

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2610 SCOMM 114: HOUSE SPEC.COMM ON FISHERIES, 1999-2000

SCOMM

114:2

Special Committee on Fisheries

5:00 P.M.

Monday, April 3, 2000

Capitol Building Room 124

Representative John Harris, Representative Carl Morgan, Jr., Co-Chairs

1. **Call to Order**
Today's Date is: April 3, 2000
The time is:
2. **Roll Call - (Quorum - need 4)**
Representative Harris, Co-Chair
Representative Morgan, Co-Chair
Representative Dyson
Representative Whitaker
Representative Hudson
Representative Kapsner
Representative Smalley
3. **Identify Teleconference Sites**
Ask moderator to list sites that have persons who wish to testify.
Three-minute testimony will be heard later in the meeting.
4. **Purpose of the Meeting:**
Confirmation Hearing
Robert Dersham
Larry Engel
5. **Hearing.....TO BE RESCHEDULED FOR A LATER DATE**
Impacts of British Columbia farmed Atlantic Salmon on
Alaska wild Salmon stock

APR-03-00 MON 11:13

KENAI LIO

FAX NO. 2633075

P.02



Alaska State Legislature

House Resources

Please enter into the record my testimony to the

HOUSE FISHERIES
committee name

committee on BOARD OF FISH CONFIRMATIONS dated 4-3-00
bill # / subject

Governor Knowles has an opportunity to diversify the board of fish. Instead he re-appoints Engle and Derham. As in the past, these two will vote in favor of any motion made by Bob Penny's evil lawyer, chairman Dan Coffey. Use some sense here. I urge you not to confirm these nominations.

Signed:

John McCumbs

Testifier

myself

Representing (Optional)

Box 87 Nimitchik AK

Address

907-567-3334

Phone number



UNITED FISHERMEN OF ALASKA

March 31, 2000

211 Fourth Street, Suite 110
Juneau, Alaska 99801-1172
907/588-2820
Fax: 907/463-2545
E-Mail: ufa@alaska.net

Honorable Tony Knowles
Governor
State of Alaska
PO Box 110001
Juneau, AK 99811-0001

Dear Governor Knowles,

I am writing to express our disappointment that you did not nominate any people with experience in blue waters fisheries or a different regional perspective to the Board of Fisheries (BOF).

Commercial fishing is the second largest industry in the state and the largest private sector employer. The present and proposed make up of the Board of Fisheries is not balanced with regards to commercial fishing "fields of action" and lacks the diversity necessary for well rounded development of Alaska's economy in a sustainable manner.

I am also concerned that all the names of the prospective candidates were not on the table for public comment before you announced your decision. Alaska fishing groups and others put a lot of effort in to considering BOF candidates; putting names on the list at the last minute frustrates the public process.

MEMBER ORGANIZATIONS

Alaska Longline Fishermen's Association • Alaska Trollers Association • Concerned Area "M" Fishermen
Cook Inlet Aquaculture Association • Copper River Salmon Producers Association • Cordova District Fishermen United
Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association • Kodiak Seiners Association • North Pacific Fisheries Association
Northern Southeast Regional Aquaculture Association • Northwest Seiners Association • Petersburg Vessel Owners Association
Prince William Sound Aquaculture Corporation • Puma Seine Vessel Owners Association • Seafood Producers Cooperative
Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association

Alaska's commercial fisheries are an economic engine in this state and must be respected if the state is to move forward with jobs that support Alaska families.

Sincerely,

Thomas M. Gemmell

Thomas M. Gemmell
Executive Director

Copy: Senator Rick Halford, Chair, Senate Resources Committee
Senator Robin Taylor, Vice-Chair, Senate Resources Committee
Senator Drue Pearce, President Senate
Representative Brian Porter, Speaker, House of Representatives
Representative Bill Hudson, Co-Chair, House Resources Committee
Representative Beverly Masek, Co-Chair, House Resources Committee
Representative John Harris, Co-Chair, House Special Committee on Fisheries
Representative Carl Morgan, Jr., Co-Chair, House Special Committee on Fisheries



Alaska State Legislature

House of Representatives

State Capitol, Rm 216
Juneau, AK 99801-1182
(907) 465-3725
Fax: (907) 465-5334

Official Business

Office of the Chief Clerk

MEMORANDUM

Date: March 21, 2000

TO: House Special Committee on Fisheries

FROM: Suzi Lowell *ML*
Chief Clerk

SUBJECT: Governor's Appointments

Speaker Porter referred the following Governor's appointments to the House Special Committee on Fisheries:

Board of Fisheries

Mr. Robert "Ed" Dersham - Anchor Point

Appointed: 03/03/97 Reappointed: 03/20/00 Expires: 06/30/03

Mr. Larry Engel - Palmer

Appointed: 02/04/94 Reappointed: 02/14/97 & 03/20/00
Expires: 06/30/03

These appointments were also referred to the Resources Committee. Attached are the resumes and committee reports for your use.

Attachments as noted

: COPY

ROBERT E. DERSHAM

OBJECTIVE

Update of previous resume

EXPERIENCE

1997 to Present - Dersham's Outlook Lodge Anchor Point Alaska
Co Owner and operator

1997 to Present - Alaska State Board of Fisheries State of Alaska
Board member

- Chairman: BOF-NPFMC Joint Protocol Committee
 - Chairman: North Gulf of Alaska Chinook Task Force Committee
 - Chairman: Halibut LAMP Task Force Committee
 - Chairman: Habitat Committee
 - Chairman: Numerous sub committees at BOF regulatory meetings
 - Attended all BOF meetings since appointment
-

Peninsula Communications, Inc. Homer, AK

1938-1992

Broadcaster

Wrote and broadcast a daily sport fishing report including tips, antidotes, and essays on the philosophical aspect of fishing. These reports were carried on three radio stations servicing the Kenai Peninsula and Kodiak Island

U. S. Department of Justice, Washington, DC

1971-1985

Special Agent- Drug Enforcement Administration**Retired**

Worked as a criminal investigator for the Drug Enforcement Administration. Supervised the development of cases against individuals who had violated federal narcotics laws. Worked undercover extensively. Testified extensively in both federal and state court. Conducted liaison with State and federal officers through task force operations in California and Alaska.

Achievements

- Received a superior performance award for undercover work done against heroin traffickers in the southern California and Baja Mexico areas.

Weyerhaeuser Corporation, Cottage Grove, OR

1968-1971

Laborer

Worked as a laborer in every facet of wood products operation.

Education & Licenses

Bachelors of Business Administration - University of Oregon, 1970

Operator of uninspected passenger vessel license- U.S. Coast Guard, 1989-present

Personal History

Born: April 20, 1948 - Eugene OR

Wife: Karan Dersham

Sons: David (30), Bert (23)

Other Organizations and Clubs

- Member - Board of Directors, Kenai Peninsula Chapter Crime stoppers Int.
- Member - Kenai Peninsula Tourism Marketing Council
- Member - The Alaskans Club
- Member - The National Federation of Independent Business
- Member - The National Rifle Association

References

- Kevin DeLaney, Director Alaska Department of Fish & Game, Sport fish Division
- Nick Dudlak, Area Fisheries Biologist, Alaska Department of Fish & Game
- Bob Ward, Homer Charter Association, Homer, AK

Fish resume 1.14

Robert E. (Ed) Dersham - Resume

P.O. Box 555

Anchor Point, AK 99556

Objective

To be considered for an appointment to the Alaska State Board of Fisheries

I am applying to be considered for appointment to the Alaska State Board of Fisheries. I do this with full knowledge of the magnitude of the commitment, and weight of the responsibility involved in service on the board. I have lived in Alaska for 20 years and been actively involved in fisheries issues for over 10 years. In every issue I've become involved with I've worked to gather as much knowledge as possible about the issue. I have then worked to support solutions that were fair to all user groups while keeping the biological health of the resource as the top priority.

My business and my life are closely tied to the saltwater charter fishing industry. I am committed to helping find workable resolutions to allocation issues using the best available biological information and input from all user groups.

If chosen, I would serve to the best of my ability. My primary goal would be to help achieve the fairest possible allocation decisions based on a thorough working knowledge of the issues to come before the board.

Highlights of Qualifications

- Member of the Anchor River Steelhead Task Force, 1990
- President of the South Peninsula Sportsman's Association 1990-1993
- Member of the North Pacific Fisheries Management Council Halibut Charter working group 1993-1994
- President of the Anchor Point Charter Association 1993-1997
- On the board of directors of the Alaska Sport Fishing Industry Association 1994-1997

Professional Experience

Dersham's Outlook Lodge, Anchor Point, AK 1985-Present
Owner and senior fishing guide for salmon and halibut

Along with my wife Karan, own and operate a complete package fishing lodge on Cook Inlet.

Achievements

- Built a successful business from the ground up that currently has 58% repeat customer and word of mouth referral clientele
- Established as a top guide for salmon and halibut on the east side of Cook Inlet and earned the respect of the other guides in the area

Resume

Larry J. Engel
P.O. Box 197
Palmer, Alaska 99645
(907) 745-4132

EDUCATION: Graduated Highschool 1956; Served U.S. Navy,
July 1956 - Sept. 1959, Honorable Discharge;
Graduated University of Washington, March 1964,
B.S. in Fisheries

WORK HISTORY: Seasonal technician and biologist with the Alaska
Department of Fish and Game, 1960 - June, 1964.

Full-time biologist with Alaska Department of
Fish and Game, Division of Sport Fish, 1964 to
August 31, 1992.

REFERENCES: R. Russell Redick, former ADF&G supervisor,
Anchorage; Telephone: (907) 522-2506

Kevin Delaney, supervisor, currently with ADF&G,
Anchorage; Telephone: (907) 344-0541

Jack Willis, President, Trout Unlimited,
Wasilla; Telephone: (907) 746-1666

Phil Cutler, President, Alaska Sport Fishing
Association, Anchorage; Telephone: (907) 243-4667



Teleconference Participants

TCN: 10683

Participant List

View List for

ALL Testifiers Go >>> Close Window

Participants

Unidentified Testifiers: 0 Unidentified Observers: 0

HOMER (HOM)

1

Name: Mr. Ed Dersham

Phone:

Address:

Affiliation: Bd of Fisher

City / St / Zip: Homer AK 99603

Type: Testifier

Bill: CONFIRMATION BOARD OF FISHERIES

KENAI (KEN)

1

Name: Mr. Dale Bondurant

Phone: 262-0818

Address: 31864 Moonshine Dr

Affiliation: self

City / St / Zip: Soldotna AK 99669

Type: Testifier

Bill: CONFIRMATION BOARD OF FISHERIES

PETERSBURG (PSG)

1

Name: Mr. Gerry Merrigan

Phone: 772-9323

Address: PO Box 232

Affiliation:

City / St / Zip: Petersburg AK 99833

Type: Testifier

Bill: CONFIRMATION BOARD OF FISHERIES



Teleconference Participants

TCN: 10683

Participant List

View List for

ALL



Testifiers



Go >>>

Close Window

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Type: Testifier

Bill: CONFIRMATION BOARD OF FISHERIES

OFF-NET TELECONFERENCE PARTICIPANTS

Name	Location	Affiliation	Subject
Larry Engel	Palmer		Confirmation Hearing

Message

Date: Monday Apr 03, 2000

Time: 5:06 PM

To: JUNEAU

From: MARY BEA BYRNE

TC Number: 10683

Dale Bondurant

Message: Kenai on line with one for Board of Fish confirmation; any chance of getting on before 5:30? - time constraint here ~mb/kenai

Close Window

Print

SCOMM

114:3



Official Business

Alaska State Legislature

House of Representatives

State Capitol
Juneau, AK. 99801-1182

Date: 2/22/00

The Honorable Brian Porter
Speaker of the House
State Capitol
Juneau, AK 99801

Dear Mr. Speaker:

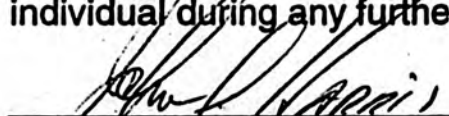
In accordance with AS 39.05.080, the Special Committee on Fisheries has reviewed the qualifications of the following and recommends that the appointment be forwarded to a joint session for consideration:

Alaska Commercial Fisheries Entry Commission (CFEC)

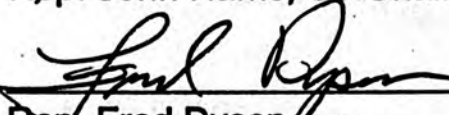
Ms. Marlene Johnson of Juneau

Appointed: 12/16/1996 Reappointed: 12/01/1999 Expires: 07/01/2003

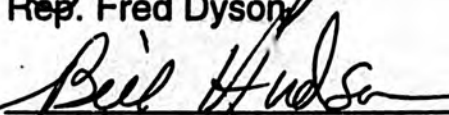
This does not reflect an intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.


Rep. John Harris, Co-Chair

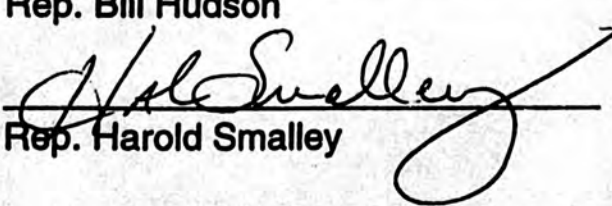

Rep. Carl Morgan, Co-Chair


Rep. Fred Dyson


Rep. Jim Whitaker


Rep. Bill Hudson


Rep. Mary Kapsner


Rep. Harold Smalley



Alaska State Legislature

House of Representatives

State Capitol, Rm 216
Juneau, AK 99801-1182
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Official Business

Office of the Chief Clerk

MEMORANDUM

Date: February 11, 2000

TO: House Special Committee on Fisheries

FROM: Suzi Lowell
Chief Clerk

SUBJECT: Governor's Appointment

Speaker Porter referred the following Governor's appointment to the House Special Committee on Fisheries:

Alaska Commercial Fisheries Entry Commission (CFEC)

Ms. Marlene Johnson of Juneau

Appointed: 12/16/1996 Reappointed: 12/01/1999 Expires: 07/01/2003

This appointment was also referred to the Resources Committee. Attached is the resume and committee report for your use.

Attachments as noted

RESUME

Marlene A. Johnson
9505 Antler Way

Juneau, Alaska 99801

NAME: Marlene A. Greenewald Johnson
POB: Hoonah, Alaska

PERSONAL INFORMATION: Married to Clifford Leo Johnson
Children: 3 sons and 2 daughters (grown)
13 grandchildren

EMPLOYMENT HISTORY:

Dec. 16, 1996 - present:
State of Alaska Commercial Fisheries Entry Commission, Commissioner. .

Jan. 1, 1995 - Dec. 1, 1996:
Manager of Shareholder Services for Huna Totem Corporation and coordinator of Huna Heritage Foundation.

1992 - 1995:
Shareholder Service Coordinator for Huna Totem Corporation, on a part time basis and coordinated the activities of Huna Heritage Foundation on a part time basis also.

1982 - 1992:
Chairman of Sealaska Corporation, full time, an Alaska Native regional corporation formed under Alaska Native Claims Settlement Act of 1971. Primarily a natural resource and investment company.

1969 - 1982:
Was part owner and Vice President of a regional air taxi, acted as the sales and personnel manager; and managed the Hoonah Station as well as the other outpost agents. Employed 50 people.

1961 - 1968:
Accountant for Coastal Glacier Seafood's, Hoonah Alaska, a retail store and seafood processing plant as well as the agent for the regional airline, Alaska Coastal-Ellis Air.

CIVIC AND OTHER ACTIVITIES:

1998 - Appointed by the Governor to serve on the Rural Governance & Empowerment Commission.

1992 - Present:

Board of Trustee of Huna Heritage Foundation, a non-profit whose mission is to preserve the culture of the Huna people.

1992 - Present:

Serves on the University of Alaska School of Fisheries and Ocean Sciences advisory council.

1985 - Present:

Serves on the Southeast Alaska Selective Service Board, is the past Chairman.

1992 - Present:

National Advisory Committee member to the Robert Wood Johnson Foundation on the Healthy Nations Program and The Improving the Health of American Indians.

1994 - Present:

Serves as a member of the Board of Directors for the Juneau Chapter of the American Cancer Society.

1990 - Present:

Serves as a Trustee on the Sealaska Heritage Foundation that provides scholarships and preserves and records southeast Alaska native's culture.

1971 - 1995:

Served on the Board of Directors of Sealaska Corporation, was one of the original incorporators of Sealaska. Represented the Corporation on several other Boards of Directors such as United Bank Alaska, Ocean Beauty Seafoods and AFN.

1972 - 1992:

Served on the Board of Directors of Huna Totem Corporation, the Village Corporation for the people of Hoonah. Primarily a timber and investment company.

1961 - 1980:

Served as a Vice President on the Tlingit and Haida Central Council, Executive Committee, the regional tribal governing body.

1964 - 1985:

Served on Rural Cap Board of Directors; as its President for 8 years, during which time helped form Alaska Federation of Natives and lobbied for the passage of Alaska Native Claims Settlement Act and later ANILCA.

1961 - 1986:

Served as an elected member to the Hoonah School Board, was the President for 15 years.

1967-1985:

Served on Hoonah Indian Association (IRA Council) Board of Directors and assisted them in writing grant applications and implementing programs.

1960-1980:

Served on the Hoonah Tlingit and Haida Community Council, was the secretary/treasure for several years and established the Hoonah Cable TV for them.

OTHER BOARDS AND COMMISSIONS:

Served on a number of other Boards and Commissions for the community and State. Some of the are:

State of Alaska Health Systems Agency
State of Alaska Governor's Interim Commission on Children and Youth
The Governors Review Commission on Native Services
The Governors Task force on Tort Reform
The State Personnel Board
The State Public Employees Retirement Board
The Alaska Labor Relations Agency
The Alaska Railroad Labor Relations Agency
The State Reapportionment Board
The Governor's Transition Team
The Juneau Convention & Visitors Bureau, first Board of Directors
The University of Alaska Presidential Search Committee
The University of Alaska Foundation
The Alaska Committee

PERSONAL INFORMATION

Was born in Hoonah, Alaska to Robert and Elsie Greenewald. Was one of 14 children. Married to Clifford L. Johnson, who is retired from Alascom, a communications company. Lives in Juneau and also retains a residence in Hoonah.

Attended school in Hoonah and Juneau public school systems. Graduated from Juneau High School. Attended vocational training under the BIA in accounting and personnel management. Took training from University of Oregon and Washington State University in management, financial management and personnel. Completed the Administrative Law: Fair Hearing Course and Logic and Opinion Writing at the National Judicial College, at the University of Nevada, Reno.

AWARDS:

1991,1990,1989	nominated as one of Alaska's 10 outstanding women.
1989	Alaska Legislature commendation for public service.
1985-1991	Outstanding Women of America award
1986	AASA Mackinnon Education Excellence & Human Recognition Award for High Standards & Ideals in Education.
1985	American Indian Opportunity - Recognition for Outstanding Service.
1983-1989	Who's Who in America
1987-1995	Who's Who in American Business
1990-1994	Benton's Who's Who International
1993	RWJ Foundation Distinguished Service Award
1995	Alaska Federation of Natives Citizen of the Year Award.

SCOMM

114:4

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Rep. Bill Hudson, Chair
Rep. Fred Dyson
Rep. John Harris
Rep. Carl Morgan
Rep. Jim Whitaker
Rep. Mary Kapsner
Rep. Harold Smalley



State Capitol
Juneau, Alaska
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465-3744
Fax (907) 465-2273

Special Committee on Fisheries

Possible Effects of Federal Subsistence Management On Sport Fishing Opportunity in Southeast and South Central Alaska¹

1) Upper Kenai River Sockeye Salmon: Much of the upper Kenai River and the entire Russian River drainage are located on Federal Public Lands. Cooper Landing, Hope and Ninilchik have been determined to be rural communities under ANILCA. Therefore, it is possible for residents of these communities to request that the Federal Subsistence Board provide them with fishing opportunity for sockeye salmon. If the request were granted, the fishery would occur in the vicinity of the confluence of the Kenai and Russian Rivers. Gear could consist of nets, traps, or rod and reel.

The potential impacts are two-fold. First, a gear conflict will exist because time and area that is now fully utilized by the sport fishery will need to be reserved for subsistence users. Second, for one out of four years, sport fishing is restricted during the season to assure escapement goals are met in the Russian River. On those years, the sport fishery would likely be closed entirely or restricted for additional periods of time to assure that, in addition to the escapement objective, the needs of the subsistence fishery are met as well.

2) Upper Kenai River Coho Salmon: In addition to gear conflicts as noted above, a management concern exists for Kenai River coho salmon regarding the Department's ability to manage for the sustained yield of this stock. This concern has been addressed by restricting both the sport fishery in the entire Kenai River and the commercial fishery in the Central District of Upper Cook Inlet. In order to provide for a priority subsistence fishery in addition to sustained yield escapement goals, both the sport and commercial fisheries would likely be closed entirely or restricted for additional periods of time until such time as this stock has rebuilt. Closures of both the sport and commercial fisheries for coho salmon would likely have occurred in 1997 if a subsistence fishery were in place.

3) Kasilof River Salmon: Upper Kasilof River, including Tustumena Lake, is in the Kenai National Wildlife Refuge near Ninilchik. Salmon stocks in the Kasilof drainage is varied and in some cases not well understood. Early run king salmon and late run sockeye production is augmented by hatcheries. There is sufficient harvestable surplus to accommodate a limited subsistence fishery although a gear conflict will likely exist.

A priority subsistence fishery on late run king salmon would likely result in closures of the sport fishery in the Kasilof River as well as closures on the commercial fisheries in the Central District of Upper Cook Inlet. Since late run king salmon of Kasilof River origin travel together with late run sockeye salmon in the marine waters of Upper Cook Inlet, any restriction placed upon commercial fishers will result in lost fishing opportunity for late run sockeye.

¹ Summarized from material presented to the Alaska Legislature by Kevin Delaney, Director, Sport Fish Division in 1997-8.

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Rep. Bill Hudson, Chair
Rep. Fred Dyson
Rep. John Harris
Rep. Carl Morgan
Rep. Jim Whitaker
Rep. Mary Kapsner
Rep. Harold Smalley



State Capitol
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Special Committee on Fisheries

QUESTIONS about the FEDERAL SUBSISTENCE FISHERIES MANAGEMENT PROGRAM

RESOURCE INFORMATION

1. What kind of stock assessment programs will be developed? For example, since fishery management is completely dependent on in-season run assessment and corresponding management actions, how will the federal program be involved in these activities.
2. What mechanisms will the federal program have in place to ensure coordination with state resource assessment and monitoring programs?
3. Will the federal program be making its own determinations of allowable harvest or will it be relying on the state's determinations?

IN-SEASON MANAGEMENT

1. The federal program outlined in the final rule states the Federal Subsistence Board may review and adopt state openings, closures, or other restrictions that serve to achieve the objectives of federal regulations. What plans does the federal program have for reviewing and implementing state emergency, in-season fisheries management actions?
2. Exactly what type of authority will federal field managers have? Who will these managers be---refuge managers, park superintendents, forest supervisors?
3. The state has a system that involves area biologists throughout the state who manage fisheries in-season and whose authority is limited to time and area restrictions. What management tools will federal managers be authorized to use in season?
4. Many commercial and subsistence fisheries are interrelated. Since the federal program only has a narrow focus on subsistence use in areas under federal jurisdiction, how will the federal program account for the intertwined nature of commercial and subsistence fishing when taking in-season management actions?
5. When there is a very poor return of salmon, such as the poor returns this past year in western Alaska, how will the federal program handle these situations? In such situations, will subsistence fishing in federal waters have a "super-priority" over subsistence fishing in state-managed waters?

MANAGEMENT PLANS

1. The state utilizes both regulatory and non-regulatory management plans for managing fisheries. These have been developed over the years by working with the fishing public and Board of Fisheries, and are reviewed regularly. How will the Federal Subsistence Board and federal managers address the escapement and harvest guidelines in these plans when managing federal fisheries?

JURISDICTIONAL

1. In the final rule, it is extremely difficult to determine where federal public lands actually are. How will the public be educated as to where federal regulations will apply?
2. How does one determine the limit of extended jurisdiction on waters adjacent to the exterior boundaries of federal areas?
3. Will the federal program be providing large-scale maps to educate the public where the boundary lines of federal areas exist, particularly when the boundary line is formed by inland or marine waters?

