



**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 242**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 100**

**[Docket No. FWS-R7-SM-2024-0017; FXRS12610700000-234-FF07J00000]**

**RIN 1018–BH67**

**Subsistence Management Regulations for Public Lands in Alaska—Subpart B; Federal Subsistence Board Membership**

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the regulations concerning the composition of the Federal Subsistence Board (Board) by adding three public members nominated or recommended by federally recognized Tribal governments, requiring that those nominees have personal knowledge of and direct experience with subsistence uses in rural Alaska including Alaska Native subsistence uses, defining requirements used for the selection of the Board Chair, affirming the Secretaries' authority to replace members from the Board, and affirming the

Secretaries' responsibility and oversight regarding Board decisions while incorporating a ratification requirement. In January 2022, the Department of the Interior (DOI) and the U.S. Department of Agriculture (USDA) held joint consultations with federally recognized Tribes of Alaska and various Tribal Consortia. Later during October–November 2022, DOI leadership and the Department of Commerce, National Oceanic and Atmospheric Administration, held joint consultations with various Alaska Tribes regarding fisheries. Approximately 445 individual subsistence users and representatives from Alaska Native Tribes, Tribal consortia, Alaska Native organizations, and Native corporations participated in the consultations, and a majority of the commenters specifically requested increasing the number of public members to five and adding more voting members who represent Alaska Native Villages and have local knowledge and direct subsistence experience.

**DATES:** Comments on this proposed rule must be received or postmarked by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments by one of the following methods:

*Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-R7-SM-2024-0017, which is the docket number for this rulemaking action. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment.”

*By hard copy:* Submit by U.S. mail or hand delivery: Public Comments Processing, Attn: FWS-R7-SM-2024-0017; U.S. Fish and Wildlife Service; 5275 Leesburg Pike; MS: PRB (JAO/3W); Falls Church, VA 22041–3803.

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

**FOR FURTHER INFORMATION CONTACT:** Ameer Howard, Deputy Assistant Regional Director, Office of Subsistence Management; 907-786-3888; [subsistence@fws.gov](mailto:subsistence@fws.gov). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. Please see Docket No. FWS-R7-SM-2024-0017 on <https://www.regulations.gov> for a document that summarizes this proposed rule.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

When Alaska became a State in 1959, Alaska Natives held aboriginal title to lands across the new State. Immediately after statehood, Alaska Natives filed blanket protests to State land selections authorized by the Statehood Act. Because the State's land selection rights were only for "vacant, unappropriated and unreserved lands," the Secretary of the Interior imposed a formal land freeze on any title transfers to Alaska in 1969. After oil was discovered at Prudhoe Bay in the late 1960s, an injunction against the Secretary of the Interior's attempt to grant a right of way for the Trans-Alaska Pipeline made it clear that Congress would have to settle aboriginal claims before an oil pipeline across Alaska could be built. Congress then extinguished aboriginal title in the Alaska Native Claims Settlement Act (ANCSA) in 1971. 43 U.S.C. 1603(b). The ANCSA conference report reflects that Congress anticipated that the Secretary of the Interior would "exercise his existing withdrawal authority" to "protect Native subsistence needs and

requirements.” H. Conf. Rep. No. 92-746 at 37 (1971). The Secretary immediately reinitiated withdrawals to protect subsistence while a solution was negotiated. In 1980, this issue, among others, was addressed in the Alaska National Interest Lands Conservation Act (ANILCA). Title VIII of ANILCA addressed the loss of aboriginal hunting and fishing rights by providing rural residents, including Alaska Native rural residents, with protections for continuing use of subsistence uses on the public lands. The congressional findings in ANILCA describe this intent and purpose:

The Congress finds and declares that—

...(4) *in order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary for the Congress to invoke its constitutional authority over Native affairs and its constitutional authority under the property clause and the commerce clause to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents; and*

(5) *the national interest in the proper regulation, protection, and conservation of fish and wildlife on the public lands in Alaska and the continuation of the opportunity for a subsistence way of life by residents of rural Alaska require that an administrative structure be established for the purpose of enabling rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.*

