 26.36, a special use permit (FWS Form 3-1383-G) is required for any outdoor public gathering of more than 20 persons.

(10) *Areas of the refuge closed to public use.* (i) From March 15 through September 30, you may not approach within 100 yards of, or walk on or otherwise occupy, the rock outcrop islands in Skilak Lake traditionally used by nesting cormorants and gulls. A map depicting the closure is available from the Refuge Headquarters.

(ii) Headquarters Lake, adjacent to the Kenai Refuge Headquarters area, is closed to boating.

(11) *Area-specific regulations for the Russian River Special Management Area.* The Russian River Special Management Area includes all refuge lands and waters within ¼ mile of the eastern refuge boundary along the Russian River from the upstream end of the fish ladder at Russian River Falls downstream to the confluence with the Kenai River, and within ¼ mile of the Kenai River from the eastern refuge boundary downstream to the upstream side of the powerline crossing at river mile 73, and areas managed by the refuge under memorandum of understanding or lease agreement at the Sportsman Landing facility. In the Russian River Special Management Area:

(i) While recreating on or along the Russian and Kenai rivers, you must closely attend or acceptably store all attractants, and all equipment used to transport attractants (such as backpacks and coolers) at all times. Attractants are any substance, natural or manmade, including but not

limited to, items of food, beverage, personal hygiene, or odiferous refuse that may draw, entice, or otherwise cause a bear or other wildlife to approach. Closely attend means to retain on the person or within the person's immediate control and in no case more than 3 feet from the person. Acceptably store means to lock within a commercially produced and certified bear-resistant container.

(ii) While recreating on or along the Russian and Kenai rivers, you must closely attend or acceptably store all lawfully retained fish at all times. Closely attend means to keep within view of the person and be near enough for the person to quickly retrieve, and in no case more than 12 feet from the person. Acceptably store means to lock within a commercially produced and certified bear-resistant container.

(iii) We prohibit overnight camping except in designated camping facilities at the Russian River Ferry and Sportsman's Landing parking areas. Campers may not spend more than 2 consecutive days at these designated camping facilities.

(iv) You may start or maintain a fire only in designated camping facilities at the Russian River Ferry and Sportsman's Landing parking areas, and then only in portable, self-contained, metal fire grills, or in the permanent fire grates provided. We prohibit moving a permanent fire grill or grate to a new location. You must completely extinguish (put out cold) all campfires before permanently leaving your campsite.

(12) *Area-specific regulations for the Moose Range Meadows Subdivision non-development and public use easements.* (i) Where the refuge administers two variable width, non-development easements held by the United States and overlaying private lands within the Moose Range Meadows Subdivision on either shore of the Kenai River between river miles 25.1 and 28.1, you may not erect any building or structure of any kind; remove or disturb gravel,

topsoil, peat, or organic material; remove or disturb any tree, shrub, or plant material of any kind; start a fire; or use a motorized vehicle of any kind (except a wheelchair occupied by a person with a disability), unless such use is authorized under the terms and conditions of a special use permit (FWS Form 3-1383-G) issued by the Refuge Manager.

(ii) Where the refuge administers two 25-foot-wide public use easements held by the United States and overlaying private lands within the Moose Range Meadows Subdivision on either shore of the Kenai River between river miles 25.1 and 28.1, we allow public entry subject to applicable Federal regulations and the following provisions:

(A) You may walk upon or along, fish from, or launch or beach a boat upon an area 25 feet upland of ordinary high water, provided that no vehicles (except wheelchairs) are used. We prohibit non-emergency camping, structure construction, and brush or tree cutting within the easements.

(B) From July 1 to August 15, you may not use or access any portion of the 25-foot-wide public easements or the three designated public easement trails located parallel to the Homer Electric Association Right-of-Way from Funny River Road and Keystone Drive to the downstream limits of the public use easements. Maps depicting the seasonal closure are available from Refuge Headquarters.

(13) *Area-specific regulations for Alaska Native Claims Settlement Act Section 17(b) easements.* Where the refuge administers Alaska Native Claims Settlement Act Section 17(b) easements to provide access to refuge lands, no person may block, alter, or destroy any section of the road, trail, or undeveloped easement, unless such use is authorized under the terms and conditions of a special use permit (FWS Form 3-1383-G) issued by the Refuge Manager. No

person may interfere with lawful use of the easement or create a public safety hazard on the easement. Section 17(b) easements are depicted on a map available from Refuge Headquarters.

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Dated: April 12, 2016.

Michael Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

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