CUSTOMARY TRADE

1. The lack of a clear definition of customary trade is a concern. How will "significant commercial enterprise" be defined?
2. The federal agencies have not identified the upper limits of customary trade for cash in any area, stating that these should be done on a regional basis. When does the federal program anticipate having regulations in place that set out regional limits on customary trade levels for cash? Are there particular regions of the state or species for which setting cash limits is a priority?
3. Are any special monitoring or enforcement efforts planned regarding customary trade transactions?

ENFORCEMENT

1. What plans has the federal program made for enforcement staffing?
2. Federal regulations provide that penalties for violations are pursuant to the regulations for the land unit where the violation occurred. Can you tell us what the penalty provisions are for the various land units (such as, Fish and Wildlife Service units, National Park Service units, Forest Service units, Bureau of Land Management units)?

Subsistence Law Flow Chart - Implementation under State and Federal Programs

<u>CURRENT STATE LAW: GENERIC</u>	<u>NW Sheep: Current State Law</u>	<u>NW Sheep: Federal Program</u>	<u>Copper R. Salmon: Current State Law</u>	<u>Copper R. Salmon: Federal Program</u> (possible)
Step 1. Board identifies non-subsistence areas; adopts regs. for uses other than subsistence.	State Boards determined that Northwest Alaska area is outside a non-subsistence area (go to Step 2).	Federal Board determined that Northwest area is outside a non-rural area (go to Step 2).	Board determined that Copper Basin-Prince William Sound areas are outside a non-subsistence area (go to Step 2).	Federal Board determines whether Copper Basin-Prince William Sound areas are outside a non-rural area (go to Step 2).
Step 2. Outside non-subsistence areas, Board identifies stocks/pops customarily and traditionally taken or used for subsistence, and the amount necessary for subsistence use.	State Board identified Baird Mtns. and Delong Mtns. sheep as two game populations customarily and traditionally taken and used for subsistence. Under "all Alaskans" policy, the amount necessary for subsistence uses was determined to be less than the surplus of each population-- less than 9 from the Delong and 18-47 from the Baird Mtns. populations.	Federal Board identified sheep regardless of population (in Units 23 and 26A) as a species customarily and traditionally taken and used for subsistence by (specified) rural residents. No determination was made of amount necessary for subsistence for federally qualified rural residents.	State Board identified Prince William Sound-Copper River salmon as a stock customarily and traditionally taken and used for subsistence. The amount necessary for all subsistence users was determined to be 60,000 salmon (Upper Copper River), 650-850 (Chenega area), 600-950 (Tatitlek area).	Federal Board identifies whether salmon in the Copper River District is a stock customarily and traditionally taken and used for subsistence by (specified) rural residents. Federal Board makes no determination of amount of Copper River salmon stocks necessary for subsistence for federally qualified rural residents.
Step 3. When surplus is sufficient for all consumptive uses: Board adopts regs. providing for a reasonable opportunity for subsistence; Board adopts regs. for other uses (subject to preferences among beneficial uses).	State Board determined the surplus of the Baird Mtns. sheep population was insufficient for all consumptive uses, so skipped Step 3. For the Delong population, the surplus was sufficient for some other uses, but not all consumptive uses, so skipped Step 3.	Federal Board made no determination of amount of sheep needed for federal subsistence users. However, by "Special Action" Federal Board determined all of the allowable Baird Mtns. and Delong Mtns. harvest was necessary for qualified federal users and closed federal lands to all except federally qualified rural residents.	State Board found that regulations provided a reasonable opportunity for subsistence uses. However, Board determined that Prince William Sound-Copper River salmon stock was sufficient to provide for some, but not all consumptive uses, so skipped Step 3.	Federal Board makes no determination of amount of salmon necessary for federal subsistence uses. <i>(This makes it uncertain what amount would be available for use under the state program for state subsistence, commercial, personal use, and sport use in the Copper River-Prince William Sound area).</i>
(See next page)	(See next page)	(See next page)	(See next page)	(See next page)

Subsistence Law Flow Chart - Implementation under State and Federal Programs

CURRENT STATE LAW: GENERIC

Step 4. When surplus is sufficient for subsistence but not all other uses:

Board adopts regs. for subsistence;
Board may adopt regs for other uses (subject to preferences among beneficial uses).

Step 5. When surplus is not sufficient for subsistence by all subsistence users:

Board eliminates other uses;
Board adopts regs. distinguishing among subsistence users based on level of dependence and lack of alternatives under Tier II provisions.

NW Sheep: Current State Law

State Board determined the surplus of the Baird Mtns. sheep population was sufficient for subsistence uses, but not all other uses and provided a reasonable opportunity for subsistence uses. For the Delong population the surplus was sufficient for some other uses in addition to subsistence. Board adopted regulations for subsistence as well as non-subsistence and non-resident hunting in the Delongs. It allocated 9 of 20 surplus animals to subsistence and 11 to non-subsistence uses from the Delong sheep population. *(Consequent to federal actions, State closed Baird Mtns. state hunt and reduced Delong Mtns. hunt to ensure conservation of sheep populations).*

Step 5 is not necessary.

NW Sheep: Federal Program

By "Special Action" Federal Board adopted regulations for a federal subsistence registration hunt for the Baird and Delongs for specified rural residents (season dates differed from state's; a designated hunter provision was authorized; season to be closed when 20 animals are taken from each the Baird and Delongs; limited harvest monitoring). *(Federal Board action necessitated State action to ensure conservation of sheep populations).*

Federal Board did not address Sec. 804 ANILCA to determine whether the federal hunt was sufficient to provide for qualified federal users, and did not determine if it was necessary to restrict federal taking of sheep to ensure conservation or continuation of subsistence uses.

Copper R. Salmon: Current State Law

State Board adopted subsistence regulations for fish wheels and dip nets along portions of the Copper River and Prince William Sound. Board adopted personal use regulations for dip nets and sport fishing regulations along portions of the Copper River and commercial fishing regulations for Prince William Sound area. *(To ensure salmon conservation, State Board may need to close or restrict salmon fishing due to federal actions).*

Step 5 is not necessary.

Copper R. Salmon: Federal Program (possible)

Federal Board adopts subsistence regulations for fish wheels and dip nets along portions of the Copper River. Federal Board may adopt regulations for salmon fishing in Copper River by specified rural residents with season dates, gear, and bag limits different from the state; and no harvest quota. The federal program may limit non-federal uses to provide for federal subsistence uses. *(Federal Board action may necessitate State action to ensure conservation of salmon stocks).*

Step 5 is not necessary, since harvest by federal subsistence users is not likely to exceed allowable harvest.

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

DIVISION OF SUBSISTENCE

TONY KNOWLES,
GOVERNOR

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MEMORANDUM

TO: Rob Bosworth, Deputy Commissioner

FROM: Elizabeth Andrews, Leader
State-Federal Subsistence Liaison Team

DATE: February 12, 1999

SUBJECT: Final Federal Rule on Subsistence Management

At your request, I completed a review of the recently published final federal subsistence regulations, *"Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, C, and D, Redefinition to Include Waters Subject to Subsistence Priority"* (64 Federal Register 1276, January 8, 1999).

This attachment is a draft of what I consider to be the highlights of the federal subsistence regulations and the preamble to the regulations published in the above-referenced Federal Register. Several department staff reviewed earlier versions and changes were made based on their questions as well as comments.

Please let me know if you have questions, or if there are changes you would like made.

attachment

HIGHLIGHTS OF FINAL FEDERAL SUBSISTENCE REGULATIONS

"Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, C, and D, Redefinition to Include Waters Subject to Subsistence Priority" (64 Federal Register 1276 (January 8, 1999)).

I. Highlights of the Preamble: The preamble published in the Federal Register is not part of the final regulations; however, it provides insights into the federal agencies' intent. Highlights from the preamble follow:

- This rule continues subsistence harvest activities at a level already occurring under state management. If there is any additional reallocation of fish to subsistence users in future regulations, it will likely be a relatively minor additional percentage of the fish harvested annually for other purposes in Alaska. (64 FR 1278).
- The preamble declines the State's request to clarify where federal regulations would apply, particularly with regard to marine waters; however, it notes that the public may research for itself where the exterior boundaries of federal areas might include marine waters. (p.1279). There is no response to the State's comment requesting clarification of river segments the federal program considers to be "adjacent to" the exterior boundaries of federal areas.
- The Federal Subsistence Board (FSB) will work with ADF&G and the Board of Fisheries to minimize conflicts created by differing regulatory cycles. (64 FR 1280).
- All delegation of authority to field officials will be within specifically defined frameworks established by the FSB, and the FSB will not lose its oversight of actions by agency officials. (64 FR 1281).
- There will be ample opportunities for cooperation with the State under the final rule. (64 FR 1282).
- To the extent possible, the FSB intends to utilize existing state fishery management plans. All those plans must be reviewed to ensure that the fishery allocation determinations in the plans are consistent with the subsistence priority of ANILCA. (64 FR 1282).
- The preamble rejects the State's request that federal regulations adopt state law to the maximum extent possible and only identify regulations that differ from existing state regulations, stating that this would be more confusing to subsistence users -- who would then have to refer to two sets of regulations while hunting or fishing on federal lands. (64 FR 1282).
- The Final Rule does not preclude adoption of other management scenarios (i.e., federal agencies determine the number of fish necessary to meet subsistence needs,

while the State manages to meet these needs). The rule gives the FSB broad authority to cooperate with the State and other organizations. (64 FR 1283).

- The subsistence priority does not mean that subsistence harvest should be free from all regulation. Regulations such as permits, seasons and bag limits are a necessary and reasonable restriction of subsistence harvest. (64 FR 1284).
- Area M is not within the area of federal jurisdiction. However, the FSB will work closely with the state, Native organizations, fishing groups and others to assure that necessary biological and harvest information is obtained. (64 FR 1284).
- The Secretaries have signed a Finding of No Significant Impact under NEPA. An Environmental Impact Statement will not be prepared. (64 FR 1285).

II. Highlights of the Final Regulations:

Effective Date: The regulations are final but not effective until Oct. 1, 1999. If, before Oct. 1, 1999, the Legislature passes a bill or resolution to amend the state constitution to enable implementation of state laws consistent with ANILCA's subsistence priority, the regulations will be held in abeyance until December 1, 2000.

Applicability and Scope (§ 3): Federal subsistence jurisdiction is asserted: (1) on all public lands where subsistence is allowed, including non-navigable waters on those lands; (2) on all waters within the exterior boundaries of 34 identified federal areas (see attached list), including waters passing through inholdings within these areas; and (3) on inland waters adjacent to the exterior boundaries of the 34 identified areas. Federal reserved water rights therefore are claimed in all inland waters within or adjacent to the identified federal areas. For BLM lands, water rights are claimed wherever the BLM lands were set aside for a specific purpose (e.g., Steese and White Mountains Conservation Areas), but not on other BLM lands. Reserved water rights are also claimed in all components of the wild and scenic river system located outside the boundaries of National Parks, National Preserves or National Wildlife Refuges.

Note that jurisdiction differs over lands and waters on inholdings within the exterior boundaries of the 34 areas. Jurisdiction is asserted over all waters on inholdings, but not on the uplands. Also note that selected but not conveyed lands are not inholdings, and federal jurisdiction is asserted on these lands if within the boundaries of units of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Forest Monument, National Recreation or Conservation Areas, or new National forest or forest addition.

Marine Waters: Federal subsistence jurisdiction is asserted over all marine waters within the exterior boundaries of the areas listed in __.3 (see attached list), except for the marine waters of the Tongass and Chugach National Forests, which are excluded. Federal jurisdiction over marine waters is presumably pursuant to claimed ownership of the submerged lands by a pre-statehood withdrawal. The regulations do not specify

where marine waters exist within the exterior boundaries of the identified units. The federal program has not published maps highlighting this information.

Definitions (§ .4):

"*Public lands*" now includes lands selected but not conveyed to Native Corporations under ANCSA and the State under the Alaska Statehood Act, *as long as* the land is within the boundaries of a CSU, National Recreation or Conservation Area, or new national forest or forest addition. Title VIII will be applied to these lands.

"*Resident*": New requirement that one's primary, permanent home must be in Alaska for the previous 12 months.

"*Regulatory Year*": means March 1 through the last day of February for fish and shellfish, and remains July 1 through June 30 for wildlife.

Licenses, permits, harvest tickets, tags, reports (§ .6): As under the former regulations, licenses are not required to take fish or shellfish unless specifically required by federal regulations. For wildlife, a valid Alaska resident hunting and trapping license continues to be required. State permits, harvest tickets or tags are required unless superseded by federal regulations.

Penalties (§ .8): Penalties are not specified in the subsistence regulations. Penalties for violating federal subsistence regulations continue to be determined by the regulations applicable to the public land where the violation occurred.

Federal Subsistence Board (§ .10):

- Final regulations do not exercise or delegate authority to restrict activities off public lands, but assert that the Secretaries retain this authority. (§__ .10(a))
- FSB has authority to recommend to the Secretaries additional lands or waters to which title VIII might be extended, and to recommend uses of the Secretaries' asserted "extra-territorial authority." (§__ .10(d)(4)(xvii, xviii))
- FSB may delegate to field officials the authority to set harvest limits, define harvest areas, and open or close specific seasons within frameworks established by the FSB. (§__ .10(d)(6))

Relationship to State procedures and regulations (§ .14): As under the previous federal regulations, state regulations apply to public lands and are adopted to the extent not inconsistent with or superseded by federal regulations. The FSB may review and adopt state openings, closures or restrictions that serve to achieve the objectives of federal regulations.

Regulation adoption process (§ .18): Deletes the requirement that the FSB accept proposals to change subpart D regulations (seasons, harvest limits, methods and means)

every year and allows the FSB to establish a rotating schedule for accepting proposals on subpart D regulations over a period of years.

Closures and other special actions (§ .19): Adds authority for FSB through "special action" to direct openings (in addition to closures) for subsistence or non-subsistence takings of fish and wildlife.

Customary and traditional use determinations (§ .24): Fish determinations generally are consistent with the state determinations as of 1990, however, there are some notable exceptions: (1) there is a positive federal determination for salmon in all waters of the Copper River for rural residents of the Prince William Sound (management) Area, whereas the state determination only includes the Glennallen subdistrict and an area encompassing Batzulnetas; (2) there is a positive federal determination for "fish other than salmon, Dolly Varden, trout, char, grayling, and burbot" in the Cook Inlet Area for rural residents of the Cook Inlet area, whereas the state determinations include salmon, smelt, bottomfish, halibut, and herring for areas outside the non-subsistence area and Dolly Varden in freshwater in the Port Graham subdistrict; (3) there is a positive federal determination for trout, smelt, and eulachon in the Southeastern Area, whereas these are generally not included in the state determinations for this area; and (4) there is a positive federal determination for rainbow trout for residents of some communities in the Kuskokwim Area.

Subsistence taking of fish and shellfish (§ .26 and § .27):

- As under the previous rule, finfish and shellfish may be taken at any time by any method, unless restricted by the federal regulations. (§§ .26(a)(2), .27(b)).
- Includes halibut in the federal program, unlike previous regulations (§ .26(a)).
- State and federal harvest limits are not cumulative; you may only take the harvest limit under one set of regulations.
- Rod and reel continues to be included in the list of authorized gear (§ .26(c)(1)).
- Rod and reel harvest limit regulations are unchanged: if a subsistence fishing permit is required, the harvest limit is indicated on the permit. If a permit is not required, the harvest limit for rod and reel is the same as under the state's subsistence regulations for that area. If the state does not have a specific subsistence season for that species, the limit is the same as under state sport fishing regulations.
- Federal regulations differ from state regulations in that salmon fisheries on Kodiak Island are extended to 24 hours per day, and king crab harvests around Kodiak Island are different.
- Finfish regulations for Prince William Sound erroneously include provisions for marine fisheries, while shellfish regulations acknowledge that no marine waters in the PWS area are under federal subsistence jurisdiction. (See §§ .26(i)(11), .27(j)(2)).

Customary trade for cash (§ .26(c)(11)-(13)): customary trade of fish is authorized without prior approval so long as it is not a "significant commercial enterprise." There is no definition of "significant commercial enterprise," nor are quantity or dollar limits placed on allowable levels of customary trade. Individuals,

businesses or organizations may not purchase or receive subsistence-taken fish for use or resale in a significant commercial enterprise. Buying or selling subsistence-taken shellfish is prohibited. (§__27(c)(3)).

Designated harvest permits (§ 26(d) and § 27(d)): Retains rule that any federally qualified subsistence user may designate another qualified user to take fish or shellfish on his behalf. The designated fisher must obtain a designated harvest permit prior to harvesting and must return a harvest report. May fish for any number of beneficiaries, but have no more than 2 harvest limits in possession at any one time.

ATTACHMENT: EXCERPT OF SECTION __.3, APPLICABILITY AND SCOPE

(b) The regulations contained in this part apply on all public lands including all non-navigable waters located on these lands, on all navigable and non-navigable water within the exterior boundaries of the following areas, and on inland waters adjacent to the exterior boundaries of the following areas:

- (1) Alaska Maritime National Wildlife Refuge;
- (2) Alaska Peninsula National Wildlife Refuge;
- (3) Aniakchak National Monument and Preserve;
- (4) Arctic National Wildlife Refuge;
- (5) Becharof National Wildlife Refuge;
- (6) Bering Land Bridge National Preserve;
- (7) Cape Krusenstern National Monument;
- (8) Chugach National Forest, excluding marine waters;
- (9) Denali National Preserve and the 1980 additions to Denali National Park;
- (10) Gates of the Arctic National Park and Preserve;
- (11) Glacier Bay National Preserve;
- (12) Innoko National Wildlife Refuge;
- (13) Izembek National Wildlife Refuge;
- (14) Katmai National Preserve;
- (15) Kanuti National Wildlife Refuge;
- (16) Kenai National Wildlife Refuge;
- (17) Kobuk Valley National Park;
- (18) Kodiak National Wildlife Refuge;
- (19) Koyukuk National Wildlife Refuge;
- (20) Lake Clark National Park and Preserve;
- (21) National Petroleum Reserve in Alaska;
- (22) Noatak National Preserve;
- (23) Nowitna National Wildlife Refuge;
- (24) Selawik National Wildlife Refuge;
- (25) Steese National Conservation Area;
- (26) Tetlin National Wildlife Refuge;
- (27) Togiak National Wildlife Refuge;
- (28) Tongass National Forest, including Admiralty Island National Monument and Misty Fjords National Monument, and excluding marine waters;
- (29) White Mountain National Recreation Area;
- (30) Wrangell-St. Elias National Park and Preserve;
- (31) Yukon-Charley Rivers National Preserve;
- (32) Yukon Delta National Wildlife Refuge;
- (33) Yukon Flats National Wildlife Refuge;
- (34) All components of the Wild and Scenic River System located outside the boundaries of National Parks, National Preserves or National Wildlife Refuges, including segments of the Alagnak River, Beaver Creek, Birch Creek, Delta River, Fortymile River, Gulkana River, and Unalakleet River.

UPDATE ON FEDERAL SUBSISTENCE FISHERIES IMPLEMENTATION

Presentation to the House of Representatives

Special Committee on Fisheries

by

Tom Boyd, Assistant Regional Director, Subsistence Management

U.S. Fish and Wildlife Service

A. Implementation Update

- Published January 8, but not effective until October 1.
- Phased implementation to allow opportunity for State action and also to allow Federal agencies to get ready.
- Authorizes \$1 million to the Federal agencies on June 1 and \$10 million on September 30, if the State doesn't act. (The State can receive this money if they do act.)
- Jurisdiction for fisheries applies only to "FEDERAL" waters.
- Secretary Babbitt has stated that he will strongly recommend that the President veto any action by Congress to further suspend implementation.

B. Overview of Final Rule

- Based on existing State subsistence fisheries regulations to reduce disruption of existing fisheries.
- Major aspects of the Final Rule
 - Extends jurisdiction for fisheries to "Federal waters;" jurisdiction over inland waters within DOI Conservation System Units and National Forests.
 - Extends jurisdiction to selected, but not yet conveyed lands, within the boundaries of CSU's, recreation and conservation areas, and forest additions.
 - Acknowledges authority of Secretaries to extend jurisdiction off of Federal lands and waters to protect subsistence uses within Federal jurisdiction.
 - Board may delegate in-season actions to field managers.
 - As a starting point adoption of current State subsistence fishing regulations pertaining to seasons, harvest limits, methods and means, etc.

C. Next Steps

- Design an organizational structure to implement subsistence fisheries management.
- Recruit and hire additional staff to work with Regional Teams and the Regional Councils on fisheries issues, and to implement on-the-ground management.
- Work with existing fisheries management authorities, State (BOF and ADF&G), North Pacific Fisheries Management Council, and National Marine Fisheries Service, to develop a cooperative management strategy.
- Evaluate unresolved issues:
 - customary trade options (region-by-region);
 - a regulatory process to receive, review, and deliberate proposals for changes to the fisheries regulations.
 - ensure coordinated management throughout large watersheds where there are Regional overlaps.
- Identify and implement cooperative management opportunities for tribal and Native organizations.



NEWS

U.S. DEPARTMENT OF THE INTERIOR

OFFICE OF THE SECRETARY

FOR IMMEDIATE RELEASE
January 5, 1999

Stephanie Hanna (O) 202/208-6416

Subsistence Fishing Regulations for Alaska Published

*Final regs allow time for Alaska Legislature to resolve
subsistence impasse and comply with ANILCA Title VIII*

Final regulations signed by the Secretary of the Interior and the Department of Agriculture's Regional Forester for Alaska, designed to expand federal subsistence fisheries management in Alaska, will soon be published in the Federal Register, it was announced today by Interior Secretary Bruce Babbitt.

"We continue to hope that the Alaska Legislature will do the right thing and enact the necessary state measures to avoid having the federal government step in and assume management of subsistence fisheries," Babbitt said. "These final regulations are the only course of action left for us if the state legislature fails to take measures that would bring state subsistence management into full compliance under federal law."

The final regulations are not scheduled to take effect until October 1, 1999, in order to allow the Alaska Legislature additional time to resolve the subsistence impasse and comply with the requirements of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). If the Alaska Legislature takes action to put a constitutional amendment for the rural subsistence priority on the general election ballot in 2000, such a move will postpone expansion of federal subsistence fisheries management.

In 1995, the federal courts ordered that the Secretaries of the Interior and Agriculture must assume responsibility for managing subsistence fisheries in all navigable waters on and adjacent to federal conservation units in Alaska. Through moratorium language in the annual Interior Appropriation Bill from FY 1996 until FY 1998, Congress prohibited publishing a final rule to implement this decision.

The final regulations announced today will establish a framework for expanding federal subsistence fisheries management on close to 60 percent of Alaska's rivers and lakes. It will cover subsistence fishing harvests on inland rivers and lakes on conservation lands and on national forests managed by the U.S. Departments of the Interior and Agriculture. These federal lands include national wildlife refuges; national parks, monuments, or preserves; national forests; national conservation and recreation areas; national wild and scenic river corridors; and the National Petroleum Reserve-Alaska.

- more -

The regulations identify the federal waters involved, update 'customary and traditional use' determinations, define subsistence fishing methods and means, and establish annual subsistence fishing seasons and harvest limits.

The Federal Subsistence Board has been managing subsistence hunting, trapping, and limited fishing on federal lands since 1990. However, in 1995, the *Katie John* decision held that Title VIII of ANILCA gives the Board jurisdiction over fisheries on most waters on federal lands. Congress postponed the federal expansion for several years, giving the state more time to take action to allow a rural subsistence priority. Recent Congressional action authorizes the publication of the regulations, but again delays implementation.

Fiscal Year 1999 funds totaling \$11 million have been appropriated for subsistence fisheries management. These funds would go to the state if the Alaska Legislature takes positive action on the rural subsistence priority. If the Alaska Legislature has not acted by June 1, 1999, \$1 million of the appropriation will go to the federal agencies to begin planning for the federal subsistence fisheries management. The remaining \$10 million will go to the federal agencies on September 30, 1999, to carry out their new responsibilities, if the Alaska Legislature has not acted by that time.

- DOI -

Note to Editors: *Additional information about the federal subsistence management program, can be found on the Internet at:*

<http://www.r7.fws.gov/asm/home.html>



Fish & Wildlife Service
Bureau of Indian Affairs
Bureau of Land Management
National Park Service



Forest Service

Federal Subsistence Fisheries Management in Alaska



SUMMARY OF FINAL REGULATIONS

This final rule (36 CFR Part 242 and 50 CFR Part 100) expands federal management of subsistence fisheries on Alaskan rivers and lakes within and alongside federal conservation lands. The Secretaries of the Interior and Agriculture have proceeded with this expanded jurisdiction as directed by the federal court in the *Katie John* case.