16 U.S.C. 3111 (emphasis added). Based on these findings, Congress declared that there would be a subsistence priority for “rural residents” on “public lands” in Alaska:

nonwasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the public lands of Alaska when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population, the taking of such population for nonwasteful subsistence uses shall be given preference on the public lands over other consumptive uses;

16 U.S.C. 3112 (2). Congress’s references to fulfilling the purposes of ANCSA (where aboriginal hunting and fishing rights had been lost), and its constitutional authority over Native affairs clarify that title VIII’s rural subsistence provisions are intended, among other purposes, to address the loss of Alaska Native aboriginal hunting and fishing rights. *See Robert T. Anderson, The Katie John Litigation: A Continuing Search for Alaska Native Fishing Rights After ANCSA*, 51 Ariz. St. L.J. 506, 522 (2017).

Title VIII originally contemplated the State administering the ANILCA rural subsistence priority. It outlined a State regulatory structure to protect subsistence uses by rural Alaska residents, providing that if, within one year of ANILCA's enactment, the State "enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference, and participation specified in" ANILCA for rural residents, then the Secretary shall not implement the provisions of ANILCA directing the establishment of regional advisory councils. 16 U.S.C. 3115(d). And such State laws, "unless and until repealed, shall supersede such sections [of ANILCA] . . . for the taking of fish and wildlife on the public lands for subsistence uses." *Id.*

However, the State was unable to implement title VIII through State regulations. When ANILCA was enacted in 1980, an Alaska statute provided a priority for nonwasteful subsistence use of wild, renewable resources, but it did not limit the priority to "rural Alaska residents," as ANILCA requires. *See Bobby v. Alaska*, 718 F. Supp. 764, 767, 788-791 (D. Alaska 1989). The State promulgated regulations recognizing the rural priority, and, after the Federal Government reviewed and approved the regulatory scheme, the State became responsible for overseeing implementation of title VIII. *See id.* at 767. Then, in 1985, the Alaska Supreme Court struck down the State regulations' limitation of the subsistence priority to rural Alaska residents. *Madison v. Alaska Dep't of Fish & Game*, 696 P.2d 168 (Alaska 1985). Without that eligibility limitation, the State's subsistence priority no longer complied with ANILCA, and the Secretary of the Interior withdrew certification of the State's regulatory scheme, pending enactment of State subsistence-use legislation consistent with ANILCA. *See Bobby*, 718 F. Supp. at 768. The Alaska Legislature then amended the State's subsistence laws to remedy the inconsistency with ANILCA. *See id.*; *see also Kenaitze Indian Tribe v. Alaska*, 860 F.2d 312, 314 (9th Cir. 1988). But in 1989, the Alaska Supreme Court voided the amended State subsistence statute after finding that a rural priority violates Alaska's Constitution. *See McDowell v. State*, 785 P.2d 1 (Alaska 1989).

As a result of Alaska's inability to satisfy ANILCA's requirements for State management, the Secretaries of the Interior and Agriculture were obligated under ANILCA to effectuate the rural subsistence priority. *See* 16 U.S.C. 3115. ANILCA authorizes the Secretaries to "prescribe such regulations as are necessary and appropriate to carry out [their] responsibilities" under title VIII. 16 U.S.C. 3124; *see* 16 U.S.C. 3102(12). In 1990, the Secretaries promulgated regulations providing "[s]ubsistence taking and uses of fish and wildlife on public lands shall be administered by a Federal Subsistence Board." *See* Temporary Subsistence Management Regulations for Public Lands in Alaska, 55 FR 27114 at 27123 (June 29, 1990); Final Regulations, 57 FR 22940 (May 29, 1992). As a result, pursuant to title VIII and its regulations, which have been amended several times since 1992, the Secretaries jointly implement the Federal Subsistence Management Program (Program), which provides a priority for taking of fish and wildlife resources for subsistence uses in Alaska. Only Alaska residents of areas identified as rural are eligible to participate in the Program.