Due to a continuing Congressional moratorium, these regulations do not go into effect until October, 1999. This allows the Alaska Legislature additional time to resolve the subsistence impasse and to meet the requirements of the rural subsistence priority in Title VIII of the *Alaska National Interest Lands Conservation Act* (or ANILCA).

Little change in existing subsistence fishing practices in rural areas is initially anticipated under these regulations, because they largely parallel existing state regulations. The Alaska Department of Fish and Game regulations will continue to apply to all commercial, personal use, and subsistence fishing on non-federal waters, and all non-subsistence fishing on federal waters.

Federal management of subsistence trapping, hunting, and limited fishing on federal public lands has been in place since July 1, 1990. The Secretaries are publishing these expanded subsistence fishing regulations separately from federal subsistence trapping and hunting regulations. The Federal Subsistence Board administers the federal subsistence management program, with the advice and insight of ten federal subsistence regional advisory councils. Members of the Federal Subsistence Board include the Secretary of the Interior's representative and Alaskan directors of five federal agencies: U.S. Fish & Wildlife Service, U.S. Bureau of Land Management, U.S. Bureau of Indian Affairs, U.S. Forest Service, and National Park Service.

*The text of the regulations is
available on our web site on the
Internet:*

<http://www.r7.fws.gov/asm/home.html>

or may be obtained by contacting:

*Thomas H. Boyd
Assistant Regional Director
Office of Federal Subsistence
Management
(800) 478-1456 or
(907) 786-3888*

*Hearing- or speech-impaired can call
through the federal relay service
(800) 877-8339 (tty/ascii/spanish).
Email: asm@fws.gov.*

The major sections of these regulations:

- Identify the waters subject to federal subsistence management jurisdiction.
- Extend jurisdiction for subsistence wildlife management to selected but not conveyed lands.
- Acknowledge existing authorities available to the Secretaries of the Interior and Agriculture to intervene off of federal lands and waters to protect subsistence activities on federal lands and waters.
- Provide for the non-commercial exchange of subsistence foods through customary trade.
- Establish customary and traditional use determinations for fisheries.
- Establish federal subsistence fishing seasons, harvest limits, and methods and means restrictions.



Fish & Wildlife Service
Bureau of Indian Affairs
Bureau of Land Management
National Park Service

Federal Subsistence Fisheries Management



Forest Service

Questions and Answers

What do these regulations do?

These regulations expand federal management of subsistence fisheries in Alaska, effective October 1, 1999. When implemented, federal subsistence fisheries management will extend to approximately 60 percent of Alaska's rivers and lakes.

The regulations identify the federal waters involved and acknowledge existing authorities of the Secretaries of the Interior and Agriculture to intervene off of federal lands and waters to protect subsistence harvests on federal lands and waters. The regulations also determine the customary and traditional uses for fisheries and establish federal subsistence seasons, harvest limits, and methods and means restrictions.

Why is the government publishing these regulations?

The Secretaries are taking this action to comply with the 1995 federal court decision in the *Katie John* case. The court found that "the definition of public lands includes those navigable waters in which the United States has an interest by virtue of the reserved water rights doctrine" Alaska v. Babbitt, 72 F.3d at 703-704. As a result, the rural subsistence priority established in Title VIII of the *Alaska National Interest Lands Conservation Act* (ANILCA) applies to certain federal waters.

When will the regulations take effect?

The regulations will take effect on October 1, 1999, and will manage the spring 2000 fishing season. However, the new regulations will not be implemented if the Alaska Legislature acts to comply with the rural subsistence priority in Title VIII of ANILCA.

Why don't the regulations take effect immediately?

Congress recently passed legislation providing for a "phased-in federal takeover". This action permits publication of the subsistence fisheries regulations, but postpones implementation until October 1, 1999. The delay is intended to allow the Alaska Legislature additional time to resolve the impasse. It also provides time for the federal agencies to prepare for effective fisheries management if it is necessary to proceed.

For the first time, Congress also appropriated funds for subsistence fisheries management, in the amount of \$11 million for FY 1999. If the Alaska Legislature takes appropriate action, these funds will be forwarded to the State of Alaska. If not, the funds go to the federal agencies to implement the federal subsistence fisheries management effort.

Is the federal takeover inevitable?

No. Secretaries Babbitt and Glickman have repeatedly said that the best solution is for Alaska to return to compliance with the rural subsistence priority and to resume unified subsistence management across federal, state, and private lands.

Senator Ted Stevens said, "It is our hope that Alaskans will join together to retain fish and game management. If they do, this amendment will allow the State of Alaska to use as much as \$11 million to help defray the cost of management, rather than the federal government gaining the funds."

Will the federal subsistence fishing regulations mean dramatic changes in existing fisheries?

Not at the outset. The final federal subsistence fisheries regulations are very similar to existing State of Alaska subsistence fishing regulations. Few major changes in subsistence harvests are anticipated initially.

What waters will be affected?

The regulations apply on inland waters within the exterior boundaries of national wildlife refuges; national parks, monuments and preserves; national conservation and recreation areas; national wild and scenic river corridors; the National Petroleum Reserve in Alaska, and the Chugach and Tongass National Forests. Jurisdiction extends to fresh waters flowing through state, private, and Alaska Native corporation lands (but not the Metlakatla Reservation), within the boundaries of these federal land units.

What about non-subsistence fishing and fishing that takes place outside of federal waters?

The State of Alaska will continue to manage commercial, sport and personal use fisheries on all Alaskan waters. Subsistence activities on nonfederal lands and waters will continue under state jurisdiction. The new regulations focus on protecting the subsistence harvests of rural Alaskans on federal waters.

What led up to the publication of these regulations?

The State of Alaska managed fish and wildlife in compliance with Title VIII until 1989, when the Alaska Supreme Court in the *McDowell* case determined that the rural subsistence priority violated the Alaska Constitution. In 1990, the Federal Subsistence Board began managing subsistence wildlife harvests — but not fisheries — on more than 200 million acres of federal lands to comply with Title VIII and the rural subsistence priority.

In 1995, the federal court ordered the Secretaries of Interior and Agriculture to also assume responsibility for managing subsistence fisheries on all inland waters on and adjacent to Alaska federal conservation units, roughly 60 percent of Alaska's inland waterways. The Secretaries of Interior and Agriculture released proposed federal subsistence fishing regulations in December of 1997. Thirty-one public hearings on the proposed regulations from January through March, 1998, provided input and public comments on the regulations.

For more information, contact:

Federal Office of Subsistence Management

1011 East Tudor Road, Anchorage, AK 99503 -- (907) 786-3888 or (800) 478-1456

Hearing- or speech-impaired can call through the federal relay service, (800) 877-8339 (tty/ascii/spanish)

Email: asm@fws.gov or on the Internet: <http://www.r7.fws.gov/asm/home.html>

federal register

Friday
January 8, 1999

Part II

Department of Agriculture

Forest Service

Department of the Interior

Fish and Wildlife Service

36 CFR Part 242

50 CFR Part 100

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

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

RIN 1018-AD68

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

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

ACTION: Final rule.

SUMMARY: This rule amends the scope and applicability of the Federal Subsistence Management Program in Alaska to include subsistence activities occurring on inland navigable waters in which the United States has a reserved water right and to identify specific Federal land units where reserved water rights exist. The amendments also extend the Federal Subsistence Board's management to all Federal lands selected under the Alaska Native Claims Settlement Act and the Alaska Statehood Act and situated within the boundaries of a Conservation System Unit, National Recreation Area, National Conservation Area, or any new national forest or forest addition, until conveyed to the State of Alaska or an Alaska Native Corporation, as required by the Alaska National Interest Lands Conservation Act (ANILCA). In addition, the amendments specify that the Secretaries are retaining the authority to determine when hunting, fishing or trapping activities taking place in Alaska off the public lands interfere with the subsistence priority on the public lands to such an extent as to result in a failure to provide the subsistence priority and to take action to restrict or eliminate the interference. The Departments also provide the Federal Subsistence Board with authority to investigate and make recommendations to the Secretaries regarding the possible existence of additional Federal reservations, Federal reserved water rights or other Federal interests, including those which attach to lands in which the United States has less than fee ownership. The regulatory amendments conform the Federal subsistence management regulations to the court decree issued in *State of Alaska v. Babbitt*, 72 F.3d 698 (9th Cir. 1995) *cert denied* 517 U.S. 1187 (1996).

The rule includes updated Customary and Traditional Use Determinations and annual seasons and harvest limits for fisheries. This rulemaking also responds to the Petitions for Rulemaking submitted by the Northwest Arctic Regional Council *al.* on April 12, 1994, and the Mentasta Village Council, *al.* on July 15, 1993.

DATES: Sections _____.1 through _____.24 are effective October 1, 1999. Sections _____.26 and _____.27 are effective October 1, 1999 through February 29, 2001.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Thomas H. Boyd, (907) 786-3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 271-2540.

SUPPLEMENTARY INFORMATION:**Background**

The Federal Subsistence Board assumed subsistence management responsibility for public lands in Alaska in 1990, after the Alaska Supreme Court ruled in *McDowell v. State of Alaska*, 785 P.2d 1 (Alaska, 1989), *reh'g denied* (Alaska 1990), that the rural preference contained in the State's subsistence statute violated the Alaska Constitution. This ruling put the State's subsistence program out of compliance with Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) and resulted in the Secretaries assuming subsistence management on the public lands in Alaska. The "Temporary Subsistence Management Regulations for Public Lands in Alaska, Final Temporary Rule" was published in the *Federal Register* (55 FR 27114-27170) on June 29, 1990. The "Subsistence Management Regulations for Public Lands in Alaska; Final Rule" was published in the *Federal Register* (57 FR 22940-22964) on May 29, 1992.

In both cases, the rule "generally excludes navigable waters" from Federal subsistence management, 55 FR 27114, 27115 (1990); 57 FR 22940, 22942 (1992). In a lawsuit consolidated with *Alaska v. Babbitt*, plaintiff Katie John challenged these rules, arguing that navigable waters are properly included within the definition of "public lands" set out in ANILCA. At oral argument before the United States District Court for Alaska, the United States took the position that Federal reserved water rights which encompass the subsistence purpose are public lands for purposes of ANILCA. The United States Court of Appeals for the Ninth Circuit

subsequently held: "[T]he definition of public lands includes those navigable waters in which the United States has an interest by virtue of the reserved water rights doctrine." *Alaska v. Babbitt*, 72 F.3d at 703-704. In the course of its decision, the Ninth Circuit also directed: "[T]he federal agencies that administer the subsistence priority are responsible for identifying those waters." *Id.* at 704.

These amendments conform the Federal subsistence management regulations to the Ninth Circuit's ruling in *Alaska v. Babbitt*. As the Ninth Circuit directed, this document identifies Federal land units in which reserved water rights exist. These are "public lands" under the Ninth Circuit's decision in *Alaska v. Babbitt* and thus are subject to the Federal subsistence priority in Title VIII of ANILCA. The amendments also provide the Federal Subsistence Board with clear authority to administer the subsistence priority in these waters.

This Final Rule is not effective until October 1, 1999, in accordance with language contained in the Omnibus Appropriations Bill for FY99, which prohibits the implementation and enforcement of regulations related to expanded jurisdiction for subsistence management until October 1, but does allow publication of this rule. However, should the Secretary of the Interior certify before October 1, 1999, that the Alaska State Legislature has passed a bill or resolution to amend the Constitution of the State of Alaska, that, if approved by the electorate, would enable the implementation of State laws consistent with and which provide for the definition, preference, and participation described in Sections 803, 804, and 805 of ANILCA, then these regulations will be held in abeyance until December 1, 2000, and a timely document will be published in the *Federal Register* delaying the effective date.

On July 15, 1993, the Mentasta Village Council, Native Village of Quinhagak, Native Village of Goodnews Bay, Alaska Federation of Natives, Alaska Inter-tribal Council, RurAL CAP, Katie John, Doris Charles, Louie Smith and Annie Cleveland filed a "Petition for Rulemaking by the Secretaries of Interior and Agriculture that Navigable Waters and Federal Reserved Waters are 'Public Lands' Subject to Title VIII of ANILCA's Subsistence Priority." On April 12, 1994, the Northwest Arctic Regional Council, Stevens Village Council, Kawerak, Inc., Copper River Native Association, Alaska Federation of Natives, Alaska Inter-tribal Council, RurAL CAP and Dinyee Corporation

filed a "Petition for Rule-Making by the Secretaries of Interior and Agriculture that Selected But Not Conveyed Lands Are To Be Treated as Public Lands for the Purposes of the Subsistence Priority in Title VIII of ANILCA and that Uses on Non-Public Lands in Alaska May Be Restricted to Protect Subsistence Uses on Public Lands in Alaska." A Request for Comments on this Petition was published at 60 FR 6466 (1995). This rule also responds to both petitions for rulemaking.

Federal Subsistence Regional Advisory Councils

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

The Regional Councils have had a substantial role in reviewing the proposed rule and making recommendations for the final rule.

Public Review and Comment

The Secretaries published an Advance Notice of Proposed Rulemaking (ANPR) (61 FR 15014) on April 4, 1996, and during May and June held eleven public hearings around Alaska to solicit comments on the Advance Notice. On December 17, 1997, the Secretaries published a Proposed Rule (62 FR 66216) and held 31 public hearings around the State, as well as soliciting input from the ten Federal Regional Subsistence Advisory Councils. The Proposed Rule was also available for review through the Office of Subsistence Management's home page at <http://www.r7.fws.gov/asm/home.html>.

In addition to the oral testimony received at the public hearings and Regional Council meetings, we received an additional 74 written comments. The comments received both in writing and during the hearings provided the agencies with a sense of how the public viewed the general jurisdictional concepts and practical implementation aspects of the rule.

Analysis of Federal Subsistence Regional Advisory Councils' Comments

The ten Regional Councils were given an opportunity to comment on a draft of the Proposed Rule during their regular meetings in the fall of 1997, and then

again on the Proposed Rule itself during their winter 1998 meetings. This section summarizes the comments received from the Councils and our analysis of those comments.

Southeast Regional Council—Some Council members expressed a need to include under Federal jurisdiction all lands and waters originally included in the proclamation establishing the Tongass National Forest, including the marine waters. This issue is the subject of pending litigation, *Peratrovich v. United States*, A92-734 (D-AK); therefore, the Final Rule will not be modified to include the marine waters within the original proclamation area.

Southcentral Regional Council—The Regional Council asked a number of questions but had no recommendations.

Kodiak/Aleutians Regional Council—The Regional Council expressed concern regarding the loss over time of subsistence marine resources. It did not make any formal recommendation on the Proposed Rule. The regulations clearly identify which marine waters are under Federal jurisdiction by referring to the original Federal Register publications delineating boundaries of the listed Federal land units. The issue of expanding the Federal jurisdiction to other marine waters outside the listed Federal land units is beyond the scope of this rule.

Bristol Bay Regional Council—The Council expressed concern that customary and traditional use determination findings for some communities need to be revised and that wording on the take of rainbow trout and steelhead should be revised. Additional concern was expressed about how to deal with the definition of customary trade and implementing regulations. Changes to the customary and traditional use determinations and taking regulations on rainbow trout would be more appropriately handled as proposals. This suggestion should be submitted to the Federal Subsistence Board for consideration as a proposal during a standard regulatory cycle for fish proposals. We did modify the customary trade regulations slightly to clarify them, but have not included a definition of "significant commercial enterprise" or placed any dollar limits on an allowable level of customary trade. The regulations in this rule clearly limit the sale of subsistence-caught fish to customary and traditional practices. We agree with the commentors who said that specific decisions on customary trade should be made at the local level. We anticipate working closely with Regional Advisory Councils to identify where specific limits should be implemented. These

limits may vary in different regions of the State.

Yukon-Kuskokwim Delta Regional Council—The Regional Council suggested more publicity clarifying the program, particularly in smaller, coastal villages and a publicity effort to let people know what is going to happen before it actually does. After publication, a condensed easy-to-read booklet with the regulations will be prepared and distributed to the public. The field offices of the Federal agencies that are a part of the Federal Subsistence Board will make this regulation, and information about the Federal program, available to villages within their areas.

Western Interior Regional Council—The Council expressed concern regarding the regulations addressing customary trade and the necessity to provide for ongoing practices; also the necessity to prevent wanton waste. We have added language prohibiting wanton waste of subsistence-taken fish and shellfish. We did modify the customary trade regulations slightly to clarify them, but have not included a definition of "significant commercial enterprise" or placed any dollar limits on an allowable level of customary trade. The regulations in this rule clearly limit the sale of subsistence-caught fish to customary and traditional practices. We agree with the commentors who said that specific decisions on customary trade should be made at the local level. We anticipate working closely with Regional Advisory Councils to identify where specific limits should be implemented. These limits may vary in different regions of the State.

Seward Peninsula Regional Council—The Regional Council asked a number of questions but had no recommendations.

Northwest Arctic Regional Council—The Regional Council had one recommendation: to eliminate a subsistence fishing closure where no similar sport closure currently exists. Recommendations for specific closures would be more appropriately handled as proposals. This suggestion should be submitted to the Federal Subsistence Board for consideration as a proposal during a standard regulatory cycle for fish proposals.

Eastern Interior Regional Council—The Council expressed concern regarding restrictions on customary trade. They asked that sections be rewritten to allow subsistence harvest by commercial license holders, and also recommended that agreements be made for local harvest data collection, and recommended that the "two basket" restriction for fishwheels not apply to the Yukon, Kuskokwim, Tanana, and

Copper Rivers. The existing regulations already authorize the Board to enter into cooperative agreements for harvest data collection. The recommendation related to the "two basket" restriction for fishwheels would be more appropriately handled as a proposal. This suggestion should be submitted to the Federal Subsistence Board for consideration as a proposal during a standard regulatory cycle for fish proposals. We did modify the customary trade regulations slightly to clarify them, but have not included a definition of "significant commercial enterprise" or placed any dollar limits on an allowable level of customary trade. The regulations in this rule clearly limit the sale of subsistence-caught fish to customary and traditional practices. We agree with the commentors who said that specific decisions on customary trade should be made at the local level. We anticipate working closely with Regional Advisory Councils to identify where specific limits should be implemented. These limits may vary in different regions of the State.

North Slope Regional Council—The Regional Council comments centered around not creating any more restrictions on the Inupiaq way of life. The Council recommended that the C & T restriction for Unit 26(B) be stated more clearly as "except for those living in Prudhoe Bay and other oil industry complexes." Changes to the customary and traditional use determinations would be more appropriately handled as proposals. This suggestion should be submitted to the Federal Subsistence Board for consideration as a proposal during a standard regulatory cycle for fish proposals.

Analysis of Public Comments

General Comments

Several commentors questioned the adequacy of the Environmental Assessment, and suggested that it significantly understated the economic impacts of the Proposed Rule, particularly because of "customary trade" provisions of the rule. One commentor said that there should be an economic cost-benefit analysis done, and another said that the Proposed Rule was in violation of the Regulatory Flexibility Act, because no regulatory flexibility analysis was performed. The Final Rule is not expected to have a significant impact on either the physical environment or the socio-economic activities generated by Alaska's fisheries. For the most part, this rule continues pre-existing subsistence harvest activities at a level already occurring under State management. If

there is any additional reallocation of fish or wildlife resources to subsistence users adopted in future annual regulations, it will likely be a relatively minor additional percentage of the fish harvested annually for other purposes in Alaska. ANILCA Title VIII does not require a cost-benefit analysis, nor does NEPA require such an analysis in the Environmental Assessment. Federal subsistence management under Title VIII of ANILCA will be designed to protect existing customary and traditional subsistence uses, including ongoing customary trade which may not be sanctioned by existing State regulations. It is not the intent of these regulations to encourage new subsistence fisheries. Because of this, the Departments certify that the proposed action represented by this final rulemaking will not have a significant effect on small entities and a flexibility analysis under the Regulatory Flexibility Act, Public Law 96-354, is not required.

One commentor said that the Proposed Rule violated Executive Order 12612, stating that it requires Federal agencies to examine the authority supporting any Federal action to limit the policy-making discretion of the states. The Final Rule clearly complies with Executive Order 12612, since it is implementing the U.S. Ninth Circuit Court of Appeals decision in *State of Alaska v. Babbitt*, 72 F.3d 698 (9th Cir. 1995) *cert denied* 517 U.S. 1187 (1996).

One commentor said that the Proposed Rule violated Executive Order 12866, stating that it requires Federal agencies to seek special involvement of those expected to be burdened by any regulation, specifically State officials, and stated that such involvement has not occurred. This rule does not impose any new requirements on the State of Alaska. The Board has worked closely with the State of Alaska since the inception of Federal subsistence management in 1990 and has continued to do so throughout the development of this rule. Cooperative agreements and cooperative management efforts with the State are beneficial to both parties and are ongoing.

The same commentor suggested the proposed rule also violated Executive Order 12988, stating that it requires regulations be written to minimize litigation and to provide a clear legal standard for affected conduct. Several provisions of the proposed rule have been modified in this final rule to clarify the legal standard for conduct. However, other provisions are unchanged in order to create a regulatory framework that will implement the subsistence priority

mandates of ANILCA Title VIII, minimize socio-economic impacts, and ensure that resource conservation standards in ANILCA are met.

One commentor said that these regulations should comply with the Clean Water and Antidegradation Acts. These regulations are consistent with the Clean Water Act and all other Federal laws.

One commentor recommended that the Federal Subsistence Board adopt an expedited process so that recommendations for regulatory changes could be adopted for the 1999 fishing season. The Board can not do this, because of the existence of Congressional limitations on implementation. Legislation enacted in October 1998 restricts implementation of these regulations until October 1, 1999.

One commentor recommended that the government should hire locally to manage the fisheries. The Federal agencies that are members of the Federal Subsistence Board will utilize the local hire authority of ANILCA to the maximum extent possible when hiring personnel to work in the Federal program.

One commentor suggested that the regulations needed to be written in plainer language and that the Federal Subsistence Board should send representatives to villages to explain them before the regulations go into effect. The regulations have been significantly re-written to put them in to plain language. After publication a condensed easy to read booklet with the regulations will be prepared and distributed to the public. The Board has made considerable effort to provide information about the expanded Federal fishery management program through numerous public hearings, regional advisory council meetings, press releases, and wide dissemination of information to an extensive mailing list. This final regulation will be mailed to over 2700 individuals and organizations in Alaska. The field offices of the Federal agencies that are a part of the Federal Subsistence Board will make this regulation, and information about the Federal program, available to villages within their areas.

One commentor said that there was no Alaska Native organization listed as being involved in the drafting of the proposed rule. Native organizations throughout the State have had an opportunity to provide input on this rule a number of times—after the issuance of the Advanced Notice of Proposed Rulemaking (April 4, 1996), during Regional Advisory Council meetings held throughout the State in

the fall of 1997, during a 120-day public comment period after the publication of the proposed rule on December 17, 1997, and during 31 public hearings and 10 Regional Advisory Council meetings held around the State during that public comment period. In addition, as a member of the Federal Subsistence Board, the Bureau of Indian Affairs has been directly involved in the drafting of the Proposed Rule and this Final Rule.

Subpart A—General Provisions

____.2 Authority.

One commentor asked how the Pacific Salmon Treaty with Canada fit in with these regulations. These regulations are consistent with all existing treaties.

____.3 Applicability and scope.

The suggestion was made to include navigable waters on BLM lands. BLM lands set aside for specific purposes, such as Steese and White Mountains Conservation Areas, have Federal reserved water rights and are included within the scope of these regulations. Other BLM lands are general public domain lands without specific purposes and do not have reserved water rights.

Several commentors suggested that waters with Federal subsistence jurisdiction should be delineated the same for Forest Service lands as they are for Department of the Interior lands, and that Federal jurisdiction should be extended to include the marine waters identified in the 1907 Tongass National Forest Proclamation. The Final Rule has been modified from the Proposed Rule so that the definition of inland waters covered under this rule is consistent for Forest Service and DOI waters. The Federal subsistence jurisdiction asserted in the Final Rule applies to waters where the Federal government holds a reserved water right or holds title to the waters or submerged lands. A Federal water right exists in inland waters within or adjacent to Federal conservation system units and national forests. The question of Federal jurisdiction over marine waters included in the Tongass Proclamation is the subject of pending litigation in *Peratrovich v. United States*, A92-734 (D. AK), and therefore those marine waters are not included in this rule.

Five commentors suggested that the scope of the Federal fishery management should be extended to include waters on Native corporation lands or to include all navigable waters within the state of Alaska. To do so would improperly extend the scope of the Federal program beyond the scope of Title VIII of ANILCA or the direction of the Ninth Circuit Court in the Katie

John decision. In Title VIII Congress mandated the implementation of a subsistence priority on Federal public lands. Native corporation and other non-Federal lands and waters located beyond the boundaries of the conservation system units and other areas specified in § _____.3 do not fall within the scope of Title VIII. In the Katie John decision, the Ninth Circuit Court ruled that the Federal program should include those waters where the Federal government retains a reserved water right. Those waters are identified in § _____.3 of this rule.

Two commentors questioned the inclusion of inland waters adjacent to conservation system unit boundaries within the scope of Federal subsistence jurisdiction, and also questioned the inclusion of waters on inholdings within those unit boundaries. We have determined that a Federal reserved water right exists in those waters and that their inclusion is necessary for effective management of subsistence fisheries. Therefore, they are included.

One commentor said that waters flowing through or adjacent to Native allotments should be subject to the Federal subsistence jurisdiction. Many Native allotments are within the boundaries of the Federal lands identified in § _____.3 of this rule, and therefore waters flowing through or adjacent to those allotments are subject to a Federal reserved water right and Federal subsistence jurisdiction. However, Native allotments falling outside of the lands and waters identified in § _____.3 are not included. Whether there are Federal reserved water rights associated with any of these small, scattered parcels would have to be determined on a case-by-case basis. These regulations contain a process for the Board to make recommendations to the Secretaries for additions, if necessary.

One commentor said that the proposed regulations did not address problems with sport fishing lodges in the Togiak drainage, or with other issues related to sport and commercial fishing or pollution of spawning grounds. This rule provides an opportunity for, and regulates, subsistence hunting, trapping, and fishing only. As such, the regulations do not contain specific provisions for sport or commercial fishing. However, the impacts of all fishery allocations and harvests were considered in the preparation of this Final Rule, and will be considered in the annual review of Subpart D regulations.

One commentor said that lakes should be included within the Federal program, and specifically mentioned Teshekpuk

Lake. One commentor recommended that the Delta River, all of the Gulkana River, Tiekol River and Little Tonsina River should be included in the Federal program. All inland waters (including lakes and rivers) within and adjacent to the areas identified in § _____.3 of this rule are included in the Federal subsistence jurisdiction. Teshekpuk Lake is included. Those portions of the above-named rivers that are included within or adjacent to the boundaries of the units identified in § _____.3 of these regulations are included within the Federal subsistence jurisdiction; any waters falling outside of the units identified are not included.

Two commentors said that Glacier Bay National Park should be included in these regulations. When Congress passed ANILCA, it stated (in Sections 203 and 1314(c)) that subsistence uses are permitted only in those national park or national monument areas where specifically authorized by the Act. Subsistence uses in Glacier Bay National Park were not specifically permitted by the Act, and can therefore not be authorized by these regulations.

One commentor noted that this rule would not protect subsistence opportunities on Native corporation lands. This is correct, since Native corporation lands (which have been conveyed or interim conveyed to corporations) are no longer Federal lands and thus not within the scope of the subsistence priority of ANILCA. However, any inland waters located within or adjacent to the external boundaries of the units identified in § _____.3 will fall within Federal subsistence jurisdiction.

Numerous commentors said that the proposed rule did not clearly identify where the proposed rule would apply, particularly with regards to marine waters. The same commentors also said that there were specific regulations regarding the taking of fish and shellfish in §§ _____.26 and 27 of this rule that related to fisheries where there did not appear to be any Federal waters or reserved water rights. The Final Rule lists the Federal land units where the rule will apply in § _____.3. Pursuant to Section 103 of ANILCA, maps and detailed legal descriptions of the boundaries of those National Park Service and Fish and Wildlife Service units were published in the *Federal Register*, including descriptions of the boundaries of units of the National Wildlife Refuge System which include marine waters. See 48 FR 7890 (February 24, 1983) (Boundaries of National Wildlife Refuges in Alaska); 57 FR 45166 (September 30, 1992) (Boundaries of National Park System

Units in Alaska). These legal descriptions and maps specifically identify the marine areas where the rule will apply. We also reviewed all the specific regulations found in §§ _____.26 and 27 and removed any regulations that did not apply to lands or waters identified in § _____.3.

One commentor said that halibut and seagull eggs should be included in the Federal subsistence program. While these regulations only apply to relatively few marine waters (see the list of marine waters in § _____.3), fish within those waters are subject to the subsistence priority and regulations for the subsistence harvest of halibut and other fish will be included for those waters. As for seagull eggs, the harvest of migratory birds (including seagull eggs) is not included within the Federal subsistence management program. Harvest of migratory birds falls under the Migratory Bird Treaty Act and its implementing regulations.

_____.4 Definitions.

One commentor said that the definition of "conservation of healthy populations of fish and wildlife" appears to contradict Section 815 of ANILCA. The definition was not amended in these regulations. Section 815 states, in part, that nothing in Title VIII permits a level of subsistence uses of fish and wildlife in a conservation system unit to be inconsistent with the conservation of healthy populations (or inconsistent with natural and healthy populations within a national park or monument). The existing definition in this section simply defines the phrase found in Section 815, but does not contradict or supersede it.

One commentor said that the existing definition of the word "family" would permit sharing of subsistence resources outside the household, and thereby expand subsistence uses. Section 803 of ANILCA specifically includes "sharing for personal or family consumption" within the definition of "subsistence uses". Permitting the sharing of subsistence resources outside the household will not expand current levels of subsistence harvest, since such sharing has always been a customary and traditional practice. The definition was not amended by these regulations.

Two commentors said that the Federal subsistence jurisdiction should be extended to Federal lands which have been selected, but not yet conveyed, to Native corporations or the State of Alaska, including those lands classified as over-selections. Two other commentors objected to the inclusion of selected lands within the program. While selected lands do not fall within

the definition of "public lands" found in ANILCA, section 906(o)(2) states that "Until conveyed, all Federal lands within the boundaries of a conservation system unit, National Recreation Area, National Conservation Area, new national forest or forest addition, shall be administered in accordance with the laws applicable to such unit." (emphasis added). Since selected lands do fall within the definition of "Federal lands" in ANILCA and Title VIII of ANILCA is a law applicable to such units, the subsistence priority of Title VIII must be extended to those lands, pursuant to section 906(o)(2). The definition of "public lands or public land" found in _____.4 of these regulations clarifies that selected lands will be treated as public lands until they are conveyed.

One commentor asked how the adoption of a fisheries regulatory year different from the wildlife regulatory year would affect regional advisory council and Federal Subsistence Board schedules. Another commentor said that the proposed fishery regulatory year would create conflicts with State regulations because of conflicting seasons and harvest reporting periods, and would complicate comparison of State and Federal information. The adoption of a different fisheries regulatory year is intended to provide a regulatory schedule that is the most efficient in managing an annual cycle of fishing regulations, and which has the least impact on subsistence users. Schedules for regular meetings of the Regional Advisory Councils and Federal Subsistence Board dealing with fishery issues will be adjusted to coincide with the fisheries regulatory year. The Federal Subsistence Board will work with the Alaska Department of Fish and Game and the State Board of Fisheries to minimize any conflicts created by this action.

_____.6 Licenses, permits, harvest tickets, tags, and reports

One commentor recommended that subsistence users should be required to possess a valid Alaska resident fishing license. This section of the regulations was rewritten to conform with plain language requirements; no substantive changes were made. Subsistence users wishing to take fish and wildlife on public lands for subsistence uses are required to possess the pertinent valid Alaska resident hunting and trapping license. At the current time, the State of Alaska does not require a license for subsistence fishing, therefore no license is required for subsistence users under the Final Rule.

It was suggested that State licenses and permits not be used. We have attempted to avoid confusion and unnecessary duplication wherever possible when establishing this new program. The retention of State permits and licenses is one area where it is possible to avoid unnecessary duplication. Federal permits and licenses may be issued in certain situations as warranted.

One commentor said that the existing State harvest reporting system should be used for any harvest reporting required under these regulations. This will be done to the maximum extent possible.

One commentor pointed out that the proposed rule and the existing Federal subsistence regulations state in § _____.6(d) that "Community harvests are reviewed annually under the regulations in subpart D of this part.", and questioned whether those annual reviews have been conducted in the past. Such review is incorporated into the annual review of all subpart D regulations, which are subject to modification by proposals from Regional Advisory Councils, subsistence users, and any other interested organizations or individuals.

_____.8 Penalties

One commentor suggested that enforcement of these regulations should be by the Federal Subsistence Management Program through cooperative agreements and that there should be no State enforcement of these regulations by the State of Alaska. The existing regulations provide that enforcement of these regulations will be retained by the individual land management agencies that are a part of the Federal Subsistence Board. This provision has not been amended. The State of Alaska will not generally be enforcing these regulations, unless authorized to do so through some special arrangement or mutual assistance agreement. However, the State of Alaska will continue to enforce on Federal lands other applicable State laws and regulations which are not inconsistent with these regulations or other Federal laws.

One commentor said that there was no information in the regulations about penalties. One commentor said that the Proposed Rule had no provision for enforcement, particularly in regards to the issue of customary trade. Enforcement of these regulations is accomplished in accordance with the penalty provisions applicable to the public land where the violation occurred. Each of the Federal land management agencies that are a part of the Federal Subsistence Board (Bureau

of Land Management, Bureau of Indian Affairs, U.S. Fish and Wildlife Service, National Park Service, and U.S. Forest Service) have separate penalty provisions for offenses occurring on lands they manage. More detailed information can be obtained from each agency.

____.9 Information collection requirements

One commentator said that data collection to manage the Federal subsistence program is prohibited unless approved by the Office of Management and Budget (OMB). While OMB approval is not required for all data collection, it is required where Federal officials request information from more than ten persons. As stated elsewhere in this preamble (Paperwork Reduction Act), OMB has already approved the initial information collection requirements of these regulations and additional approvals will be sought whenever required.

____.10 Federal Subsistence Board

Several commentators disagreed with the language of § _____.10(a) of the Proposed Rule which stated that the Secretaries retain their existing authority to restrict or eliminate hunting, fishing, or trapping activities which occur on lands or waters other than the lands identified in the applicability and scope section of the regulation. We did not modify this section. The authority of the Secretaries to restrict or eliminate activities off Federal public lands has been confirmed in cases as *Kleppe v. New Mexico* (426 U.S. 529) and *Minnesota v. Block* (660 F.2d 817). This regulation does not expand or diminish the Secretaries' authority, it only states that it exists. This authority has rarely been exercised and is not exercised in this Final Rule.

One commentator recommended that the Secretaries should delegate to the Federal Subsistence Board authority to extend jurisdiction beyond Federal lands. Extension of Federal jurisdiction is a significant policy decision, only applied in very rare circumstances, and the Secretaries have chosen not to delegate that authority to the Board. They have delegated overall management of the subsistence program to the Board. By adoption of these regulations, the Board will assume the responsibility for management of an expanded fishery program on all lands identified in § _____.3 of this rule.

One commentator said that the Federal agencies do not have sufficient expertise to assure compliance with ANILCA, and recommended that management

authority be vested in the National Marine Fisheries Service and that the regulations provide clear guidelines for cooperation with the Alaska Department of Fish and Game. The Federal Subsistence Board, and its member agencies, understand the complexity of the issues associated with the implementation of these regulations. The Board will obtain whatever expertise is needed to implement these regulations in order to assure that the subsistence opportunity is protected consistent with the conservation of healthy populations of fishery resources.

One commentator recommended that a tribal liaison appointed by the Federally-recognized tribes should be included as one of the official liaisons to the Federal Subsistence Board. Any tribe or group of tribes (or any other organization) can designate at any time a person to act in a liaison role to the Board. At this time, the Board believes that tribes have sufficient opportunity to provide input to the Board through the existing Regional Advisory Council structure, or through direct presentation of information to the Board without the designation of a formal liaison position.

One commentator recommended that the Chairs of the ten Regional Advisory Councils be included as voting members of the Federal Subsistence Board. Separate from this rulemaking, the Federal Subsistence Board just recently completed an internal examination the Board structure and considered one option of including Regional Council chairs on the Board. That option was rejected, in part because ANILCA stipulates that the Regional Councils are to provide recommendations to the government. A conflict would occur if those chairs sat on a board that would deliberate and make decisions on recommendations made by the Councils on which those chairs sit.

Five commentators recommended that use of compacts, contracts, and co-management or other agreements should be included within this rule. We clarified the wording of this section without changing its scope by changing the phrase "Native corporations" to "Native organizations." Section 10(d)(4)(xv) of this regulation now states that the Federal Subsistence Board may "Enter into cooperative agreements or otherwise cooperate with Federal agencies, the State, Native organizations, local governmental entities, and other persons and organizations, including international entities to effectuate the purposes and policies of the Federal subsistence management program". This regulatory language derives from section 809 of

ANILCA, and permits a wide range of cooperative mechanisms to carry out the purposes of the title, including, where appropriate, the cooperative mechanisms suggested above. The subsistence priority of Title VIII is not solely a priority for Alaska Natives, but is a priority for all rural residents, Native or otherwise.

One commentator objected to § _____.10(d)(4)(xviii) of the Proposed Rule which states that the Board can investigate and make recommendations to the Secretaries identifying additional Federal reservations, Federal reserved water rights or other Federal interests in lands or waters to which the Title VIII subsistence priority would be extended. This commentator said that section constituted a granting authority beyond the scope of ANILCA. We did not revise this section in this final rule. If additional waters or Federal interests are proposed for inclusion, the Board would need to investigate and provide a recommendation based on their findings to the Secretaries. This section only authorizes the Board to do so. The addition of any other waters or interests to this rule will involve a further rulemaking, with public notice and comment.

Two commentators questioned the regulation dealing with delegation of certain actions by the Board to agency field officials (§ _____.10(d)(6)). One said that the regulatory language was not clear as to what type of actions might be delegated and the other said that field officials might abuse such delegation resulting in harm to the resource. As written, such delegation will be limited to setting harvest limits, defining harvest areas, and opening or closing specific fish or wildlife harvests. In all cases such delegation will specifically define "frameworks established by the Board" as specified in the regulation. Thus, field officials will always be constrained by the framework of any delegation, and the Board will not lose its oversight of actions by agency officials.

One commentator recommended that the authority to open or close fish or wildlife harvest seasons should be community-based, and not in the hands of an agency field official. Implementation and enforcement of Federal regulations is the responsibility of the Departments. Field managers will work with local communities and local biologists to assure that community interests are addressed in any actions.

____.11 Regional advisory councils

Four organizations or individuals commented on the make up of the Regional Advisory Councils. Two

recommended that the Council membership include fish and game biologists or individuals familiar with non-subsistence uses in the region. One suggested that the Councils need more representation from other user groups. The fourth recommended that there should be tribal recognition and tribal recommendations for appointments to the Councils. The Regional Advisory Councils were established pursuant to section 805(a) of ANILCA and § _____. 11 of these regulations, and are charged with providing recommendations to the Board relating to subsistence uses within each region. The Board considers the recommendations of the Councils, along with technical information gathered by Federal staff, and testimony presented to the Board by other organizations and individuals. The input of other fish and game biologists and organizations or individuals knowledgeable about non-subsistence uses is considered by the Board before taking action on Council recommendations. Tribal recommendations, as well as recommendations by other organizations or individuals, are considered in the selection of Council membership. No changes were made in this section of these regulations.

One commentator recommended that Regional Council members should be elected, but did not specify by whom. This recommendation was not adopted, because ANILCA requires that persons serving as members of these Councils must be appointed by the Secretaries.

_____.12 Local Advisory Committees.

There were several comments in regards to the role of local advisory committees in the Federal process, especially on the Yukon River. Local fish and game advisory committees have the opportunity to be involved in Federal subsistence management program by submitting recommendations to the Federal Subsistence Board and Regional Advisory Councils. The Federal Subsistence Board will seek guidance and expertise from all user groups. Two commentators requested a committee for their area or village. The creation of local fish and game advisory committees is a function of the Alaska Department of Fish and Game. The request should be made to them. One commentator suggested that existing State advisory committees should be used as opposed to creating a separate system. Local advisory committees may be used in addition to Regional Advisory Councils; a separate system will not be created. The Federal Subsistence Board will seek the best information available for

regulation development. Local advisory committee input is always welcome under current and proposed rules.

_____.14 Relationships to State Provisions and Regulations.

One commentator said that the Proposed Rule and Environmental Assessment did not adequately explore mechanisms for cooperation or outline the Secretaries' expectations of the Federal agencies for cooperation. There will be ample opportunities for cooperation with the State under the Final Rule. A question arose concerning timely reassertion of State authority over subsistence and suggested imposing a time limit once the petition to reassert is filed. This section was not amended and no time limit was included in this Final Rule. The Secretaries will act expeditiously when a petition for reassertion is filed. One commentator requested a transition period from Federal to State management authority for specific regulations. The Secretary will not certify a State subsistence management program unless the State enacts and implements laws of general applicability which are consistent with, and which provide for the definition, preference and participation specified in sections 803, 804, and 805 of ANILCA.

One commentator said that the proposed regulations did not support State conservation efforts, since the State has already implemented many changes to its regulations through fishery management plans since the Proposed Rule was published. To the extent possible, these final regulations incorporate changes to make them consistent with existing State regulations. The Board intends to utilize, to the extent possible, the existing State fishery management plans, but all those plans must be reviewed to ensure that the fishery allocation determinations in the plans are consistent with the subsistence priority of ANILCA.

One commentator suggested that the Federal subsistence regulations should adopt State regulations to the maximum extent possible, and that the Federal regulations should only include those regulations that differ from existing State regulations. As already stated, it has always been the intent of the Board with the adoption of these regulations to be consistent with existing State regulations except where specifically noted. However, we believe that to include in the Federal regulations only those areas where the Federal regulations differ from State regulations would be more confusing to subsistence

users who would then have to refer to two sets of regulations while hunting or fishing on Federal lands.

_____.16 The Customary and Traditional Use Determination Process.

One commentator suggested that the Federal Subsistence Board abandon the Customary and Traditional use determination process and make determinations on a geographical basis. The Customary and Traditional use determination process is currently being evaluated. The Federal Subsistence Board accepts proposals for changes annually, but no changes were made in this section in the Final Rule.

_____.19 Closures and Other Special Actions.

Several commentators stated the closure provisions are too cumbersome, bureaucratic, and do not accurately define the circumstances under which the Federal Subsistence Board may take action to ensure resource conservation. The Secretaries understand this concern; this Final Rule grants to the Board specific authority to " * * * delegate to agency field officials the authority to set harvest limits, define harvest areas, and open or close specific fish or wildlife harvest seasons within frameworks established by the Board." (§ _____.10(d)(6)). Implementation of this regulation will provide for less cumbersome management actions, while retaining Board oversight of those actions.

Subpart C—Board Determinations

_____.22 Subsistence Resource Regions.

Two commentators urged the formation of a Yukon River Regional Council while one suggested two Councils for the Southeast Region; one for game and another for fish. The Federal Subsistence Board will not make these changes at this time but will continue to evaluate the efficiency of the current structure and make future adjustments as needed.

_____.23 Rural Determinations.

Two commentators questioned the basis for and outcomes of the rural determinations. The procedure for making rural/non-rural determinations was developed previously with public input through a rulemaking process as were the existing rural/non-rural determinations. Those determinations will be reviewed after the year 2000 census results are available.

____.24 Customary and Traditional Use Determinations.

One commentator suggested that the Federal Subsistence Board should make customary and traditional use determinations by geographic area rather than species. Another objected to making customary and traditional use determinations that have not been subjected to public review and suggested that C&T determinations be accompanied by a determination of the amount of fish and wildlife reasonably necessary to provide for subsistence on public lands. The Federal Subsistence Board has established a task force to evaluate the existing C&T process and will seek Regional Advisory Council input on various alternatives before making changes, if any, to the current regulations.

One commentator said that the rule should be modified to require a positive affirmation of customary and traditional use in order for subsistence regulations to apply. We did not make this change. To require a positive affirmation of use puts the burden on the subsistence user to ensure that his or her use is authorized in regulation. The current Federal subsistence regulations state in part that: "If no determination has been made for a species in a Unit, all rural Alaska residents are eligible to harvest fish or wildlife under this part." § _____.24(a). This regulation already covers customary and traditional use determinations for fish, and does not need to be modified.

Several other commentators said that the customary and traditional use determinations in the proposed rule were incomplete. We have revised the determinations for fish and shellfish in this section to incorporate both the last Alaska Board of Fish customary and traditional use determinations that were in compliance with Title VIII (January 1990) and the determinations that the Board of Fish has made since 1990 where they might apply on Federal waters. For those determinations made by the Board of Fish since 1990, we have made a determination that eligibility for those fisheries should be limited to the residents of the area identified. These determinations are subject to revision through the annual consideration of proposed changes to Subpart C.

Subpart D—Subsistence Taking of Fish

____.26 Subsistence taking of fish

Numerous comments regarding customary and traditional use determinations and the taking of fish were received. Proposed changes to the existing subpart C and subpart D

regulations will not be considered until the 2000–2001 regulations cycle. The commentators have been notified that their suggestions should be submitted to the Federal Subsistence Board for consideration as a proposal during a standard regulatory cycle.

A large number of comments dealt with the issue of customary trade. Many of the commentators felt that the sections dealing with customary trade in the Proposed Rule (§§ _____.26(c)(11) and (12)) were not specific enough, and would permit an expansion of subsistence fishing beyond current levels. Several suggested that this rule should define the term "significant commercial enterprise", including a specific dollar limit. Some said that no sale of subsistence-caught fish should be permitted, while others said that customary trade practices should be protected and that customary trade should include sales up to \$70,000 per year. Several commentators suggested that decisions on customary trade should be made on a local level. We did modify the customary trade regulations slightly to clarify them, but have not included a definition of "significant commercial enterprise" or placed any dollar limits on an allowable level of customary trade. The regulations in this rule clearly limit the sale of subsistence-caught fish to customary and traditional practices. We agree with the commentators who said that specific proposals on customary trade should be made at the local level. We anticipate working closely with Regional Advisory Councils to identify where specific limits should be implemented. These limits may vary in different regions of the State.

Numerous commentators also said that the proposed rule did not always rely on the State's reporting areas, and were not always consistent with current State regulations. The majority of these comments came from the State of Alaska. When the proposed rule was published in December of 1997, it was structured to reflect all the State subsistence fishery regulations which were current at that time. Since then, the State Board of Fish has made changes to State regulations which resulted in the comments noted above. In order to address these concerns, we reviewed Subparts C and D with respect to fisheries and shellfish (particularly §§ _____.26 and 27). Changes were made in this Final Rule to make it consistent with current State regulations. There are a few specific regulations where this rule is not consistent with State regulations. These are areas where the courts have ruled or the Board has previously dealt with a fishery issue and

made decisions which are not consistent with State regulations. These areas include: (1) the use of rod and reel for subsistence as a method of harvest, (2) the extension of salmon fisheries on Kodiak Island to 24 hours per day, (3) customary and traditional use determinations for rainbow trout in Southwest Alaska, and (4) regulations relating to the take of king crab around Kodiak Island.

Another commentator suggested the rule should clarify how the Federal subsistence management program will manage halibut, since the International Pacific Halibut Commission has halibut management responsibilities. Although most marine waters are excluded from these regulations, halibut and other marine resources in those marine waters identified in § _____.3 will be included within these regulations.

Many comments were received in regards to joint management whereby the Federal agencies determine the number of fish necessary to meet subsistence needs and monitor the take, while the State manages to meet these needs. While the Final Rule provides for management of fisheries in a manner consistent with the current Federal program, it does not preclude the adoption of other management scenarios. Sections _____.10 and .14 give the Board broad authorities to cooperate with the State and other organizations in the implementation of the Federal Subsistence Management Program. Other commentators asked about the status of personal use fisheries in the Federal plan. Personal use fisheries are not provided for under ANILCA's Title VIII and are not addressed in these regulations. The State of Alaska manages personal use fisheries and comments or recommendations concerning those fisheries should be directed to the State. There were several comments in regards to the use of different types of equipment for subsistence use. Although the use of rod and reel is not permitted under State subsistence regulations, it is permitted under these regulations, since the Board has previously determined that rod and reel should be considered a traditional means of harvest. There are no requirements to purchase commercial equipment. One commentator wanted some provision made for the use of fish as bait in sport and commercial fisheries. Provisions regarding sport and commercial fisheries should be referred to the State which has management authority over these fisheries. Comments in regards to changing wording from "unless permitted" to "unless prohibited" for steelhead and rainbow trout were suggested. The

"unless permitted" wording is consistent with State regulations. One commentor suggested dropping bag limits for rod and reel. Bag limits are reasonable regulations for conservation of fish stocks and are authorized and consistent with ANILCA, Section 814.