Because the Program is a joint effort between the Departments of the Interior and Agriculture (USDA), these regulations are located in two different titles of the Code of Federal Regulations (CFR): The USDA regulations are at title 36, "Parks, Forests, and Public Property," and the DOI regulations are at title 50, "Wildlife and Fisheries," at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. Consequently, to indicate that identical changes are proposed for regulations in both titles 36 and 50, in this document we present references to the specific section of both titles of the CFR as: § \_\_.10.

The Program regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife. Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Program. Subpart C sets forth important Board determinations regarding program eligibility, i.e., which areas of Alaska are considered rural and which species are harvested in those areas as part of a "customary and

traditional use” for subsistence purposes. Subpart D sets forth specific harvest seasons and limits. Subparts A and B fall under the purview of the Secretaries, but the Board participates in the development of regulations for subparts C and D.

In administering the Program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Council). The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Council members represent varied geographical, cultural, and user interests within each region.

The current Board comprises:

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, National Park Service;
- The Alaska State Director, Bureau of Land Management;
- The Alaska Regional Director, Bureau of Indian Affairs;
- The Alaska Regional Forester, USDA Forest Service; and
- Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.

### **Proposed Rulemaking Action**

In January 2022, DOI and USDA held joint consultations with approximately 445 individual subsistence users and representatives from federally recognized Tribes of Alaska, Tribal consortia, Native organizations, and Alaska Native corporations. In October–November 2022, DOI leadership and the Department of Commerce, National Oceanic and Atmospheric Administration, held joint consultations with various Alaska Tribes regarding fisheries. During

all of these consultations, a primary request from commenters was to make changes to the Federal Subsistence Board, including increasing the number of public members to five and adding more voting members who represent Alaska Native Villages and have local knowledge and direct subsistence experience.<sup>1</sup> The report detailing the information received during these consultations is the “Federal Subsistence Policy Consultation Summary Report,” which can be found as a supplementary document in Docket No. FWS-R7-SM-2024-0017 at <https://www.regulations.gov>.

We propose to revise titles 36 (in part 242) and 50 (in part 100) of the CFR at § \_\_.10 to be responsive to that request by defining the requirements used for the selection of the Board Chair, increasing the number of public members of the Board, and including a voice for federally recognized Tribal governments to nominate or recommend a certain number of the public members of the Board. We propose that the Board Chair, like the two current public members, be required to possess personal knowledge of and direct experience with subsistence uses in rural Alaska. We further propose adding three public members to the Board, all of whom will be required to possess personal knowledge of and direct experience with subsistence uses in rural Alaska, including Alaska Native subsistence uses, and will be nominated or recommended by federally recognized Tribal governments.

As is currently required in the regulations, the Board Chair and all public members will be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture. Also as is currently the case, the public members will become special governmental employees for the purpose of serving on the Board. The Secretaries retain the authority to remove public members from the Board, and also retain their existing authorities to replace agency personnel on the Board, and we have added language affirming those authorities in this

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<sup>1</sup>The references to “commenters” below refer to the comments received from these same participants in connection with the consultations.

proposed rule. Because this proposed rule would increase the total number of Board members, the number required for a quorum would increase to six.

Lastly, consistent with title VIII, we propose clarifying that the Secretaries retain the authority to modify, disapprove, or stay any action taken by the Board, and also propose incorporating a requirement for ratification. Recognizing that a Board's action may be time sensitive, we propose that for temporary special actions (36 CFR 242.19(b) and 50 CFR 100.19(b)), Board actions will not become effective for 10 calendar days, allowing an opportunity for the Secretaries to modify, disapprove, stay, or expressly ratify Board actions. If the 10 calendar days elapse without action by the Secretaries, the Board decision will be deemed automatically ratified by the Secretaries (with the Secretaries retaining discretion to revisit the ratification). For emergency special actions (36 CFR 242.19(a) and 50 CFR 100.19(a)), the Board action will likewise not become effective for 10 calendar days unless the Board determines that the emergency situation calls for responsive action within 24 hours to protect subsistence resources or public safety. For other Board actions (i.e., actions that follow the regular adoption process in 36 CFR 242.18 or 50 CFR 100.18), the Secretaries retain, and will exercise when appropriate, their authority to modify or disapprove actions prior to publication in the *Federal Register*, as is the current practice.

## **I. Increase in Number of Public Board Members**

The current Board includes a Chair, two public Board members, and five Federal agency personnel. None of the current agency personnel, nor any of their predecessors, are federally qualified subsistence users while serving on the Board as a result of the urban location for their duty location. The Secretaries are proposing to add three public members nominated or recommended by Tribes, while also requiring that they possess personal knowledge of and direct experience with subsistence uses in rural Alaska, including Alaska Native subsistence uses, for the purpose of ensuring adequate representation by members with rural subsistence experience

on the Board at any particular meeting. Adding three public members to the Board could further the goals of ANILCA and also could be responsive to commenters' requests for: (1) an increase in the number of public board members to five; and (2) adding more voting members who represent Alaska Native villages and have local knowledge of direct subsistence experience.

Related to this, the Secretaries specifically request public comments on the issues listed below:

(1) Are federally recognized Tribal governments the only groups that should nominate/recommend public board members that possesses the qualifications identified in this proposed rule? Should Alaska Native Corporations and other entities also be included as entities to nominate/recommend public board members, so long as the nominees possess personal knowledge of and direct experience with subsistence uses in rural Alaska (including Alaska Native subsistence uses)?

(2) Would it be preferable for federally recognized Tribes to nominate/recommend only two of the three new public board members?

(3) How should the Secretaries solicit and receive nominations/recommendations? Should the Secretaries broadly solicit nominations or recommendations from federally recognized Tribal governments, or should the Secretaries identify as a matter of their sole discretion one or more specific federally recognized Tribal governments?

(4) Is the proposed quorum of six appropriate with the addition of the three new public board members, or should it be increased?

Commenters also expressed concerns that the public Board members at present do not have alternates who can stand in for them in times of illness or unavailability due to conflicts with subsistence activities. This is not the case for Federal agency personnel, who have qualified designees who can act in their stead. This issue was specifically raised by the Board in a meeting with the Secretary. While the Secretaries preliminarily view the proposal to add additional public board members as eliminating the need to further consider whether public

board members should have the ability to appoint alternates, the Secretaries invite public comment on this issue.

Commenters also focused on the desirability of considering Indigenous Knowledge in connection with Board decision making. The Secretaries preliminarily view this approach/practice as consistent with the Secretaries' policies and broader Federal Government policy. For example, on November 22, 2022, the White House Office of Science and Technology Policy and Council on Environmental Quality released the "Guidance for Federal Departments and Agencies on Indigenous Knowledge" at the White House Tribal Nations Summit. The guidance and accompanying implementation memorandum recognized that, to make the best scientific and policy decisions, the Federal Government should value and, as appropriate, respectfully consider Indigenous Knowledge in the decision-making process. The implementation memorandum for all Federal agencies noted that "...the U.S. Government can fulfill its trust responsibilities to Tribal Nations, recognize Tribal sovereignty and self-governance, and honor its commitment to strengthening relations with Indigenous Peoples by including Indigenous Knowledge in Federal decision making." Further, the implementation memorandum encouraged Federal agencies "to pursue and promote inclusion of Indigenous Knowledge in Federal scientific and policy decisions consistent with this Guidance ...." The Guidance started with the following recognition:

The Federal Government recognizes the valuable contributions of the Indigenous Knowledge that Tribal Nations and Indigenous Peoples have gained and passed down from generation to generation and the critical importance of ensuring that Federal departments and agencies' (Agencies) consideration and inclusion of Indigenous Knowledge is guided by respect for the sovereignty and self-determination of Tribal Nations; the Nation-to-Nation relationship between the United States and Tribal Nations and the United States' trust responsibility; and the need for the consent of and honest engagement with Tribal Nations and Indigenous Peoples.