One commentor said in that Southeast Alaska the harvest of subsistence fish should be permitted at any time. Another commentor said that there should be no requirement for permits, seasons or bag limits for subsistence harvest, since ANILCA did not specifically mention any of those items. The subsistence priority of ANILCA is a priority over other consumptive uses, but that opportunity does not mean that subsistence harvest should be free from all regulation. ANILCA stipulates that subsistence harvest should not threaten the conservation of healthy populations of fish or wildlife. Regulations such as permits, seasons and bag limits, are considered a necessary and reasonable restriction of subsistence harvest.

One commentor said that genetic studies should be completed in the Area M fishery and associated destination drainages before there is a serious problem. Area M is not within the area of Federal jurisdiction. However, the Federal Subsistence Board will work closely with the State of Alaska, Native organizations, fishing groups and others to assure that necessary biological and harvest information is obtained.

A number of comments dealt with permit possession and record keeping. Current regulations require on-person possession of permits. In addition, permits and daily records will be required when important for collection of specific data to ensure adequate management and to provide biological data for emergency management decisions. One commentor noted that subsection (f) allows Federally qualified users to remove fish from their commercial catch for subsistence purposes which conflicts with State commercial fishing regulations. This provision is consistent with State regulations and will be retained. Another commentor noted that the proposed regulations do not contain measures to conserve chum salmon in times of shortage as provided in State regulations and will hinder efforts to conserve chum salmon in times of shortage. All fisheries will be managed for healthy populations as provided for in ANILCA Section 802(1). The request for fish habitat enhancement for the Yukon Flats area should be directed to the local land manager who has responsibility for these activities.

____.27 Subsistence Taking of Shellfish

One commentor requested that the Federal program also cover sea cucumbers, abalone, and sea urchins. Management of these species can occur under current regulations and the Federal program may include them where it has marine jurisdiction.

One commentor opposed having to purchase a license to dig clams. Licenses are not required although permits may be required in some areas for resource management purposes. Another commentor stated that State and Federal requirements for king crab pots differ. This difference occurs only in the Kodiak Island area and results from the Federal Subsistence Board instituting regulations a number of years ago to protect king crab populations in that area.

Summary of Changes

Based on our analysis of comments, we have made the following revisions from the Proposed Rule:

Throughout the document, we have made editing and wording changes to comply with the Executive Memorandum on Plain Language in Government Writing.

§ ____3(b)—Jurisdiction over inland waters on Forest Service lands has been modified to be consistent with the jurisdictional approach used on Department of the Interior lands. We have also more clearly identified the waters in which the Federal government will manage subsistence fisheries.

§ ____24(a)(2)—We have revised the determinations for fish and shellfish in this section to incorporate both the past Alaska Board of Fish customary and traditional use determinations that were in compliance with Title VIII (January 1990) and the determinations that the Board of Fish has made since 1990 where they apply on Federal waters and are consistent with Title VIII of ANILCA.

§§ ____26 and .27—We have made minor wording changes to the regulations on customary trade (§ ____26(c)(11-12)), but have retained the intent found in the Proposed Rule to provide for ongoing customary trade practices. We have made numerous revisions to assure consistency with the current State subsistence fisheries and shellfish regulations. In order to reduce confusion, we have also eliminated regulations covering areas where there is no Federal jurisdiction.

We must emphasize that these regulations **ONLY APPLY TO FEDERAL LANDS AND WATERS** where there is a Federal interest. Individuals who do not meet the requirements under these

regulations may still harvest fish and wildlife on Federal lands and waters in accordance with other State fishing and hunting regulations, except in those instances where Federal lands or waters have been specifically closed to non-Federally qualified subsistence users.

Nothing in this Final Rule is intended to change the underlying rural priority which is set out in Title VIII of ANILCA or otherwise amend the statutory basis of the Federal Subsistence Management Program. Although many sections of these regulations are not being amended other than to make them conform to requirements for plain language, for the purpose of clarity and ease of understanding, the entire text of the rule for subparts A, B, and C, and sections ____26, and ____27 of subpart D is being printed. The unpublished section (Section ____25) relates to wildlife regulations that are revised annually. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text is incorporated into 36 CFR Part 242 and 50 CFR Part 100.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as

identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940-22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

An environmental assessment has been prepared on the expansion of Federal jurisdiction over fisheries and is available by contacting the office listed under "For Further Information Contact." The Secretary of the Interior with the concurrence of the Secretary of Agriculture has determined that the expansion of Federal jurisdiction does not constitute a major Federal action, significantly affecting the human environment and has, therefore, signed a Finding of No Significant Impact.

Compliance With Section 810 of ANILCA

A Section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

During the environmental assessment process, an evaluation of the effects of this rule was also conducted in accordance with Section 810. This evaluation supports the Secretaries' determination that the Final Rule will not reach the "may significantly restrict" threshold for notice and hearings under ANILCA Section 810(a) for any subsistence resources or uses.

Paperwork Reduction Act

This rule contains information collection requirements subject to Office of Management and Budget (OMB)

approval under the Paperwork Reduction Act of 1995. It applies to the use of public lands in Alaska. The information collection requirements are a revision of the collection requirements already approved by OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018-0075, which expires 5/31/2000. This revision was submitted to OMB for approval. A comment period was open on OMB collection requirements and no comments were received.

Currently, information is being collected by the use of a Federal Subsistence Registration Permit and Designated Hunter Application. The information collected on these two permits establishes whether an applicant qualifies to participate in a Federal subsistence hunt on public land in Alaska and provides a report of harvest and the location of harvest. The collected information is necessary to determine harvest success, harvest location, and population health in order to make management decisions relative to the conservation of healthy wildlife populations. Additional harvest information is obtained from harvest reports submitted to the State of Alaska. The recordkeeping burden for this aspect of the program is negligible (one hour or less). This information is accessed via computer data base. The current overall annual burden of reporting and recordkeeping is estimated to average 0.25 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under the existing rule is less than 5,000, yielding a total annual reporting and recordkeeping burden of 1,250 hours or less.

The collection of information under this Final Rule will be achieved through the use of a Federal Subsistence Registration Permit Application, which would be the same form as currently approved and used for the hunting program. This information will establish whether the applicant qualifies to participate in a Federal subsistence fishery on public land in Alaska and will provide a report of harvest and location of harvest.

The likely respondents to this collection of information are rural Alaska residents who wish to participate in specific subsistence fisheries on Federal land. The collected information is necessary to determine harvest success and harvest location in order to make management decisions relative to the conservation of healthy fish populations. The annual burden of reporting and recordkeeping is

estimated to average 0.50 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under this rule is less than 10,000, yielding a total annual reporting and recordkeeping burden of 5,000 hours or less.

You may direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (Subsistence), Washington, DC 20503.

Additional information collection requirements may be imposed if local advisory committees subject to the Federal Advisory Committee Act are established under subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "\$" and a numbered heading; for example, § 24 Customary and traditional determinations.) (5) Is the description of the rule in the SUPPLEMENTARY INFORMATION section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand? Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

Economic Effects

This rule was not subject to OMB review under Executive Order 12866.

This rulemaking will impose no significant costs on small entities; this Final Rule does not restrict any existing sport or commercial fishery on the

public lands and subsistence fisheries will continue at essentially the same levels as they presently occur. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, fishing tackle, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, it is estimated that 24 million pounds of fish (including 8.3 million pounds of salmon) are harvested by subsistence users annually and, if given an estimated dollar value of \$3.00 per pound for salmon and \$0.58 per pound for other fish, would equate to about \$34 million in food value statewide.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments have determined based on the above figures that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

The Small Business Regulatory Enforcement Act (5 U.S.C. 801 *et seq.*) requires that before a rule can take effect, copies of the rule and other documents must be sent to the U.S. House and U.S. Senate and establishes a means for Congress to disapprove the rulemaking. The Departments have determined that this rulemaking is not a major rule under the Act, and thus the effective date of the rule is not additionally delayed unless Congress takes additional action.

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

The Secretaries have determined and certify pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that

this rulemaking will not impose a cost of \$100 million or more in any given year on local or state governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any state or local entities or tribal governments.

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

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Drafting Information—These regulations were drafted by William Knauer, Bob Gerhard, and Victor Starostka under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Curt Wilson, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Area Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service.

List of Subjects

36 CFR Part 242

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

50 CFR Part 100

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

For the reasons set out in the preamble, the Departments amend Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, as set forth below.

PART—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

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

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

2. Revise subparts A, B, and C of 36 CFR part 242 and 50 CFR part 100 to read as follows:

Subpart A—General Provisions

Sec.

- ___1 Purpose.
- ___2 Authority.
- ___3 Applicability and scope.
- ___4 Definitions.
- ___5 Eligibility for subsistence use.
- ___6 Licenses, permits, harvest tickets, tags, and reports.
- ___7 Restriction on use.
- ___8 Penalties.
- ___9 Information collection requirements.

Subpart B—Program Structure

- ___10 Federal Subsistence Board.
- ___11 Regional advisory councils.
- ___12 Local advisory committees.
- ___13 Board/agency relationships.
- ___14 Relationship to State procedures and regulations.
- ___15 Rural determination process.
- ___16 Customary and traditional use determination process.
- ___17 Determining priorities for subsistence uses among rural Alaska residents.
- ___18 Regulation adoption process.
- ___19 Closures and other special actions.
- ___20 Request for reconsideration.
- ___21 [Reserved].

Subpart C—Board Determinations

- ___22 Subsistence resource regions.
- ___23 Rural determinations.
- ___24 Customary and traditional use determinations.

Subpart A—General Provisions

§ ___1 Purpose.

The regulations in this part implement the Federal Subsistence Management Program on public lands within the State of Alaska.

§ ___2 Authority.

The Secretary of the Interior and Secretary of Agriculture issue the regulations in this part pursuant to authority vested in Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3101–3126.

§ ___3 Applicability and scope.

(a) The regulations in this part implement the provisions of Title VIII of ANILCA relevant to the taking of fish and wildlife on public lands in the State of Alaska. The regulations in this part do not permit subsistence uses in Glacier Bay National Park, Kenai Fjords National Park, Katmai National Park, and that portion of Denali National Park established as Mt. McKinley National Park prior to passage of ANILCA, where subsistence taking and uses are prohibited. The regulations in this part do not supersede agency specific regulations.

(b) The regulations contained in this part apply on all public lands including all non-navigable waters located on

these lands, on all navigable and non-navigable water within the exterior boundaries of the following areas, and on inland waters adjacent to the exterior boundaries of the following areas:

- (1) Alaska Maritime National Wildlife Refuge;
- (2) Alaska Peninsula National Wildlife Refuge;
- (3) Aniakchak National Monument and Preserve;
- (4) Arctic National Wildlife Refuge;
- (5) Becharof National Wildlife Refuge;
- (6) Bering Land Bridge National Preserve;
- (7) Cape Krusenstern National Monument;
- (8) Chugach National Forest, excluding marine waters;
- (9) Denali National Preserve and the 1980 additions to Denali National Park;
- (10) Gates of the Arctic National Park and Preserve;
- (11) Glacier Bay National Preserve;
- (12) Innoko National Wildlife Refuge;
- (13) Izembek National Wildlife Refuge;
- (14) Katmai National Preserve;
- (15) Kanuti National Wildlife Refuge;
- (16) Kenai National Wildlife Refuge;
- (17) Kobuk Valley National Park;
- (18) Kodiak National Wildlife Refuge;
- (19) Koyukuk National Wildlife Refuge;
- (20) Lake Clark National Park and Preserve;
- (21) National Petroleum Reserve in Alaska;
- (22) Noatak National Preserve;
- (23) Nowitna National Wildlife Refuge;
- (24) Selawik National Wildlife Refuge;
- (25) Steese National Conservation Area;
- (26) Tetlin National Wildlife Refuge;
- (27) Togiak National Wildlife Refuge;
- (28) Tongass National Forest, including Admiralty Island National Monument and Misty Fjords National Monument, and excluding marine waters;
- (29) White Mountain National Recreation Area;
- (30) Wrangell-St. Elias National Park and Preserve;
- (31) Yukon-Charley Rivers National Preserve;
- (32) Yukon Delta National Wildlife Refuge;
- (33) Yukon Flats National Wildlife Refuge;
- (34) All components of the Wild and Scenic River System located outside the boundaries of National Parks, National Preserves or National Wildlife Refuges, including segments of the Alagnak River, Beaver Creek, Birch Creek, Delta River, Fortymile River, Gulkana River, and Unalakleet River.

(c) The public lands described in paragraph (b) of this section remain subject to change through rulemaking pending a Department of the Interior review of title and jurisdictional issues regarding certain submerged lands beneath navigable waters in Alaska.

§ 4. Definitions.

The following definitions apply to all regulations contained in this part:

Agency means a subunit of a cabinet level Department of the Federal government having land management authority over the public lands including, but not limited to, the U.S. Fish & Wildlife Service, Bureau of Indian Affairs, Bureau of Land Management, National Park Service, and USDA Forest Service.

ANILCA means the Alaska National Interest Lands Conservation Act, Pub. L. 96-487, 94 Stat. 2371 (codified, as amended, in scattered sections of 16 U.S.C. and 43 U.S.C.).

Area, District, Subdistrict, and Section mean one of the geographical areas defined in the codified Alaska Department of Fish and Game regulations found in Title 5 of the Alaska Administrative Code.

Barter means the exchange of fish or wildlife or their parts taken for subsistence uses; for other fish, wildlife or their parts; or, for other food or for nonedible items other than money, if the exchange is of a limited and noncommercial nature.

Board means the Federal Subsistence Board as described in § 10.

Commissions means the Subsistence Resource Commissions established pursuant to section 808 of ANILCA.

Conservation of healthy populations of fish and wildlife means the maintenance of fish and wildlife resources and their habitats in a condition that assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystem, including the recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem; minimizes the likelihood of irreversible or long-term adverse effects upon such populations and species; ensures the maximum practicable diversity of options for the future; and recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and the manipulation of the components of the ecosystem.

Customary trade means cash sale of fish and wildlife resources regulated in this part, not otherwise prohibited by

Federal law or regulation, to support personal and family needs; and does not include trade which constitutes a significant commercial enterprise.

Customary and traditional use means a long-established, consistent pattern of use, incorporating beliefs and customs which have been transmitted from generation to generation. This use plays an important role in the economy of the community.

FACA means the Federal Advisory Committee Act, Pub. L. 92-463, 86 Stat. 770 (codified as amended, at 5 U.S.C. Appendix II, 1-15).

Family means all persons related by blood, marriage or adoption, or any person living within the household on a permanent basis.

Federal Advisory Committees or Federal Advisory Committee means the Federal Local Advisory Committees as described in § 12.

Federal lands means lands and waters and interests therein the title to which is in the United States, including navigable and non-navigable waters in which the United States has reserved water rights.

Fish and wildlife means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the carcass or part thereof.

Game Management Unit or GMU means one of the 26 geographical areas listed under game management units in the codified State of Alaska hunting and trapping regulations and the Game Unit Maps of Alaska.

Inland Waters means, for the purposes of this part, those waters located landward of the mean high tide line or the waters located upstream of the straight line drawn from headland to headland across the mouths of rivers or other waters as they flow into the sea. Inland waters include, but are not limited to, lakes, reservoirs, ponds, streams, and rivers.

Marine Waters means, for the purposes of this part, those waters located seaward of the mean high tide line or the waters located seaward of the straight line drawn from headland to headland across the mouths of rivers or other waters as they flow into the sea.

Person means an individual and does not include a corporation, company, partnership, firm, association, organization, business, trust or society.

Public lands or public land means:

(1) Lands situated in Alaska which are Federal lands, except—

(i) Land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(ii) Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq., which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(iii) Lands referred to in section 19(b) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1618(b).

(2) Notwithstanding the exceptions in paragraphs (1)(i) through (iii) of this definition, until conveyed or interim conveyed, all Federal lands within the boundaries of any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Forest Monument, National Recreation Area, National Conservation Area, new National forest or forest addition shall be treated as public lands for the purposes of the regulations in this part pursuant to section 906(o)(2) of ANILCA.

Regional Councils or Regional Council means the Regional Advisory Councils as described in § _____.11.

Regulatory year means July 1 through June 30, except for fish and shellfish where it means March 1 through the last day of February.

Reserved water right(s) means the Federal right to use unappropriated appurtenant water necessary to accomplish the purposes for which a Federal reservation was established. Reserved water rights include nonconsumptive and consumptive uses.

Resident means any person who has his or her primary, permanent home for the previous 12 months within Alaska and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to: the address listed on an Alaska Permanent Fund dividend application; an Alaska license to drive, hunt, fish, or engage in an activity regulated by a government entity; affidavit of person or persons who know the individual; voter registration; location of residences owned, rented or leased; location of stored household goods; residence of spouse, minor children or dependents; tax documents;

or whether the person claims residence in another location for any purpose.

Rural means any community or area of Alaska determined by the Board to qualify as such under the process described in § _____.15.

Secretary means the Secretary of the Interior, except that in reference to matters related to any unit of the National Forest System, such term means the Secretary of Agriculture.

State means the State of Alaska.

Subsistence uses means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.

Take or taking as used with respect to fish or wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

Year means calendar year unless another year is specified.

§ _____.5 Eligibility for subsistence use.

(a) You may take fish and wildlife on public lands for subsistence uses only if you are an Alaska resident of a rural area or rural community. The regulations in this part may further limit your qualifications to harvest fish or wildlife resources for subsistence uses. If you are not an Alaska resident or are a resident of a non-rural area or community listed in § _____.23, you may not take fish or wildlife on public lands for subsistence uses under the regulations in this part.

(b) Where the Board has made a customary and traditional use determination regarding subsistence use of a specific fish stock or wildlife population, in accordance with, and as listed in, § _____.24, only those Alaskans who are residents of rural areas or communities designated by the Board are eligible for subsistence taking of that population or stock on public lands for subsistence uses under the regulations in this part. If you do not live in one of those areas or communities, you may not take fish or wildlife from that population or stock, on public lands under the regulations in this part.

(c) Where customary and traditional use determinations for a fish stock or wildlife population within a specific area have not yet been made by the Board (e.g., "no determination"), all Alaskans who are residents of rural areas or communities may harvest for

subsistence from that stock or population under the regulations in this part.

(d) The National Park Service may regulate further the eligibility of those individuals qualified to engage in subsistence uses on National Park Service lands in accordance with specific authority in ANILCA, and National Park Service regulations at 36 CFR Part 13.

§ _____.6 Licenses, permits, harvest tickets, tags, and reports.

(a) If you wish to take fish and wildlife on public lands for subsistence uses, you must be a rural Alaska resident and:

(1) Possess the pertinent valid Alaska resident hunting and trapping licenses (no license required to take fish or shellfish) unless Federal licenses are required or unless otherwise provided for in subpart D of this part;

(2) Possess and comply with the provisions of any pertinent Federal permits (Federal Subsistence Registration Permit or Federal Designated Harvester Permit) required by subpart D of this part; and

(3) Possess and comply with the provisions of any pertinent permits, harvest tickets, or tags required by the State unless any of these documents or individual provisions in them are superseded by the requirements in subpart D of this part.

(b) If you have been awarded a permit to take fish and wildlife, you must have that permit in your possession during the taking and must comply with all requirements of the permit and the regulations in this section pertaining to validation and reporting and to regulations in subpart D of this part pertaining to methods and means, possession and transportation, and utilization. Upon the request of a State or Federal law enforcement agent, you must also produce any licenses, permits, harvest tickets, tags or other documents required by this section. If you are engaged in taking fish and wildlife under these regulations, you must allow State or Federal law enforcement agents to inspect any apparatus designed to be used, or capable of being used to take fish or wildlife, or any fish or wildlife in your possession.

(c) You must validate the harvest tickets, tags, permits, or other required documents before removing your kill from the harvest site. You must also comply with all reporting provisions as set forth in subpart D of this part.

(d) If you take fish and wildlife under a community harvest system, you must report the harvest activity in accordance with regulations specified for that

community in subpart D of this part, and as required by any applicable permit conditions. Individuals may be responsible for particular reporting requirements in the conditions permitting a specific community's harvest. Failure to comply with these conditions is a violation of these regulations. Community harvests are reviewed annually under the regulations in subpart D of this part.

(e) You may not make a fraudulent application for Federal or State licenses, permits, harvest tickets or tags or intentionally file an incorrect harvest report.

§ _____.7 Restriction on use.

(a) You may not trade or sell fish and wildlife, taken pursuant to the regulations in this part, except as provided for in §§ _____.25, _____.26, and _____.27.

(b) You may not use, sell, or trade fish and wildlife, taken pursuant to the regulations in this part, in any significant commercial enterprise.

§ _____.8 Penalties.

If you are convicted of violating any provision of 50 CFR Part 100 or 36 CFR Part 242, you may be punished by a fine or by imprisonment in accordance with the penalty provisions applicable to the public land where the violation occurred.

§ _____.9 Information collection requirements.

(a) The rules in this part contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501-3520. They apply to fish and wildlife harvest activities on public lands in Alaska. Subsistence users will not be required to respond to an information collection request unless a valid OMB number is displayed on the information collection form.

(1) Section _____.6, Licenses, permits, harvest tickets, tags, and reports. The information collection requirements contained in § _____.6 (Federal Subsistence Registration Permit or Federal Designated Hunter Permit forms) provide for permit-specific subsistence activities not authorized through the general adoption of State regulations. Identity and location of residence are required to determine if you are eligible for a permit and a report of success is required after a harvest attempt. These requirements are not duplicative with the requirements of paragraph (a)(3) of this section. The regulations in § _____.6 require this information before a rural Alaska resident may engage in subsistence uses

on public lands. The Department estimates that the average time necessary to obtain and comply with this permit information collection requirement is 0.25 hours.

(2) Section _____.20, Request for reconsideration. The information collection requirements contained in § _____.20 provide a standardized process to allow individuals the opportunity to appeal decisions of the Board. Submission of a request for reconsideration is voluntary but required to receive a final review by the Board. We estimate that a request for reconsideration will take 4 hours to prepare and submit.

(3) The remaining information collection requirements contained in this part imposed upon subsistence users are those adopted from State regulations. These collection requirements would exist in the absence of Federal subsistence regulations and are not subject to the Paperwork Reduction Act. The burden in this situation is negligible and information gained from these reports are systematically available to Federal managers by routine computer access requiring less than one hour.

(b) You may direct comments on the burden estimate or any other aspect of the burden estimate to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, N.W., MS 224 ARLSQ, Washington, D.C. 20240; and the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Additional information requirements may be imposed if Local Advisory Committees or additional Regional Councils, subject to the Federal Advisory Committee Act (FACA), are established under subpart B of this part. Such requirements will be submitted to OMB for approval prior to their implementation.

Subpart B—Program Structure

§ _____.10 Federal Subsistence Board.

(a) The Secretary of the Interior and Secretary of Agriculture hereby establish a Federal Subsistence Board, and assign them responsibility 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, however, retain their existing authority to restrict or eliminate hunting, fishing, or trapping activities which 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.

(b) Membership. (1) The voting members of the Board are: a Chair 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; Alaska Regional Director, National Park Service; Alaska Regional Forester, USDA Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Area Director, Bureau of Indian Affairs. Each member of the Board may appoint a designee.

(2) [Reserved]

(c) Liaisons to the Board are: a State liaison, and the Chairman of each Regional Council. The State liaison and the Chairman of each Regional Council may attend public sessions of all Board meetings and be actively involved as consultants to the Board.

(d) Powers and duties. (1) The Board shall meet at least twice per year and at such other times as deemed necessary. Meetings shall occur at the call of the Chair, but any member may request a meeting.

(2) A quorum consists of four members.

(3) No action may be taken unless a majority of voting members are in agreement.