As discussed further below, incorporating to a greater degree this substantial and diverse body of Indigenous Knowledge into its decision making might better enable the Board to address

subsistence uses for all federally qualified users in implementing the title VIII rural subsistence priority.

Alaska, given its vast and varied geography, has a wide variety of subsistence uses based on place and seasons. The variations include differences in species of fish, land mammals, and marine mammals subject to harvest, in addition to seasonal availability of the same resource, such as salmon, across different areas of the State. The breadth of subsistence practices may indicate a need for a diversity of subsistence use experiences on the Board to improve Federal decision making.

Consistent with this, many commenters highlighted the importance of Alaska Native “ecological knowledge and observations by local stakeholders to promote sustainable harvests and protect habitats.” Federal Subsistence Policy Consultation Summary Report (June 14, 2022) (bia.gov). One of the five questions asked of attendees to the January 2022 consultations on subsistence was “How has climate change affected subsistence?” The followup question posed was “What changes could be made to subsistence policies, regulations, or laws to help you adapt to those changes?” The commenters requested the inclusion of Indigenous Knowledge to inform decision making as noted above, and they “emphasized the need to make real-time management decisions that are responsive to evolving, on-the-ground conditions and fluctuations caused by climate change.” Federal Subsistence Policy Consultation Summary Report (June 14, 2022) (bia.gov).

These comments reflect the unprecedented challenges the Alaska subsistence community is facing regarding the availability of subsistence resources as a result of climate change and other factors. The Secretaries acknowledge that the regional advisory councils provide opportunities to incorporate Indigenous Knowledge into Board decision making. The Secretaries view this proposed rule as creating another structural path for providing Indigenous Knowledge to the Board. Additional public board members who meet the specified qualifications have the potential to expand and diversify the kinds of evidence and knowledge available to the Board for

critical decisions. See “What is “Indigenous Knowledge” And Why Does It Matter? Integrating Ancestral Wisdom and Approaches into Federal Decision-Making,” available at <https://www.whitehouse.gov/ostp/news-updates/2022/12/02/> (last accessed Oct. 24, 2023). The Secretaries again invite comments on all of these issues.

The Secretaries’ inclusion of recommendations/nominations from federally recognized Tribes honors the Secretaries’ political relationship with Tribal Nations and their commitment to strengthening relations with Indigenous Peoples. The Secretaries’ consideration of these nominations/recommendations also would recognize Tribes’ qualifications to identify individuals who possess personal knowledge of and direct experience with subsistence uses in rural Alaska, both Native and non-Native, and also to identify individuals who are best able to present Indigenous Knowledge that can be included in the Board’s decision making. Tribal governments are well-situated to make these recommendations in part because Alaska Natives comprise approximately 55 percent of the rural population in all areas of the State and constitute a much larger majority—82 percent of the population—in the most remote and roadless regions. See James A. Fall, *Alaska Populations Trends and Patterns, 1960-2018* at 11, ADF&G Div. of Subsistence, Alaska Dep’t of Fish & Game (2019); Alaska Native Population, Alaska Native Policy Center.<sup>2</sup>

In proposing this rule, the Secretaries acknowledge that they will retain ultimate authority to decide whether to appoint to the Board the particular individuals nominated or recommended by Tribes; the Secretaries are not delegating their authority to appoint.

## II. Qualifications of Chair

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<sup>2</sup> See also U.S. Census Bureau, Percent American Indian and Alaska Native Alone or in Combination, Total Population by County: 2020, <https://public.tableau.com/shared/NMZXR84J?:showVizHome=n> (showing the Alaska Native population makes up 96.9% of the Kusilvak Census Area, 88.5% of the Bethel Census Area, 88.1% of the Northwest Arctic Borough, 82.6% of the Nome Census Area, 79.9% of the Dillingham Census Area, and 77.2% of the Yukon-Koyukuk Census Area). [https://www.adfg.alaska.gov/static/home/library/pdfs/subsistence/Trends\\_in\\_Population\\_Summary\\_2019.pdf](https://www.adfg.alaska.gov/static/home/library/pdfs/subsistence/Trends_in_Population_Summary_2019.pdf).