(4) The Board is empowered, to the extent necessary, to implement Title VIII of ANILCA, to:

(i) Issue regulations for the management of subsistence taking and uses of fish and wildlife on public lands;

(ii) Determine which communities or areas of the State are rural or non-rural;

(iii) Determine which rural Alaska areas or communities have customary and traditional subsistence uses of specific fish and wildlife populations;

(iv) Allocate subsistence uses of fish and wildlife populations on public lands;

(v) Ensure that the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes;

(vi) Close public lands to the non-subsistence taking of fish and wildlife;

(vii) Establish priorities for the subsistence taking of fish and wildlife on public lands among rural Alaska residents;

(viii) Restrict or eliminate taking of fish and wildlife on public lands;

(ix) Determine what types and forms of trade of fish and wildlife taken for

subsistence uses constitute allowable customary trade;

(x) Authorize the Regional Councils to convene;

(xi) Establish a Regional Council in each subsistence resource region and recommend to the Secretaries, appointees to the Regional Councils, pursuant to the FACA;

(xii) Establish Federal Advisory Committees within the subsistence resource regions, if necessary and recommend to the Secretaries that members of the Federal Advisory Committees be appointed from the group of individuals nominated by rural Alaska residents;

(xiii) Establish rules and procedures for the operation of the Board, and the Regional Councils;

(xiv) Review and respond to proposals for regulations, management plans, policies, and other matters related to subsistence taking and uses of fish and wildlife;

(xv) Enter into cooperative agreements or otherwise cooperate with Federal agencies, the State, Native organizations, local governmental entities, and other persons and organizations, including international entities to effectuate the purposes and policies of the Federal subsistence management program;

(xvi) Develop alternative permitting processes relating to the subsistence taking of fish and wildlife to ensure continued opportunities for subsistence;

(xvii) Evaluate whether hunting, fishing, or trapping activities which occur on lands or waters in Alaska other than public lands 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, and after appropriate consultation with the State of Alaska, the Regional Councils, and other Federal agencies, make a recommendation to the Secretaries for their action;

(xviii) Identify, in appropriate specific instances, whether there exists additional Federal reservations, Federal reserved water rights or other Federal interests in lands or waters, including those in which the United States holds less than a fee ownership, to which the Federal subsistence priority attaches, and make appropriate recommendation to the Secretaries for inclusion of those interests within the Federal Subsistence Management Program; and

(xix) Take other actions authorized by the Secretaries to implement Title VIII of ANILCA.

(5) The Board may implement one or more of the following harvest and harvest reporting or permit systems:

(i) The fish and wildlife is taken by an individual who is required to obtain and possess pertinent State harvest permits, tickets, or tags, or Federal permit (Federal Subsistence Registration Permit);

(ii) A qualified subsistence user may designate another qualified subsistence user (by using the Federal Designated Harvester Permit) to take fish and wildlife on his or her behalf;

(iii) The fish and wildlife is taken by individuals or community representatives permitted (via a Federal Subsistence Registration Permit) a one-time or annual harvest for special purposes including ceremonies and potlatches; or

(iv) The fish and wildlife is taken by representatives of a community permitted to do so in a manner consistent with the community's customary and traditional practices.

(6) The Board may delegate to agency field officials the authority to set harvest limits, define harvest areas, and open or close specific fish or wildlife harvest seasons within frameworks established by the Board.

(7) The Board shall establish a Staff Committee for analytical and administrative assistance composed of a member from the U.S. Fish and Wildlife Service, National Park Service, U.S. Bureau of Land Management, Bureau of Indian Affairs, and USDA Forest Service. A U.S. Fish and Wildlife Service representative shall serve as Chair of the Staff Committee.

(8) The Board may establish and dissolve additional committees as necessary for assistance.

(9) The U.S. Fish and Wildlife Service shall provide appropriate administrative support for the Board.

(10) The Board shall authorize at least two meetings per year for each Regional Council.

(e) Relationship to Regional Councils.

(1) The Board shall consider the reports and recommendations of the Regional Councils concerning the taking of fish and wildlife on public lands within their respective regions for subsistence uses. The Board may choose not to follow any Regional Council recommendation which it determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, would be detrimental to the satisfaction of subsistence needs, or in closure situations, for reasons of public safety or administration or to assure the continued viability of a particular fish or wildlife population. If a recommendation is not adopted, the Board shall set forth the factual basis

and the reasons for the decision, in writing, in a timely fashion.

(2) The Board shall provide available and appropriate technical assistance to the Regional Councils.

§ 17.11 Regional advisory councils.

(a) The Board shall establish a Regional Council for each subsistence resource region to participate in the Federal subsistence management program. The Regional Councils shall be established, and conduct their activities, in accordance with the FACA. The Regional Councils shall provide a regional forum for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife resources on public lands. The Regional Councils shall provide for public participation in the Federal regulatory process.

(b) Establishment of Regional Councils; membership. (1) The number of members for each Regional Council shall be established by the Board, and shall be an odd number. A Regional Council member must be a resident of the region in which he or she is appointed and be knowledgeable about the region and subsistence uses of the public lands therein. The Board shall accept nominations and recommend to the Secretaries that representatives on the Regional Councils be appointed from those nominated by subsistence users. Appointments to the Regional Councils shall be made by the Secretaries.

(2) Regional Council members shall serve 3 year terms and may be reappointed. Initial members shall be appointed with staggered terms up to three years.

(3) The Chair of each Regional Council shall be elected by the applicable Regional Council, from its membership, for a one year term and may be reelected.

(c) Powers and Duties. (1) The Regional Councils are authorized to:

(i) Hold public meetings related to subsistence uses of fish and wildlife within their respective regions, after the Chair of the Board or the designated Federal Coordinator has called the meeting and approved the meeting agenda;

(ii) Elect officers;

(iii) Review, evaluate, and make recommendations to the Board on proposals for regulations, policies, management plans, and other matters relating to the subsistence take of fish and wildlife under these regulations within the region;

(iv) Provide a forum for the expression of opinions and

recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife within the region;

(v) Encourage local and regional participation, pursuant to the provisions of the regulations in this part in the decisionmaking process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses;

(vi) Prepare and submit to the Board an annual report containing—

(A) An identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(B) An evaluation of current and anticipated subsistence needs for fish and wildlife populations from the public lands within the region;

(C) A recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs related to the public lands; and

(D) Recommendations concerning policies, standards, guidelines, and regulations to implement the strategy;

(vii) Appoint members to each Subsistence Resource Commission within their region in accordance with the requirements of Section 808 of ANILCA;

(viii) Make recommendations on determinations of customary and traditional use of subsistence resources;

(ix) Make recommendations on determinations of rural status;

(x) Make recommendations regarding the allocation of subsistence uses among rural Alaska residents pursuant to § 17;

(xi) Develop proposals pertaining to the subsistence taking and use of fish and wildlife under these regulations, and review and evaluate such proposals submitted by other sources;

(xii) Provide recommendations on the establishment and membership of Federal Advisory Committees.

(2) The Regional Councils shall:

(i) Operate in conformance with the provisions of FACA and comply with rules of operation established by the Board;

(ii) Perform other duties specified by the Board.

§ 12 Local advisory committees.

(a) The Board shall establish such local Federal Advisory Committees within each region as necessary at such time that it is determined, after notice and hearing and consultation with the State, that the existing State fish and game advisory committees do not adequately provide advice to, and assist, the particular Regional Council in carrying out its function as set forth in § 11.

(b) Local Federal Advisory Committees, if established by the Board, shall operate in conformance with the provisions of the FACA, and comply with rules of operation established by the Board.

§ 13 Board/agency relationships.

(a) General. (1) The Board, in making decisions or recommendations, shall consider and ensure compliance with specific statutory requirements regarding the management of resources on public lands, recognizing that the management policies applicable to some public lands may entail methods of resource and habitat management and protection different from methods appropriate for other public lands.

(2) The Board shall issue regulations for subsistence taking of fish and wildlife on public lands. The Board is the final administrative authority on the promulgation of subpart C and D regulations relating to the subsistence taking of fish and wildlife on public lands.

(3) Nothing in the regulations in this part shall enlarge or diminish the authority of any agency to issue regulations necessary for the proper management of public lands under their jurisdiction in accordance with ANILCA and other existing laws.

(b) Section 808 of ANILCA establishes National Park and Park Monument Subsistence Resource Commissions. Nothing in the regulations in this part affects the duties or authorities of these commissions.

§ 14 Relationship to State procedures and regulations.

(a) State fish and game regulations apply to public lands and such laws are hereby adopted and made a part of the regulations in this part to the extent they are not inconsistent with, or superseded by the regulations in this part.

(b) The Board may close public lands to hunting and fishing, or take actions to restrict the taking of fish and wildlife despite any State authorization for taking fish and wildlife on public lands. The Board may review and adopt State openings, closures, or restrictions which serve to achieve the objectives of the regulations in this part.

(c) The Board may enter into agreements with the State in order to coordinate respective management responsibilities.

(d) Petition for repeal of subsistence rules and regulations. (1) The State of Alaska may petition the Secretaries for repeal of the subsistence rules and regulations in this part when the State has enacted and implemented

subsistence management and use laws which:

(i) Are consistent with sections 803, 804, and 805 of ANILCA; and

(ii) Provide for the subsistence definition, preference, and participation specified in sections 803, 804, and 805 of ANILCA.

(2) The State's petition shall:

(i) Be submitted to the Secretary of the Interior, U.S. Department of the Interior, Washington, D.C. 20240, and the Secretary of Agriculture, U.S. Department of Agriculture, Washington, D.C. 20240;

(ii) Include the entire text of applicable State legislation indicating compliance with sections 803, 804, and 805 of ANILCA; and

(iii) Set forth all data and arguments available to the State in support of legislative compliance with sections 803, 804, and 805 of ANILCA.

(3) If the Secretaries find that the State's petition contains adequate justification, a rulemaking proceeding for repeal of the regulations in this part will be initiated. If the Secretaries find that the State's petition does not contain adequate justification, the petition will be denied by letter or other notice, with a statement of the ground for denial.

§ 15 Rural determination process.

(a) The Board shall determine if an area or community in Alaska is rural. In determining whether a specific area of Alaska is rural, the Board shall use the following guidelines:

(1) A community or area with a population of 2500 or less shall be deemed to be rural unless such a community or area possesses significant characteristics of a non-rural nature, or is considered to be socially and economically a part of an urbanized area.

(2) Communities or areas with populations above 2500 but not more than 7000 will be determined to be rural or non-rural.

(3) A community with a population of more than 7000 shall be presumed non-rural, unless such a community or area possesses significant characteristics of a rural nature.

(4) Population data from the most recent census conducted by the United States Bureau of Census as updated by the Alaska Department of Labor shall be utilized in this process.

(5) Community or area characteristics shall be considered in evaluating a community's rural or non-rural status. The characteristics may include, but are not limited to:

(i) Use of fish and wildlife;

(ii) Development and diversity of the economy;

- (iii) Community infrastructure;
- (iv) Transportation; and
- (v) Educational institutions.

(6) Communities or areas which are economically, socially and communally integrated shall be considered in the aggregate.

(b) The Board shall periodically review rural determinations. Rural determinations shall be reviewed on a ten year cycle, commencing with the publication of the year 2000 U.S. census. Rural determinations may be reviewed out-of-cycle in special circumstances. Once the Board makes a determination that a community has changed from rural to non-rural, a waiting period of five years shall be required before the non-rural determination becomes effective.

(c) Current determinations are listed at § _____.23.

§ _____.16 Customary and traditional use determination process.

(a) The Board shall determine which fish stocks and wildlife populations have been customarily and traditionally used for subsistence. These determinations shall identify the specific community's or area's use of specific fish stocks and wildlife populations. For areas managed by the National Park Service, where subsistence uses are allowed, the determinations may be made on an individual basis.

(b) A community or area shall generally exhibit the following factors, which exemplify customary and traditional use. The Board shall make customary and traditional use determinations based on application of the following factors:

- (1) A long-term consistent pattern of use, excluding interruptions beyond the control of the community or area;
- (2) A pattern of use recurring in specific seasons for many years;
- (3) A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics;

(4) The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from the community or area;

(5) A means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate;

(6) A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values and lore from generation to generation;

(7) A pattern of use in which the harvest is shared or distributed within a definable community of persons; and

(8) A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area.

(c) The Board shall take into consideration the reports and recommendations of any appropriate Regional Council regarding customary and traditional uses of subsistence resources.

(d) Current determinations are listed in § _____.24.

§ _____.17 Determining priorities for subsistence uses among rural Alaska residents.

(a) Whenever it is necessary to restrict the subsistence taking of fish and wildlife on public lands in order to protect the continued viability of such populations, or to continue subsistence uses, the Board shall establish a priority among the rural Alaska residents after considering any recommendation submitted by an appropriate Regional Council.

(b) The priority shall be implemented through appropriate limitations based on the application of the following criteria to each area, community, or individual determined to have customary and traditional use, as necessary:

- (1) Customary and direct dependence upon the populations as the mainstay of livelihood;
- (2) Local residency; and
- (3) The availability of alternative resources.

(c) If allocation on an area or community basis is not achievable, then the Board shall allocate subsistence opportunity on an individual basis through application of the criteria in paragraphs (b) (1) through (3) of this section.

(d) In addressing a situation where prioritized allocation becomes necessary, the Board shall solicit recommendations from the Regional Council in the area affected.

§ _____.18 Regulation adoption process.

(a) Proposals for changes to the Federal subsistence regulations in subpart D of this part shall be accepted by the Board according to a published schedule. The Board may establish a rotating schedule for accepting proposals on various parts of subpart D regulations over a period of years. The Board shall develop and publish proposed regulations in the *Federal Register* and publish notice in local

newspapers. Comments on the proposed regulations in the form of proposals shall be distributed for public review.

(1) Proposals shall be made available for at least a thirty (30) day review by the Regional Councils. Regional Councils shall forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted in the time period as specified by the Board or as a part of the Regional Council's annual report described in § _____.11, whichever is earlier.

(2) The Board shall publish notice throughout Alaska of the availability of proposals received.

(3) The public shall have at least thirty (30) days to review and comment on proposals.

(4) After the comment period the Board shall meet to receive public testimony and consider the proposals. The Board shall consider traditional use patterns when establishing harvest levels and seasons, and methods and means. The Board may choose not to follow any recommendation which the Board determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation approved by a Regional Council is not adopted by the Board, the Board shall set forth the factual basis and the reasons for its decision in writing to the Regional Council.

(5) Following consideration of the proposals the Board shall publish final regulations pertaining to subpart D of this part in the *Federal Register*.

(b) Proposals for changes to subpart C of this part shall be accepted by the Board according to a published schedule. The Board shall develop and publish proposed regulations in the *Federal Register* and publish notice in local newspapers. Comments on the proposed regulations in the form of proposals shall be distributed for public review.

(1) Public and governmental proposals shall be made available for a thirty (30) day review by the regional councils. Regional Councils shall forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted within the time period as specified by the Board or as a part of the Regional Council's annual report described in § _____.11, whichever is earlier.

(2) The Board shall publish notice throughout Alaska of the availability of proposals received.

(3) The public shall have at least thirty (30) days to review and comment on proposals.

(4) After the comment period the Board shall meet to receive public testimony and consider the proposals. The Board may choose not to follow any recommendation which the Board determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation approved by a Regional Council is not adopted by the Board, the Board shall set forth the factual basis and the reasons for their decision in writing to the Regional Council.

(5) Following consideration of the proposals the Board shall publish final regulations pertaining to subpart C of this part in the *Federal Register*. A Board decision to change a community's or area's status from rural to non-rural will not become effective until five years after the decision has been made.

(c) [Reserved]

(d) Proposals for changes to subparts A and B of this part shall be accepted by the Secretary of the Interior in accordance with 43 CFR Part 14.

§ _____.19 Closures and other special actions.

(a) The Board may make or direct restriction, closure, or opening for the taking of fish and wildlife for non-subsistence uses on public lands when necessary to assure the continued viability of particular fish or wildlife population, to continue subsistence uses of a fish or wildlife population, or for reasons of public safety or administration.

(b) After consulting with the State of Alaska, providing adequate notice to the public, and holding at least one public hearing in the vicinity of the affected communities, the Board may make or direct temporary openings or closures to subsistence uses of a particular fish or wildlife population on public lands to assure the continued viability of a fish or wildlife population, or for reasons of public safety or administration. A temporary opening or closure will not extend beyond the regulatory year for which it is promulgated.

(c) In an emergency situation, the Board may direct immediate openings or closures related to subsistence or non-subsistence uses of fish and wildlife on public lands, if necessary to assure the continued viability of a fish or wildlife population, to continue subsistence uses of fish or wildlife, or for public safety reasons. The Board shall publish notice and reasons

justifying the emergency closure in the *Federal Register* and in newspapers of any area affected. The emergency closure shall be effective when directed by the Board, may not exceed 60 days, and may not be extended unless it is determined by the Board, after notice and hearing, that such closure should be extended.

(d) The Board may make or direct a temporary change to open or adjust the seasons or to increase the bag limits for subsistence uses of fish and wildlife populations on public lands. An affected rural resident, community, Regional Council, or administrative agency may request a temporary change in seasons or bag limits. Prior to implementing a temporary change, the Board shall consult with the State, shall comply with the provisions of 5 U.S.C. 551-559 (Administrative Procedure Act or APA), and shall provide adequate notice and opportunity to comment. The length of any temporary change shall be confined to the minimum time period or bag limit determined by the Board to be necessary to satisfy subsistence uses. In addition, a temporary change may be made only after the Board determines that the proposed temporary change will not interfere with the conservation of healthy fish and wildlife populations. The decision of the Board shall be the final administrative action.

(e) Regulations authorizing any individual agency to direct temporary or emergency closures on public lands managed by the agency remain unaffected by the regulations in this part, which authorize the Board to make or direct restrictions, closures, or temporary changes for subsistence uses on public lands.

(f) You may not take fish and wildlife in violation of a restriction, closure, opening, or temporary change authorized by the Board.

§ _____.20 Request for reconsideration.

(a) Regulations in subparts C and D of this part published in the *Federal Register* are subject to requests for reconsideration.

(b) Any aggrieved person may file a request for reconsideration with the Board.

(c) To file a request for reconsideration, you must notify the Board in writing within sixty (60) days of the effective date or date of publication of the notice, whichever is earliest, for which reconsideration is requested.

(d) It is your responsibility to provide the Board with sufficient narrative evidence and argument to show why the action by the Board should be reconsidered. You must include the

following information in your request for reconsideration:

(1) Your name, and mailing address;

(2) The action which you request be reconsidered and the date of *Federal Register* publication of that action;

(3) A detailed statement of how you are adversely affected by the action;

(4) A detailed statement of the facts of the dispute, the issues raised by the request, and specific references to any law, regulation, or policy that you believe to be violated and your reason for such allegation;

(5) A statement of how you would like the action changed.

(e) Upon receipt of a request for reconsideration, the Board shall transmit a copy of such request to any appropriate Regional Council for review and recommendation. The Board shall consider any Regional Council recommendations in making a final decision.

(f) If the request is justified, the Board shall implement a final decision on a request for reconsideration after compliance with 5 U.S.C. 551-559 (APA).

(g) If the request is denied, the decision of the Board represents the final administrative action.

§ _____.21 [Reserved]

Subpart C—Board Determinations

§ _____.22 Subsistence resource regions.

(a) The Board hereby designates the following areas as subsistence resource regions:

- (1) Southeast Region;
- (2) Southcentral Region;
- (3) Kodiak/Aleutians Region;
- (4) Bristol Bay Region;
- (5) Yukon-Kuskokwim Delta Region;
- (6) Western Interior Region;
- (7) Seward Peninsula Region;
- (8) Northwest Arctic Region;
- (9) Eastern Interior Region;
- (10) North Slope Region.

(b) You may obtain maps delineating the boundaries of the subsistence resource regions from the U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.

§ _____.23 Rural determinations.

(a) The Board has determined all communities and areas to be rural in accordance with § _____.15 except the following:

Adak;
Fairbanks North Star Borough;
Homer area—including Homer, Anchor Point, Kachemak City, and Fritz Creek;
Juneau area—including Juneau, West Juneau and Douglas;
Kenai area—including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kaslof, and Clam Gulch;

Ketchikan area—including Ketchikan City, Clover Pass, North Tongass Highway, Ketchikan East, Mountain Pass, Herring Cove, Saxman East, and parts of Pennekot Island;

Municipality of Anchorage;
Seward area—including Seward and Moose Pass;
Valdez; and
Wasilla area—including Palmer, Wasilla, Sutton, Big Lake, Houston, and Bodenber Butte.

(b) You may obtain maps delineating the boundaries of non-rural areas from the U.S. Fish and Wildlife Service at the address in § _____.22(b).

§ _____.24 Customary and traditional use determinations.

(a) The Board has determined that rural Alaska residents of the listed communities and areas have customary and traditional subsistence use of the specified species on Federal public

lands in the specified areas. When there is a determination for specific communities or areas of residence in a Unit, all other communities not listed for that species in that Unit have no Federal subsistence for that species in that Unit. If no determination has been made for a species in a Unit, all rural Alaska residents are eligible to harvest fish or wildlife under this part.

(1) Wildlife determinations.

Area	Species	Determination
Unit 1(C)	Black Bear	Rural residents of Unit 1(C) and Haines, Gustavus, Klukwan, and Hoonah.
1(A)	Brown Bear	Rural residents of Unit 1(A) except no subsistence for residents of Hyder.
1(B)	Brown Bear	Rural residents of Unit 1(A), Petersburg, and Wrangell, except no subsistence for residents of Hyder.
1(C)	Brown Bear	Rural residents of Unit 1(C), Haines, Hoonah, Klukwan, Skagway, and Wrangell, except no subsistence for residents of Gustavus.
1(D)	Brown Bear	Residents of 1(D).
1(A)	Deer	Rural residents of 1(A) and 2.
1(B)	Deer	Rural residents of Unit 1(A), residents of 1(B), 2 and 3.
1(C)	Deer	Rural residents of 1(C) and (D), and residents of Hoonah and Gustavus.
1(D)	Deer	No Federal subsistence priority.
1(B)	Goat	Rural residents of Units 1(B) and 3.
1(C)	Goat	Residents of Haines, Klukwan, and Hoonah.
1(B)	Moose	Rural residents of Units 1, 2, 3, and 4.
1(C) Berner's Bay	Moose	No Federal subsistence priority.
1(D)	Moose	Residents of Unit 1(D).
Unit 2	Brown Bear	No Federal subsistence priority.
2	Deer	Rural residents of Unit 1(A) and residents of Units 2 and 3.
Unit 3	Deer	Residents of Unit 1(B) and 3, and residents of Port Alexander, Port Protection, Pt. Baker, and Meyer's Chuck.
3, Wrangell and Mitkof Islands	Moose	Rural residents of Units 1(B), 2, and 3.
Unit 4	Brown Bear	Residents of Unit 4 and Kake.
4	Deer	Residents of Unit 4 and residents of Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, Wrangell, and Yakutat.
4	Goat	Residents of Sitka, Hoonah, Tenakee, Pelican, Funter Bay, Angoon, Port Alexander, and Elfin Cove.
Unit 5	Black Bear	Residents of Unit 5(A).
5	Brown Bear	Residents of Yakutat.
5	Deer	Residents of Yakutat.
5	Moose	Residents of Unit 5(A).
Unit 6(A)	Black Bear	Residents of Yakutat and residents of 6(C) and 6(D), except no subsistence for Whittier.
6, Remainder	Black Bear	Residents of Unit 6(C) and 6(D), except no subsistence for Whittier.
6	Brown Bear	No Federal subsistence priority.
6(C) and (D)	Goat	Rural residents of Unit 6(C) and (D).
6	Moose	No Federal subsistence priority.
6	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and the residents of Chickaloon and 16-26.
Unit 7	Brown Bear	No Federal subsistence priority.
7	Caribou	No Federal subsistence priority.
7, Brown Mountain hunt area	Goat	Residents of Port Graham and English Bay.
7, that portion draining into Kings Bay	Moose	Residents of Chenega Bay and Tatitlek.
7, Remainder	Moose	No Federal subsistence priority.
7	Sheep	No Federal subsistence priority.
Unit 8	Brown Bear	Residents of Old Harbor, Akhiok, Larsen Bay, Karluk, Ouzinkie, and Port Lions.
8	Deer	Residents of Unit 8.
8	Elk	Residents of Unit 8.
8	Goat	No Federal subsistence priority.
Unit 9(D)	Bison	No Federal subsistence priority.
9(A) and (B)	Black Bear	Residents of Units 9(A) and (B), and 17(A), (B), and (C).
9(A), (C) and (D)	Brown Bear	No Federal subsistence priority.
9(B)	Brown Bear	Residents of Unit 9(B).
9(E)	Brown Bear	Residents of Chignik Lake, Egegik, Ivanof Bay, Perryville, and Port Heiden/Meshik.