In addition, the Secretaries propose to require that the Board Chair possess personal knowledge of and direct experience with subsistence uses in rural Alaska.

### **III. Term Limits**

The Secretaries also are considering whether to impose term limits as to public Board members, including potentially the Chair. The proposed regulatory text includes reference to the potential for the Secretaries to establish term limits for service of Board members in such circumstances as the Secretaries deem appropriate. The Secretaries invite public comment on other possible approaches, such as including specific term limit requirements, with or without staggered terms, in the regulatory text that would apply when new appointments are made (and not to existing members). The comments may address, for example, what specific term limits may be appropriate (i.e., what duration measured in years) and whether and how they should be renewable.

### **IV. Oversight Responsibility and Ratification Requirement**

Consistent with title VIII, the Secretaries propose clarifying that the Secretary of the Interior, or the Secretary of Agriculture with respect to a unit of the National Forest System, retains the authority to modify, disapprove, stay, or expressly ratify any action taken by the Board. The Secretaries also propose to incorporate a requirement for ratification. Under the proposal, recognizing that the Board may need to act quickly in response to changed circumstances, temporary special actions of the Board will not become effective for 10 calendar days (or any longer period specified by the Board when taking the action), allowing an opportunity for the Secretaries to modify, disapprove, stay, or expressly ratify the actions. For emergency special actions (36 CFR 242.19(a) and 50 CFR 100.19(a)), the Board action will likewise not become effective for 10 calendar days unless the Board determines that the emergency situation calls for responsive action within 24 hours to protect subsistence resources

or public safety. If the Secretaries do not take action (i.e., to modify, disapprove, stay, or expressly affirm) during the 10 calendar days (or the longer period), the Board decision will be deemed automatically ratified by the Secretary for purposes of the proposed regulation (with the Secretary retaining discretion to revisit prior express or automatic ratifications). For other Board actions (i.e., actions that follow the regular adoption process in 36 CFR 242.18 and 50 CFR 100.18), the Secretaries retain, and will exercise when appropriate, their authority to modify or disapprove actions prior to publication in the *Federal Register*, as is the current practice.

The Secretaries provide proposed draft regulatory text for this specific proposal at the end of this document, but also invite public comment on this proposal and expressly request comments on the following:

(1) Should the Secretaries consider adopting a different framework that, while not requiring ratification, allows for review of emergency and temporary Board actions? For example, should the Secretaries consider a framework in which the effective date of Board actions would be delayed to allow the Secretaries a limited time to review those actions (and potentially stay the action for a further limited time to facilitate decision making concerning whether to modify or disapprove the action)?

(2) Are the proposed timeframes for ratification of special actions and emergency actions sufficient to allow for the Board to respond to evolving resource and subsistence issues in real time while allowing for appropriate Secretarial oversight and approval?

(3) What specific mechanism(s) should the Secretaries use to modify, disapprove, stay, or expressly affirm an emergency or temporary Board action (i.e., what would be the form of the Secretary of the Interior's action, and how would it best be communicated to the Board and public)?

(4) Would it be helpful and/or necessary for the Secretaries to make any conforming changes to the other regulations in 36 CFR part 242 and 50 CFR part 100, such as the regulation

governing Board reconsideration of actions (36 CFR 242.20 and 50 CFR 100.20), if the ratification requirement is included in the final rule?

### **Public Review Process—Comments**

You may submit written comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. If you submit a comment via <https://www.regulations.gov>, your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <https://www.regulations.gov> at Docket No. FWS-R7-SM-2024-0017.