Area	Species	Determination
9(A) and (B)	Caribou	Residents of Units 9(B), 9(C) and 17.
9(C)	Caribou	Residents of Units 9(B), 9(C) and 17 and residents of Egegik.
9(D)	Caribou	Residents of Unit 9(D), and residents of False Pass.
9(E)	Caribou	Residents of Units 9(B), (C), (E), 17, and residents of Nelson Lagoon and Sand Point.
9(A), (B), (C) and (E)	Moose	Residents of Unit 9(A), (B), (C) and (E).
9(D)	Moose	No Federal subsistence priority.
9(B)	Sheep	Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth.
9, Remainder	Sheep	No determination.
9	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and the residents of Chickaloon and 16-26.
9(A), (B), (C), & (E)	Beaver	Residents of Units 9(A), (B), (C), (E), and 17.
Unit 10 Unimak Island	Caribou	Residents of False Pass.
10, Remainder	Caribou	No determination.
10	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and the residents of Chickaloon and 16-26.
Unit 11	Bison	No Federal subsistence priority.
11	Brown Bear	No Federal subsistence priority.
11, north of the Sanford River	Caribou	Residents of Units 11, 12, and 13 (A)-(D) and the residents of Chickaloon and Dot Lake.
11, remainder	Caribou	Residents of Units 11 and 13 (A)-(D) and the residents of Chickaloon.
11	Goat	Residents of Unit 11 and the residents of Chitina, Chistochina, Copper Center, Gakona, Gulkana, Mentasta Lake, Tazlina, Tonsina, and Dot Lake.
11, north of the Sanford River	Moose	Residents of Units 11, 12, and 13 (A)-(D) and the residents of Chickaloon and Dot Lake.
11, remainder	Moose	Residents of Unit 11 and Unit 13 (A)-(D) and the residents of Chickaloon.
11, north of the Sanford River	Sheep	Residents of Unit 12 and the communities and areas of Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Siana, McCarthy/South Wrangell/South Park, Tazlina and Tonsina; Residents along the Nabesna Road—Milepost 0-46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0-62 (McCarthy Road).
11, remainder	Sheep	Residents of the communities and areas of Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Siana, McCarthy/South Wrangell/South Park, Tazlina and Tonsina; Residents along the Tok Cutoff—Milepost 79-110 (Mentasta Pass), residents along the Nabesna Road—Milepost 0-46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0-62 (McCarthy Road).
11	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and the residents of Chickaloon and 16-26.
11	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
11	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 12	Brown Bear	Residents of Unit 12 and Dot Lake.
12	Caribou	Residents of Unit 12 and residents of Dot Lake and Mentasta Lake.
12, South of a line from Noyes Mountain, southeast of the confluence of Tatschunda Creek to Nabesna River.	Moose	Residents of Unit 11 north of 62nd parallel (excluding North Siana Homestead and South Siana Homestead); and residents of Unit 12, 13(A)-(D) and the residents of Chickaloon and residents of Dot Lake.
12, East of the Nabesna River and Nabesna Glacier, south of the Winter Trail from Pickerel Lake to the Canadian Border.	Moose	Residents of Unit 12.
12, Remainder	Moose	Residents of Unit 12 and residents of Dot Lake and Mentasta Lake.
12	Sheep	Residents of Unit 12 and residents of Chistochina and Mentasta Lake.
12	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and the residents of Chickaloon and 16-26.
Unit 13	Brown Bear	No Federal subsistence priority.
13	Caribou Nelchina Herd	Residents of Units 11, 13 and the residents of Chickaloon, and 12 (along Nabesna Road).
13(E)	Caribou	Residents of McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters)
13(D)	Goat	No Federal subsistence priority.
13(A), (B), and (D)	Moose	Residents of Unit 13 and the residents of Chickaloon.
13(C)	Moose	Residents of Units 12, 13 and the residents of Chickaloon and Dot Lake.

Area	Species	Determination
13(E)	Moose	Residents of McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D)	Sheep	No Federal subsistence priority.
13	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and the residents of Chickaloon, and 16-26.
13	Grouse (Spruce, Blue, Ruffed & Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
13	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
Unit 14(B) and (C)	Brown Bear	No Federal subsistence priority.
14	Goat	No Federal subsistence priority.
14	Moose	No Federal subsistence priority.
14(A) and (C)	Sheep	No Federal subsistence priority.
Unit 15(C)	Black Bear	Residents of Port Graham and Nanwalek only.
15, Remainder	Black Bear	No Federal subsistence priority.
15	Brown Bear	No Federal subsistence priority.
15(C), Port Graham and English Bay hunt areas.	Goat	Residents of Port Graham and Nanwalek.
15(C), Seldovia hunt area	Goat	Residents Seldovia area.
15	Moose	Residents of Ninilchik, Nanwalek, Port Graham, and Seldovia.
15	Sheep	No Federal subsistence priority.
15	Ptarmigan (Rock, Willow and White-tailed).	Residents of Unit 15.
15	Grouse (Spruce)	Residents of Unit 15.
15	Grouse (Ruffed)	No Federal subsistence priority.
Unit 16	Brown Bear	No Federal subsistence priority.
16(A)	Moose	No Federal subsistence priority.
16(B)	Moose	Residents of Unit 16(B).
16	Sheep	No Federal subsistence priority.
16	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and the residents of Chickaloon, and 16-26.
16	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
16	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 17	Black Bear	Residents of Units 9(A) and (B), and 17(A), (B), and (C).
17(A)	Brown Bear	Residents of Unit 17, and residents of Goodnews Bay and Platinum.
17(A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Brown Bear	Residents of Kwethluk.
17(B) and (C)	Brown Bear	Residents of Unit 17.
17	Caribou	Residents of Units 9(B), 17 and residents of Lime Village and Stony River.
17(A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Caribou	Residents of Kwethluk.
17(A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Moose	Residents of Kwethluk.
17(A)	Moose	Residents of Unit 17 and residents of Goodnews Bay and Platinum; however, no subsistence for residents of Akiachak, Akiak and Quinhagak.

Area	Species	Determination
17(B) and (C)	Moose	Residents of Unit 17, and residents of Nondalton, Levelock, Goodnews Bay and Platinum.
17	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and the residents of Chickaloon, and 16-26.
17	Beaver	Residents of Units 9(A), (B), (C), (E), and 17.
Unit 18	Black Bear	Residents of Unit 18, residents of Unit 19(A) living downstream of the Holokuk River, and residents of Chuathbaluk, Aniak, Lower Kalskag, Holy Cross, Stebbins, St. Michael, and Togiak.
18	Brown Bear	Residents of Akiachak, Akiak, Eek, Goodnews Bay, Kwethluk, Mt. Village, Napaskiak, Platinum, Quinhagak, St. Mary's, and Tuluksak.
18	Caribou (Kilbuck caribou herd only).	INTERIM DETERMINATION BY FEDERAL SUBSISTENCE BOARD (12/18/91): residents of Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaskiak, Napakiak, Kasigluk, Atmanthluak, Nunapitchuk, Tuntutliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills.
18 North of the Yukon River	Caribou (except Kilbuck caribou herd).	Residents of Alakanuk, Andreafsky, Chevak, Emmonak, Hooper Bay, Kotlik, Kwethluk, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Mary's, St. Michael, Scammon Bay, Sheldon Point, and Stebbins.
18, Remainder	Caribou (except Kilbuck caribou herd).	Residents of Kwethluk.
18, that portion of the Yukon River drainage upstream of Russian Mission and that portion of the Kuskokwim River drainage upstream of, but not including the Tuluksak River drainage.	Moose	Residents of Unit 18 and residents of Upper Kalskag, Lower Kalskag, Aniak, and Chuathbaluk.
18, remainder	Moose	Residents of Unit 18 and residents of Upper Kalskag and Lower Kalskag.
18	Muskox	No Federal subsistence priority.
18	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and the residents of Chickaloon and 16-26.
Unit 19(C), (D)	Bison	No Federal subsistence priority.
19(A)	Brown Bear	Residents of Unit 19(A), (D), and Residents of Tuluksak, Lower Kalskag and Kwethluk.
19(B)	Brown Bear	Residents of Kwethluk.
19(C)	Brown Bear	No Federal subsistence priority.
19(D)	Brown Bear	Residents of Unit 19(A) and (D), and residents of Tulusak and Lower Kalskag.
19(A) and (B)	Caribou	Residents of Unit 19(A) and (B) and Kwethluk; and residents of Unit 18 in Kuskokwim Drainage and Kuskokwim Bay during the winter season.
19(C)	Caribou	Residents of Unit 19(C), and residents of Lime Village, McGrath, Nikolai, and Telida.
19(D)	Caribou	Residents of Unit 19(D), and residents of Lime Village, Sleetmute and Stony River.
19(A) and (B)	Moose	Residents of Unit 18 within Kuskokwim River drainage upstream from and including the Johnson River, and Unit 19.
19(C)	Moose	Residents of Unit 19.
19(D)	Moose	Residents of Unit 19 and residents of Lake Minchumina.
19	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and the residents of Chickaloon and 16-26.
Unit 20(D)	Bison	No Federal subsistence priority.
20(F)	Black Bear	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20(E)	Brown Bear	Residents of Unit 12 and Dot Lake.
20(F)	Brown Bear	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20(A), (C) (Delta, Yanert, and 20(C) herds) and (D).	Caribou	No determination, except no subsistence for residents of households of the Denali National Park Headquarters.
20(D) and 20(E)	Caribou 40-Mile Herd	Residents of Unit 12 north of Wrangell Park-Preserve, rural residents of 20(D) and residents of 20(E).
20(A)	Moose	Residents of Cantwell, Minto, and Nenana, McKinley Village, the area along the Parks Highway between mileposts 216 and 239, except no subsistence for residents of households of the Denali National Park Headquarters.
20(B)	Moose	Minto Flats Management Area—residents of Minto and Nenana.
20(B)	Moose	Remainder—rural residents of Unit 20(B), and residents of Nenana and Tanana.
20(C)	Moose	Rural residents of Unit 20(C) (except that portion within Denali National Park and Preserve and that portion east of the Teklanika River), and residents of Cantwell, Manley, Minto, Nenana, the Parks Highway from milepost 300-309, Nikolai, Tanana, Telida, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239. No subsistence for residents of households of the Denali National Park Headquarters.

Area	Species	Determination
20(D)	Moose	Rural residents of Unit 20(D) and residents of Tanacross.
20(F)	Moose	Residents of Unit 20(F), Manley, Minto and Stevens Village.
20(F)	Wolf	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and the residents of Chickaloon and 16-26.
20(D)	Grouse, (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
20(D)	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 21	Brown Bear	Rural residents of Units 21 and 23.
21	Caribou, Western Arctic Caribou Herd only.	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of 23 and 24.
21(A) and (E)	Caribou	Residents of Unit 21(A) and Aniak, Chuathbaluk, Crooked Creek, Grayling, Holy Cross, McGrath, Shageluk and Takotna.
21(A)	Moose	Residents of Unit 21(A), (E), Takotna, McGrath, Aniak and Crooked Creek.
21(B) and (C)	Moose	Residents of Unit 21(B) and (C), residents of Tanana and Galena.
21(D)	Moose	Residents of Unit 21(D), and residents of Huslia and Ruby.
21(E)	Moose	Residents of Unit 21(E) and residents of Russian Mission.
21	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and the residents of Chickaloon, and 16-26.
Unit 22(A)	Black Bear	Residents of Unit 22(A) and Koyuk.
22(B)	Black Bear	Residents of Unit 22(B).
22(C), (D), and (E)	Black Bear	No Federal subsistence priority.
22	Brown Bear	Residents of Unit 22
22(A)	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24, and residents of Kotlik, Emmonak, Hooper Bay, Scammon Bay, Chevak, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Mary's, Sheldon Point, and Alakanuk.
22, Remainder	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24.
22	Moose	Residents of Unit 22.
22(B)	Muskox	Residents of Unit 22(B).
22(C)	Muskox	Residents of Unit 22(C).
22(D)	Muskox	Residents of Unit 22(D) excluding St. Lawrence Island.
22(E)	Muskox	Residents of Unit 22(E) excluding Little Diomed Island.
22	Wolf	Residents of Units 23, 22, 21(D) north and west of the Yukon River, and residents of Kotlik.
22	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
22	Ptarmigan (Rock, Willow and White-tailed).	
Unit 23	Brown Bear	Rural residents of Units 21 and 23.
23	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, residents of Galena, and residents of Units 22, 23, 24 including residents of Wiseman but not including other residents of the Dalton Highway Corridor Management Area, and 26(A).
23	Moose	Residents of Unit 23.
23 South of Kotzebue Sound and west of and including the Buckland River drainage.	Muskox	Residents of Unit 23 South of Kotzebue Sound and west of and including the Buckland River drainage.
23, Remainder	Muskox	Residents of Unit 23 east and north of the Buckland River drainage.
23	Sheep	Residents of Unit 23 north of the Arctic Circle.
23	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and the residents of Chickaloon, and 16-26.
23	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
23	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Black Bear	Residents of Stevens Village and residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, remainder	Black Bear	Residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Brown Bear	Residents of Stevens Village and residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.

Area	Species	Determination
24, remainder	Brown Bear	Residents of Unit 24 including Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area
24	Caribou	Residents of Unit 24 including Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area; residents of Galena, Kobuk, Koyukuk, Stevens Village, and Tanana.
24	Moose	Residents of Unit 24, and residents of Koyukuk and Galena.
24	Sheep	Residents of Unit 24 residing north of the Arctic Circle and residents of Allakaket, Alatna, Hughes, and Huslia.
24	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and the residents of Chickaloon and 16-26.
Unit 25(D)	Black Bear	Residents of Unit 25(D).
25(D)	Brown Bear	Residents of Unit 25(D).
25, remainder	Brown Bear	No Federal subsistence priority.
25(A)	Moose	Residents of Unit 25(A) and 25(D).
25(D) West	Moose	Residents of Beaver, Birch Creek and Stevens Village.
25(D), Remainder	Moose	Residents of Remainder of Unit 25.
25(A)	Sheep	Residents of Arctic Village, Chalkytsik, Fort Yukon, Kaktovik and Venetie.
25(B) and (C)	Sheep	No Federal subsistence priority.
25(D)	Wolf	Residents of Unit 25(D).
25, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and the residents of Chickaloon and 16-26.
Unit 26	Brown Bear	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex) and residents of Anaktuvuk Pass and Point Hope.
26(A)	Caribou	Residents of Unit 26 and the residents of Anaktuvuk Pass and Point Hope.
26(B)	Caribou	Residents of Unit 26 and the residents of Anaktuvuk Pass, Point Hope, and Wiseman.
26(C)	Caribou	Residents of Unit 26 and the residents of Anaktuvuk Pass and Point Hope.
26	Moose	Residents of Unit 26, (except the Prudhoe Bay-Deadhorse Industrial Complex), and residents of Point Hope and Anaktuvuk Pass.
26(A)	Muskox	Residents of Anaktuvuk Pass, Atkasuk, Barrow, Nuiqsut, Point Hope, Point Lay, and Wainwright.
26(B)	Muskox	Residents of Anaktuvuk Pass, Nuiqsut, and Kaktovik.
26(C)	Muskox	Residents of Kaktovik.
26(A)	Sheep	Residents of Unit 26, Anaktuvuk Pass, and Point Hope.
26(B)	Sheep	Residents of Unit 26, Anaktuvuk Pass, Point Hope, and Wiseman.
26(C)	Sheep	Residents of Unit 26, Arctic Village, Chalkytsik, Fort Yukon, Point Hope, and Venetie.
26	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11-13 and the residents of Chickaloon and 16-26.

(2) Fish determinations.

Area	Species	Determination
KOTZEBUE AREA	All fish	Residents of the Kotzebue Area.
NORTON SOUND—PORT CLARENCE AREA	All fish	Residents of the Norton Sound-Port Clarence Area.
YUKON-NORTHERN AREA:		
Yukon River drainage	Salmon, other than Yukon River Fall Chum salmon.	Residents of the Yukon Area, including the community of Stebbins.
Yukon River drainage	Yukon River Fall chum salmon	Residents of the Yukon River drainage, including the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak.
Yukon River drainage	Freshwater fish species (other than salmon), including sheefish, whitefish, lamprey, burbot, sucker, grayling, pike, char, and blackfish.	Residents of the Yukon-Northern Area.
Remainder	All fish	Residents of the Northern Area, except for those domiciled in Unit 26-B.
KUSKOKWIM AREA	Salmon	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparrevohn USAFB, and Tatalina USAFB.
	Rainbow trout	Residents of the communities of Quinhagak, Goodnews Bay, Kwethluk, Eek, Akiachak, Akiak, and Platinum.
	Pacific cod	Residents of the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Cheformak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutulak.
	All other fish other than herring	Residents of the Kuskokwim Area.

Area	Species	Determination
Waters around Nunivak Island	Herring and herring roe	Residents within 20 miles of the coast between the westernmost tip of the Naskonant Peninsula and the terminus of the Ishowik River and on Nunivak Island.
BRISTOL BAY AREA:		
Nushagak District, including drainages flowing into the district.	Salmon and other freshwater fish	Residents of the Nushagak District and freshwater drainages flowing into the district.
Naknek-Kvichak District—Naknek River drainage.	Salmon and other freshwater fish	Residents of the Naknek and Kvichak River drainages.
Naknek-Kvichak District—Iliamna-Lake Clark drainage.	Salmon and other freshwater fish	Residents of the Iliamna-Lake Clark drainage.
Togiak District, including drainages flowing into the district.	Salmon and other freshwater fish	Residents of the Togiak District, freshwater drainages flowing into the district, and the community of Manokotak.
Togiak District	Herring spawn on kelp	Residents of the Togiak District.
Remainder	All fish	Residents of the Bristol Bay Area.
ALEUTIAN ISLANDS AREA	All fish	Residents of the Aleutian Islands Area and the Pribilof Islands.
ALASKA PENINSULA AREA	Halibut	Residents of the Alaska Peninsula Area and the communities of Ivanof Bay and Perryville.
	All other fish in the Alaska Peninsula Area.	Residents of the Alaska Peninsula Area.
CHIGNIK AREA	Halibut, salmon and fish other than steelhead and rainbow trout.	Residents of the Chignik Area.
KODIAK AREA—except the Mainland District, all waters along the south side of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°52' North latitude) mid-stream Shelikof Strait, and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57°11'22" North latitude, 156°20'30" W longitude).	Salmon	Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base.
Kodiak Area	Fish other than steelhead and rainbow trout and salmon.	Residents of the Kodiak Area.
COOK INLET AREA	Fish other than salmon, Dolly Varden, trout, char, grayling, and burbot.	Residents of the Cook Inlet Area.
PRINCE WILLIAM SOUND AREA:		
South-Western District and Green Island.	Salmon	Residents of the Southwestern District which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield, and Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands.
North of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.	Salmon	Residents of the villages of Tatitlek and Ellamar.
Glennallen Subdistrict of the Upper Copper River District and the waters of the Copper River.	Salmon	Residents of the Prince William Sound Area.
Copper River District—remainder.	Salmon	Residents of the Prince William Sound Area.
YAKUTAT AREA:		
Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to the Tsiu River.	Salmon	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to Point Manby.	Dolly Varden, steelhead trout, and smelt.	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
SOUTHEASTERN ALASKA AREA:		
District 1—Section 1-E in waters of the Naha River and Roosevelt Lagoon.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Saxman.
District 1—Section 1-F in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Saxman.

Area	Species	Determination
District 2—North of the latitude of the northern-most tip of Chasina Point and west of a line from the northern-most tip of Chasina Point to the eastern-most tip of Grindall Island to the eastern-most tip of the Kasaan Peninsula.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kasaan and in the drainage of the southeastern shore of the Kasaan Peninsula west of 132° 20' W. long. and east of 132° 25' W. long.
District 3—Section 3-A	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the townsite of Hydaburg.
District 3—Section A	Halibut and bottomfish	Residents of Southeast Area.
District 3—Section 3-B in waters east of a line from Point Ildefonso to Tranquil Point.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989.
District 3—Section 3-C in waters of Sarkar Lakes.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989.
District 5—North of a line from Point Barrie to Boulder Point.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9-A	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9-B north of the latitude of Swain Point.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 10—West of a line from Pinta Point to False Point Pybus.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 12—South of a line from Fishery Point to south Passage Point and north of the latitude of Point Caution.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30' W. long., including Killisnoo Island.
District 13—Section 13-A south of the latitude of Cape Edward.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13-B north of the latitude of Dorothy Narrows.
District 13—Section 13-B north of the latitude of Redfish Cape.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13-B north of the latitude of Dorothy Narrows.
District 13—Section 13-C	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13-B north of the latitude of Dorothy Narrows.
District 13—Section 13-C east of the longitude of Point Elizabeth.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30' W. long., including Killisnoo Island.
District 14—Section 14-B and 14-C.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Hoonah and in Chichagof Island drainages on the eastern shore of Port Frederick from Gartina Creek to Point Sophia.

(3) Shellfish determinations.

Area	Species	Determination
BERING SEA AREA	All shellfish	Residents of the Bering Sea Area.
ALASKA PENINSULA-ALEUTIAN ISLANDS AREA.	Shrimp, Dungeness, king, and Tanner crab	Residents of the Alaska Peninsula-Aleutian Islands Area.
KODIAK AREA	Shrimp, Dungeness, and Tanner crab	Residents of the Kodiak Area.
Kodiak Area, except for the Semidi Island, the North Mainland, and the South Mainland Sections.	King crab	Residents of the Kodiak Island Borough except those residents on the Kodiak Coast Guard base.
PRINCE WILLIAM SOUND AREA	Shrimp, clams, Dungeness, king, and Tanner crab.	Residents of the Prince William Sound Area.
SOUTHEASTERN ALASKA—YAKUTAT AREA:		
Section 1-E south of the latitude of Grant Island light.	Shellfish, except shrimp, king crab, and Tanner crab.	Residents of the Southeast Area.

Area	Species	Determination
Section 1-F north of the latitude of the northernmost tip of Mary Island, except waters of Boca de Quadra.	Shellfish, except shrimp, king crab, and Tanner crab.	Residents of the Southeast Area.
Section 3-A and 3-B	Shellfish, except shrimp, king crab, and Tanner crab.	Residents of the Southeast Area.
District 13	Dungeness crab, shrimp, abalone, sea cucumbers, gum boots, cockles, and clams, except geoducks.	Residents of the Southeast Area.

Subpart D—Subsistence Taking of Fish and Wildlife

3. In subpart D, revise §§ _____.26 and _____.27 of 36 CFR part 242 and 50 CFR part 100 to read as follows:

§ _____.26 Subsistence taking of fish.

(a) *Applicability.* (1) Regulations in this section apply to the taking of fish or their parts for subsistence uses.

(2) You may take fish for subsistence uses at any time by any method unless you are restricted by the subsistence fishing regulations found in this section. The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative. This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not after that, take any additional fish of that species under any other harvest limit specified for a State season.

(b) *Definitions.* The following definitions shall apply to all regulations contained in this section and § _____.27:

Abalone Iron means a flat device which is used for taking abalone and which is more than one inch (24 mm) in width and less than 24 inches (610 mm) in length, with all prying edges rounded and smooth.

ADF&G means the Alaska Department of Fish and Game.

Anchor means a device used to hold a fishing vessel or net in a fixed position relative to the beach; this includes using part of the seine or lead, a ship's anchor, or being secured to another vessel or net that is anchored.

Beach seine means a floating net which is designed to surround fish and is set from and hauled to the beach.

Cast net means a circular net with a mesh size of no more than one and one-half inches and weights attached to the perimeter which, when thrown, surrounds the fish and closes at the bottom when retrieved.

Char means the following species: Arctic char (*Salvelinus alpinus*); lake trout (*Salvelinus namaycush*); brook trout (*Salvelinus fontinalis*), and Dolly Varden (*Salvelinus malma*).

Crab means the following species: red king crab (*Paralithodes camshatica*); blue king crab (*Paralithodes platypus*); brown king crab (*Lithodes aequispina*); *Lithodes couesi*; all species of tanner or snow crab (*Chionoecetes* spp.); and Dungeness crab (*Cancer magister*).

Depth of net means the perpendicular distance between cork line and lead line expressed as either linear units of measure or as a number of meshes, including all of the web of which the net is composed.

Dip net means a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed five feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand.