### *Tribal Consultation and Comment*

As expressed in Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” the Federal officials that have been delegated authority by the Secretaries are committed to honoring the unique government-to-government political relationship that exists between the Federal Government and federally recognized Indian Tribes (Tribes) as listed in 82 FR 4915 (January 17, 2017). Consultation with Alaska Native corporations is based on Pub. L. 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Pub. L. 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: “The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian Tribes under Executive Order No. 13175.”

Because Tribal members are affected by subsistence regulations, the Secretaries will provide federally recognized Tribes of Alaska and Alaska Native corporations an opportunity to consult on this proposed rule.

As stated above, the Secretaries previously conducted consultations where the subject of Board membership was addressed. The Secretaries have directed that DOI and USDA representatives will hold joint consultations regarding this rulemaking effort. The Secretaries will engage in outreach efforts for this proposed rule, including a notification letter, to ensure that Tribes and Alaska Native corporations are advised of the mechanisms by which they can participate. The Secretaries will commit to efficiently and adequately providing an opportunity to Tribes and Alaska Native corporations for consultation regarding this subsistence rulemaking.

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

## **Compliance with Statutory and Regulatory Authorities**

### *National Environmental Policy Act*

A draft environmental impact statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The final environmental impact statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available by contacting: U.S. Fish and Wildlife Service, Office of Subsistence Management, 1011 E. Tudor Road, MS 121, Anchorage, Alaska 99503-6199. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human

environment and, therefore, signed a finding of no significant impact.

Similarly, this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. Further, a detailed statement under the National Environmental Policy Act of 1969 is not required because the rule is covered by a categorical exclusion under 43 CFR 46.210(i): “Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.” We have also determined that the proposed rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under the National Environmental Policy Act.

#### *Section 810 of ANILCA*

An ANILCA section 810 analysis was completed as part of the FEIS process on the Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restrictions are necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Federal Subsistence Management Program, under alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of the subsistence program regulations was conducted in accordance with section 810. That evaluation also supported the Secretaries’ determination that the regulations will not reach the “may significantly restrict” threshold that would require notice and hearings under ANILCA section 810(a).

#### *Paperwork Reduction Act of 1995 (PRA)*

This proposed rule contains existing information collections. All information collections require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 et seq.). We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has reviewed and approved the information collection requirements associated with this rulemaking and assigned the OMB Control Number 1018–0075 (expires January 31, 2024, and, in accordance with 5 CFR 1320.10, an agency may continue to conduct or sponsor this collection of information while the submission is pending at OMB). This proposed rule makes no substantive changes to the currently approved information collections. We anticipate a minor increase in the estimated number of annual responses and annual burden hours associated with the currently approved FWS Form 3–2321, Membership Application. We estimate the total burden associated with this information collection to be 15,429 annual responses, 6,953 annual burden hours, and no non-hour cost burden.

*Regulatory Planning and Review—Executive Orders 12866, 13563, and 14094*

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. We have developed this proposed rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this proposed rulemaking action is not significant.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires preparation of flexibility analyses for rules that will have a significant economic impact on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The revised Board composition put forward under this proposed rule would not result in effects to the economy. The Departments certify that this rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

#### *Congressional Review Act*

Under the Congressional Review Act (5 U.S.C. 804 (2)), this proposed rule is not a major rule. It will not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and 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.

#### *Executive Order 12630*

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

#### *Unfunded Mandates Reform Act*

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that this proposed rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The implementation of this proposed rule would be by Federal agencies, with no cost imposed on any State or local entities or Tribal governments.

#### *Executive Order 12988*

The Secretaries have determined that these proposed regulations meet the applicable

standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

*Executive Order 13132*

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

*Executive Order 13175*

As described above under *Tribal Consultation and Comment*, the Secretaries will provide federally recognized Tribes of Alaska and Alaska Native corporations a variety of opportunities for consultation, commenting on proposed changes to the existing regulations, and providing input in person, by mail or email, at any time during the rulemaking process.

*Executive Order 13211*

This Executive order requires agencies to prepare statements of energy effects when undertaking certain actions. However, this proposed rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no statement of energy effects is required.

**List of Subjects**

36 CFR Part 242

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

50 CFR Part 100

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

## **Proposed Regulation Promulgation**

For the reasons set out in the preamble, the Secretaries of the Interior and Agriculture propose to amend 36 CFR part 242 and 50 CFR part 100 as set forth below.

### **PART \_\_\_\_—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA**

1. The authority citation for 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

**Authority:** 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

#### **Subpart B—Program Structure**

2. In subpart B of 36 CFR part 242 and 50 CFR part 100, amend § \_\_\_\_ .10 by:

- a. Revising paragraphs (a), (b), and (d)(2); and
- b. Adding paragraphs (d)(11) through (13).

The revisions and additions read as follows:

#### **§ \_\_\_\_ .10 Federal Subsistence Board.**

(a) *Authority.* The Secretary of the Interior and the Secretary of Agriculture hereby establish a Federal Subsistence Board and delegate to it the authority for administering the subsistence taking and uses of fish and wildlife on public lands and the related promulgation and signature authority for regulations of subparts C and D of this part. The Secretaries retain their existing authority to restrict or eliminate hunting, fishing, or trapping activities that occur on lands or waters in Alaska other than public lands when such activities interfere with subsistence hunting, fishing, or trapping on the public lands to such an extent as to result in a failure to provide the subsistence priority. The Secretaries also retain the ultimate responsibility for compliance with title VIII of ANILCA and other applicable laws and maintain oversight of the Board.

(b) *Membership.* (1) The voting members of the Board are: A Chair who possesses personal knowledge of and direct experience with subsistence uses in rural Alaska to be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture; five public members who possess personal knowledge of and direct experience with subsistence uses in rural Alaska, three of whom shall be nominated or recommended by federally recognized Tribal governments in Alaska and shall possess personal knowledge of and direct experience with subsistence uses in rural Alaska (including Alaska Native subsistence uses), to be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska Regional Forester, U.S. Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Regional Director, Bureau of Indian Affairs. Each Federal agency member of the Board may appoint a designee.

(2) Public board members serve at the will of the Secretaries. The Secretaries maintain their authorities for replacement of Federal agency members, public board members, or any designees.

\* \* \* \* \*

(d) \* \* \*

(2) A quorum consists of six members.

\* \* \* \* \*

(11) The Secretary of the Interior, or the Secretary of Agriculture with respect to a unit of the National Forest System, retains authority to (at any time) stay, modify, or disapprove any action taken by the Board.

(12) Temporary special actions of the Board are not effective unless ratified by the Secretary of the Interior or the Secretary of Agriculture with respect to a unit of the National Forest System. To allow an opportunity for the Secretaries to modify, disapprove, stay, or expressly ratify any temporary action taken by the Board, such Board actions will not become

effective until at least 10 calendar days after the date of the action (or any longer period specified by the Board when taking the action). For emergency special actions, the Board action will likewise not become effective for 10 calendar days (or any longer period specified by the Board when taking the action) unless the Board determines that the emergency situation calls for responsive action within 24 hours to protect subsistence resources or public safety. If no action is taken by the Secretary to modify, disapprove, stay, or expressly ratify within 10 days (or the longer period specified by the Board), the emergency or temporary Board action will be deemed automatically ratified for purposes of this subpart. The Secretaries may revisit a prior ratification (express or automatic) of a Board action at any time. For other Board actions (i.e., actions that follow the regular adoption process in § \_\_.18), the Secretaries retain, and will exercise when appropriate, their authority to modify or disapprove actions prior to publication in the *Federal Register*, as is the current practice.

(13) The Secretaries may establish term limits for service of Board members in such circumstances as the Secretaries deem appropriate.

\* \* \* \* \*

**Joan Mooney,**

*Principal Deputy Assistant Secretary for Policy, Management, and Budget,  
Department of the Interior.*

**Homer L. Wilkes**

*Under Secretary, Natural Resources and Environment  
U.S. Department of Agriculture*