Diving Gear means any type of hard hat or skin diving equipment, including SCUBA equipment, a tethered, umbilical, surface-supplied, or snorkel.

Drainage means all of the waters comprising a watershed including tributary rivers, streams, sloughs, ponds and lakes which contribute to the water supply of the watershed.

Drift gillnet means a drifting gillnet that has not been intentionally staked, anchored or otherwise fixed.

Fishwheel means a fixed, rotating device, with no more than four baskets on a single axle, for catching fish which is driven by river current or other means.

Freshwater of streams and rivers means the line at which fresh water is separated from saltwater at the mouth of streams and rivers by a line drawn between the seaward extremities of the exposed tideland banks at the present stage of the tide.

Fyke net means a fixed, funneling (fyke) device used to entrap fish.

Gear means any type of fishing apparatus.

Gillnet means a net primarily designed to catch fish by entanglement

in a mesh that consists of a single sheet of webbing which hangs between cork line and lead line, and which is fished from the surface of the water.

Grappling hook means a hooked device with flukes or claws, which is attached to a line and operated by hand.

Groundfish or bottomfish means any marine fish except halibut, osmerids, herring and salmonids.

Hand purse seine means a floating net which is designed to surround fish and which can be closed at the bottom by pursing the lead line; pursing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed.

Handline means a hand-held and operated line, with one or more hooks attached.

Harvest limit means the maximum legal take per person or designated group, per specified time period, in the area in which the person is fishing, even if part or all of the fish are preserved. A fish, when landed and killed becomes part of the harvest limit of the person originally hooking it.

Herring pound means an enclosure used primarily to contain live herring over extended periods of time.

Household means a person or persons having the same residence.

Hung measure means the maximum length of the cork line when measured wet or dry with traction applied at one end only.

Hydraulic clam digger means a device using water or a combination of air and water to remove clams from their environment.

Jigging gear means a line or lines with lures or baited hooks, drawn through the water by hand, and which are operated during periods of ice cover from holes cut in the ice, or from shore ice and which are drawn through the water by hand.

Lead means either a length of net employed for guiding fish into a seine, set gillnet, or other length of net, or a length of fencing employed for guiding fish into a fishwheel, fyke net or dip net.

Legal limit of fishing gear means the maximum aggregate of a single type of fishing gear permitted to be used by one individual or boat, or combination of

boats in any particular regulatory area, district or section.

Long line means either a stationary, buoyed, or anchored line, or a floating, free-drifting line with lures or baited hooks attached.

Mechanical clam digger means a mechanical device used or capable of being used for the taking of clams.

Mechanical jigging machine means a mechanical device with line and hooks used to jig for halibut and bottomfish, but does not include hand gurdies or rods with reels.

Mile means a nautical mile when used in reference to marine waters or a statute mile when used in reference to fresh water.

Possession limit means the maximum number of fish a person or designated group may have in possession if the fish have not been canned, salted, frozen, smoked, dried, or otherwise preserved so as to be fit for human consumption after a 15 day period.

Pot means a portable structure designed and constructed to capture and retain live fish and shellfish in the water.

Purse seine means a floating net which is designed to surround fish and which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

Ring net means a bag-shaped net suspended between no more than two frames; the bottom frame may not be larger in perimeter than the top frame; the gear must be nonrigid and collapsible so that free movement of fish or shellfish across the top of the net is not prohibited when the net is employed.

Rockfish means all species of the genus *Sebastes*.

Rod and reel means either a device upon which a line is stored on a fixed or revolving spool and is deployed through guides mounted on a flexible pole, or a line that is attached to a pole.

Salmon means the following species: pink salmon (*Oncorhynchus gorbuscha*); sockeye salmon (*Oncorhynchus nerka*); chinook salmon (*Oncorhynchus tshawytscha*); coho salmon (*Oncorhynchus kisutch*); and chum salmon (*Oncorhynchus keta*).

Salmon stream means any stream used by salmon for spawning or for traveling to a spawning area.

Salmon stream terminus means a line drawn between the seaward extremities of the exposed tideland banks of any salmon stream at mean lower low water.

Scallop dredge means a dredge-like device designed specifically for and capable of taking scallops by being towed along the ocean floor.

Sea urchin rake means a hand-held implement, no longer than four feet, equipped with projecting prongs used to gather sea urchins.

Set gillnet means a gillnet that has been intentionally set, staked, anchored, or otherwise fixed.

Shovel means a hand-operated implement for digging clams or cockles.

Spear means a shaft with a sharp point or fork-like implement attached to one end which is used to thrust through the water to impale or retrieve fish and which is operated by hand.

Stretched measure means the average length of any series of 10 consecutive meshes measured from inside the first knot and including the last knot when wet; the 10 meshes, when being measured, shall be an integral part of the net, as hung, and measured perpendicular to the selvages; measurements shall be made by means of a metal tape measure while the 10 meshes being measured are suspended vertically from a single peg or nail, under five-pound weight.

Subsistence fishing permit means a permit issued by the Alaska Department of Fish and Game, unless specifically identified otherwise.

To operate fishing gear means any of the following: to deploy gear in the water; to remove gear from the water; to remove fish or shellfish from the gear during an open season or period; or to possess a gillnet containing fish during an open fishing period, except that a gillnet which is completely clear of the water is not considered to be operating for the purposes of minimum distance requirement.

Trawl means a bag-shaped net towed through the water to capture fish or shellfish, and includes beam, otter, or pelagic trawl.

Troll gear means a power gurdy troll gear consisting of a line or lines with lures or baited hooks which are drawn through the water by a power gurdy; hand troll gear consisting of a line or lines with lures or baited hooks which are drawn through the water from a vessel by hand trolling, strip fishing or other types of trolling, and which are retrieved by hand power or hand-powered crank and not by any type of electrical, hydraulic, mechanical or other assisting device or attachment; or dinglebar troll gear consisting of one or more lines, retrieved and set with a troll gurdy or hand troll gurdy, with a terminally attached weight from which one or more leaders with one or more lures or baited hooks are pulled through the water while a vessel is making way.

Trout means the following species: cutthroat trout (*Oncorhynchus clarki*)

and rainbow trout or steelhead trout (*Oncorhynchus mykiss*).

(c) Methods, means, and general restrictions. (1) Unless otherwise specified in this section or under terms of a required subsistence fishing permit, you may use the following legal types of gear for subsistence fishing:

- (i) A set gillnet;
- (ii) A drift gillnet;
- (iii) A purse seine;
- (iv) A hand purse seine;
- (v) A beach seine;
- (vi) Troll gear;
- (vii) A fish wheel;
- (viii) A trawl;
- (ix) A pot;
- (x) A ring net;
- (xi) A longline;
- (xii) A fyke net;
- (xiii) A lead;
- (xiv) A herring pound;
- (xv) A dip net;
- (xvi) Jigging gear;
- (xvii) A mechanical jigging machine;
- (xviii) A handline;
- (xix) A shovel;
- (xx) A mechanical clam digger;
- (xxi) A hydraulic clam digger;
- (xxii) An abalone iron;
- (xxiii) A scallop dredge;
- (xxiv) A grappling hook;
- (xxv) A sea urchin rake;
- (xxvi) Diving gear;
- (xxvii) A cast net;
- (xxviii) A handline;
- (xxix) A rod and reel; and
- (xxx) A spear.

(2) You must include an escape mechanism on all pots used to take fish or shellfish. The escape mechanisms are as follows:

(i) A sidewall, which may include the tunnel of all shellfish and bottomfish pots must contain an opening equal to or exceeding 18 inches in length, except that in shrimp pots the opening must be a minimum of six inches in length. The opening must be laced, sewn, or secured together by a single length of untreated, 100 percent cotton twine, no larger than 30 thread. The cotton twine may be knotted at each end only. The opening must be within six inches of the bottom of the pot and must be parallel with it. The cotton twine may not be tied or looped around the web bars. Dungeness crab pots may have the pot lid tie-down straps secured to the pot at one end by a single loop of untreated, 100 percent cotton twine no larger than 60 thread, or the pot lid must be secured so that, when the twine degrades, the lid will no longer be securely closed;

(ii) All king crab, Tanner crab, shrimp, miscellaneous shellfish and bottomfish pots may, instead of complying with (i) of this paragraph, satisfy the following: a sidewall, which

may include the tunnel, must contain an opening at least 18 inches in length, except that shrimp pots must contain an opening at least six inches in length. The opening must be laced, sewn, or secured together by a single length of treated or untreated twine, no larger than 36 thread. A galvanic timed release device, designed to release in no more than 30 days in salt water, must be integral to the length of twine so that, when the device releases, the twine will no longer secure or obstruct the opening of the pot. The twine may be knotted only at each end and at the attachment points on the galvanic timed release device. The opening must be within six inches of the bottom of the pot and must be parallel with it. The twine may not be tied or looped around the web bars.

(3) For subsistence fishing for salmon, you may not use a gillnet exceeding 50 fathoms in length, unless otherwise specified in this section. The gillnet web must contain at least 30 filaments of equal diameter or at least 6 filaments, each of which must be at least 0.20 millimeter in diameter.

(4) You may not obstruct more than one-half the width of any stream with any gear used to take fish for subsistence uses. You may not obstruct more than one-half the width of any stream with any stationary fishing.

(5) You may not use live non-indigenous fish as bait.

(6) You must have your first initial, last name, and address plainly and legibly inscribed on the side of your fishwheel facing midstream of the river.

(7) You may use kegs or buoys of any color but red on any permitted gear.

(8) You must have your first initial, last name, and address plainly and legibly inscribed on each keg, buoy, stakes attached to gillnets, stakes identifying gear fished under the ice, and any other unattended fishing gear which you use to take fish for subsistence uses.

(9) You may not use explosives or chemicals to take fish for subsistence uses.

(10) You may not take fish for subsistence uses within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction, unless otherwise indicated.

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

differently for separate regions of the State.

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

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

(14) Except as provided elsewhere in this section, you may not take rainbow trout or steelhead trout.

(15) You may not use as bait for commercial or sport fishing purposes fish taken for subsistence use or under subsistence regulations.

(16) You may not accumulate harvest limits authorized in this section or \$____.27 with harvest limits authorized under State regulations.

(17) Unless specified otherwise in this section, you may use a rod and reel to take fish without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(i) If you are required to obtain a subsistence fishing permit for an area, that permit is required to take fish for subsistence uses with rod and reel in that area. The harvest and possessions limits for taking fish with a rod and reel in those areas are the same as indicated on the permit issued for subsistence fishing with other gear types;

(ii) If you are not required to obtain a subsistence fishing permit for an area, the harvest and possession limits for taking fish for subsistence uses with a rod and reel is the same as for taking fish under State of Alaska subsistence fishing regulations in those same areas. If the State does not have a specific subsistence season for that particular species, the limit shall be the same as for taking fish under State of Alaska sport fishing regulations.

(18) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish for subsistence uses at any time.

(19) You may not intentionally waste or destroy any subsistence-caught fish or shellfish; however, you may use for bait or other purposes, whitefish, herring, and species for which bag limits, seasons, or other regulatory methods and means are not provided in this section, as well as the head, tail, fins, and viscera of legally-taken subsistence fish.

(d) *Fishing by designated harvest permit.* (1) Any species of fish that may be taken by subsistence fishing under

this part may be taken under a designated harvest permit.

(2) If you are a Federally-qualified subsistence user, you (beneficiary) may designate another Federally-qualified subsistence user to take fish on your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest fish and must return a completed harvest report. The designated fisherman may fish for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated fishing permit when taking, attempting to take, or transporting fish taken under this section, on behalf of a beneficiary.

(4) The designated fisherman may not fish with more than one legal limit of gear.

(5) You may not designate more than one person to take or attempt to take fish on your behalf at one time. You may not personally take or attempt to take fish at the same time that a designated fisherman is taking or attempting to take fish on your behalf.

(e) *Fishing permits and reports.* (1) You may take salmon only under the authority of a subsistence fishing permit, unless a permit is specifically not required in a particular area by the subsistence regulations in this part, or unless you are retaining salmon from your commercial catch consistent with paragraph (f) of this section.

(2) If a subsistence fishing permit is required by this section, the following permit conditions apply unless otherwise specified in this section:

(i) You may not take more fish for subsistence use than the limits set out in the permit;

(ii) You must obtain the permit prior to fishing;

(iii) You must have the permit in your possession and readily available for inspection while fishing or transporting subsistence-taken fish;

(iv) If specified on the permit, you shall keep accurate daily records of the catch, showing the number of fish taken by species, location and date of catch, and other such information as may be required for management or conservation purposes; and

(v) If the return of catch information necessary for management and conservation purposes is required by a fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the mail, accident,

sickness, or other unavoidable circumstances.

(f) *Relation to commercial fishing activities.* (1) If you are a Federally-qualified subsistence user who also commercial fishes, you may retain fish for subsistence purposes from your lawfully-taken commercial catch.

(2) When participating in a commercial and subsistence fishery at the same time, you may not use an amount of combined fishing gear in excess of that allowed under the appropriate commercial fishing regulations.

(g) You may not possess, transport, give, receive or barter subsistence-taken fish or their parts which have been taken contrary to Federal law or regulation or State law or regulation (unless superseded by regulations in this part).

(h) [Reserved]

(i) *Fishery management area restrictions.* (1) *Kotzebue Area.* The Kotzebue Area includes all waters of Alaska between the latitude of the westernmost tip of Point Hope and the latitude of the westernmost tip of Cape Prince of Wales, including those waters draining into the Chukchi Sea.

(i) You may take fish for subsistence purposes without a permit.

(ii) You may take salmon only by gillnets, beach seines, or a rod and reel.

(iii) In the Kotzebue District, you may take sheefish with gillnets that are not more than 50 fathoms in length, nor more than 12 meshes in depth, nor have a mesh size larger than 7 inches.

(iv) You may not subsistence fish for char from June 1 through September 20, in the Noatak River one mile upstream and one mile downstream from the mouth of the Kelly River, and in the Kelly River from its mouth to 1/4 mile upstream.

(2) *Norton Sound-Port Clarence Area.* The Norton Sound-Port Clarence Area includes all waters of Alaska between the latitude of the westernmost tip of Cape Prince of Wales and the latitude of Canal Point light, including those waters of Alaska surrounding St. Lawrence Island and those waters draining into the Bering Sea.

(i) In the Port Clarence District, you may take fish at any time except as specified by emergency regulation.

(ii) In the Norton Sound District, you may take fish at any time except as follows:

(A) In Subdistricts 2 through 6, if you are a commercial fishermen, you may not fish for subsistence purposes during the weekly closures of the commercial salmon fishing season, except that from July 15 through August 1, you may take salmon for subsistence purposes seven

days per week in the Unalakleet and Shaktoolik River drainages with gillnets which have a mesh size that does not exceed 4 1/2 inches, and with beach seines;

(B) In the Unalakleet River from June 1 through July 15, you may take salmon only from 8:00 a.m. Monday until 8:00 p.m. Saturday;

(C) In Subdistricts 1-3, you may take salmon other than chum salmon by beach seine during periods established by emergency regulations.

(iii) You may take salmon only by gillnets, beach seines, fishwheel, or a rod and reel.

(iv) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, jigging gear, spear, lead, or a rod and reel.

(v) In the Unalakleet River from June 1 through July 15, you may not operate more than 25 fathoms of gillnet in the aggregate nor may you operate an unanchored fishing net.

(vi) You may take fish for subsistence purposes without a subsistence fishing permit except that a subsistence fishing permit is required in the Norton Sound District: for net fishing in all waters from Cape Douglas to Rocky Point.

(vii) Only one subsistence fishing permit will be issued to each household per year.

(3) *Yukon-Northern Area.* The Yukon-Northern Area includes all waters of Alaska between the latitude of Canal Point Light and the latitude of the westernmost point of the Naskonat Peninsula, including those waters draining into the Bering Sea, and all waters of Alaska north of the latitude of the westernmost tip of Point Hope and west of 141° W. long., including those waters draining into the Arctic Ocean and the Chukchi Sea.

(i) Unless otherwise restricted in this section, you may take salmon in the Yukon-Northern Area at any time.

(ii) In the following locations, you may take salmon only during the open weekly fishing periods of the commercial salmon fishing season and may not take them for 24 hours before the opening of the commercial salmon fishing season:

(A) District 4, excluding the Koyukuk River drainage;

(B) In Subdistricts 4-B and 4-C from June 15 through September 30, salmon may be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday;

(C) District 6, excluding the Kantishna River drainage, salmon may be taken from 6:00 p.m. Friday until 6:00 p.m. Wednesday.

(iii) During any commercial salmon fishing season closure of greater than five days in duration, you may not take salmon during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk River drainage, salmon may not be taken from 6:00 p.m. Friday until 6:00 p.m. Sunday;

(B) In District 5, excluding the Tozitna River drainage and Subdistrict 5-D, salmon may not be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday.

(iv) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, you may take fish other than sr'mon at any time.

(v) In Districts 1, 2, 3, and Subdistrict 4-A, excluding the Koyukuk and Innoko River drainages, you may not take salmon for subsistence purposes during the 24 hours immediately before the opening of the commercial salmon fishing season.

(vi) In Districts 1, 2, and 3:

(A) After the opening of the commercial salmon fishing season through July 15, you may not take salmon for subsistence for 18 hours immediately before, during, and for 12 hours after each commercial salmon fishing period;

(B) After July 15, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each commercial salmon fishing period.

(vii) In Subdistrict 4-A after the opening of the commercial salmon fishing season, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each commercial salmon fishing period; however, you may take king salmon during the commercial fishing season, with drift gillnet gear only, from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday.

(viii) In the upper Yukon River drainage, you may not subsistence fish in Birch Creek and waters within 500 feet of its mouth, except that you may take whitefish and suckers under the authority of a subsistence fishing permit.

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

(A) Kanuti River upstream from a point five miles downstream of the state highway crossing;

(B) Bonanza Creek;

(C) Jim River including Prospect and Douglas Creeks; and (D) North Fork of the Chandalar River system upstream from the mouth of Quartz Creek.

(x) You may not subsistence fish in the Delta River.

(xi) You may not subsistence fish in the following rivers and creeks and within 500 feet of their mouths: Big Salt River, Hess Creek, and Beaver Creek.

(xii) You may not subsistence fish in the Deadman, Jan, Fielding, and Two-Mile Lakes.

(xiii) You may not subsistence fish in the Toklat River drainage from August 15 through May 15.

(xiv) You may take salmon only by gillnet, beach seine, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(xv) In District 4, if you are a commercial fisherman, you may not take salmon for subsistence purposes during the commercial salmon fishing season using gillnets with mesh larger than six-inches after a date specified by ADF&G emergency order issued between July 10 and July 31.

(xvi) In Districts 4, 5, and 6, you may not take salmon for subsistence purposes by drift gillnets, except as follows:

(A) In Subdistrict 4-A upstream from the mouth of Stink Creek, you may take king salmon by drift gillnets less than 150 feet in length from June 10 through July 14, and chum salmon by drift gillnets after August 2;

(B) In Subdistrict 4-A downstream from the mouth of Stink Creek, you may take king salmon by drift gillnets less than 150 feet in length from June 10 through July 14.

(xvii) Unless otherwise specified in this section, you may take fish other than salmon and halibut by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, subject to the following restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the commercial salmon fishing season, if you are a commercial fisherman, you may not operate more than one type of gear at a time, for commercial, personal use, and subsistence purposes;

(B) You may not use an aggregate length of set gillnet in excess of 150 fathoms and each drift gillnet may not exceed 50 fathoms in length; and

(C) In Districts 4, 5, and 6, you may not set subsistence fishing gear within 200 feet of other operating commercial, personal use, or subsistence fishing gear except that, at the site approximately one mile upstream from Ruby on the south bank of the Yukon River between ADF&G regulatory markers containing the area known locally as the "Slide," you may set subsistence fishing gear within 200 feet of other operating

commercial or subsistence fishing gear and in District 4, from Old Paradise Village upstream to a point four miles upstream from Anvik, there is no minimum distance requirement between fish wheels.

(xviii) During the commercial salmon fishing season, within the Yukon River and the Tanana River below the confluence of the Wood River, you may use drift gillnets and fish wheels only during open subsistence salmon fishing periods.

(xix) In District 4, from September 21 through May 15, you may use jigging gear from shore ice.

(xx) Except as provided in this section, you may take fish for subsistence purposes without a subsistence fishing permit.

(xxi) You must possess a subsistence fishing permit for the following locations:

(A) For the Yukon River drainage from the mouth of Hess Creek to the mouth of the Dall River;

(B) For the Yukon River drainage from the upstream mouth of 22 Mile Slough to the U.S.-Canada border;

(C) For whitefish and suckers in Birch Creek and within 500 feet of its mouth;

(D) For the Tanana River drainage above the mouth of the Wood River.

(xxii) Only one subsistence fishing permit will be issued to each household per year.

(xxiii) In Districts 1, 2, and 3, you may not possess king salmon taken for subsistence purposes unless the dorsal fin has been removed immediately after landing.

(xxiv) If you are a commercial salmon fisherman who is registered for District 1, 2, or 3, you may not take salmon for subsistence purposes in any other district located downstream from Old Paradise Village.

(4) *Kuskokwim Area.* The Kuskokwim Area consists of all waters of Alaska between the latitude of the westernmost point of Naskonat Peninsula and the latitude of the southernmost tip of Cape Newenham, including the waters of Alaska surrounding Nunivak and St. Matthew Islands and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Kuskokwim Area at any time without a subsistence fishing permit.

(ii) In District 1 and in those waters of the Kuskokwim River between Districts 1 and 2, excluding the Kuskokuak Slough, you may not take salmon for 16 hours before, during, and for six hours after, each open commercial salmon fishing period for District 1.

(iii) In District 1, Kuskokuak Slough only from June 1 through July 31, you may not take salmon for 16 hours before and during each open commercial salmon fishing period in the district.

(iv) In Districts 4 and 5, from June 1 through September 8, you may not take salmon for 16 hours before, during, and 6 hours after each open commercial salmon fishing period in each district.

(v) In District 2, and anywhere in tributaries that flow into the Kuskokwim River within that district, from June 1 through September 8 you may not take salmon for 16 hours before, during, and six hours after each open commercial salmon fishing period in the district.

(vi) You may not take subsistence fish by nets in the Goodnews River east of a line between ADF&G regulatory markers placed near the mouth of the Ufigag River and an ADF&G regulatory marker placed near the mouth of the Tunulik River 16 hours before, during, and six hours after each open commercial salmon fishing period.

(vii) You may not take subsistence fish by nets in the Kanektok River upstream of ADF&G regulatory markers placed near the mouth 16 hours before, during, and six hours after each open commercial salmon fishing period.

(viii) You may not take subsistence fish by nets in the Arolik River upstream of ADF&G regulatory markers placed near the mouth 16 hours before, during, and six hours after each open commercial salmon fishing period.

(ix) You may take salmon only by gillnet, beach seine, fish wheel, or rod and reel subject to the restrictions set out in this section, except that you may also take salmon by spear in the Holitna, Kanektok, and Arolik River drainages, and in the drainage of Goodnews Bay.

(x) You may not use an aggregate length of set gillnets or drift gillnets in excess of 50 fathoms for taking salmon.

(xi) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel.

(xii) You must attach to the bank each subsistence gillnet operated in tributaries of the Kuskokwim River and fish it substantially perpendicular to the bank and in a substantially straight line.

(xiii) Within a tributary to the Kuskokwim River in that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakoff River, you may not set or operate any part of a set gillnet within 150 feet of any part of another set gillnet.

(xiv) The maximum depth of gillnets is as follows:

(A) Gillnets with six-inch or smaller mesh may not be more than 45 meshes in depth;

(B) Gillnets with greater than six-inch mesh may not be more than 35 meshes in depth.

(xv) You may take halibut only by a single hand-held line with no more than two hooks attached to it.

(xvi) You may not use subsistence set and drift gillnets exceeding 15 fathoms in length in Whitefish Lake in the Ophir Creek drainage. You may not operate more than one subsistence set or drift gillnet at a time in Whitefish Lake in the Ophir Creek drainage. You must check the net at least once every 24 hours.

(xvii) Rainbow trout may be taken by residents of Goodnews Bay, Platinum, Quinhagak, Eek, Kwethluk, Akiachak, and Akiak, subject to the following restrictions:

(A) You may take rainbow trout only by the use of gillnets, rod and reel, or jigging through the ice;

(B) You may not use gillnets for taking rainbow trout from March 15–June 15;

(C) If you take rainbow trout incidentally in other subsistence net fisheries and through the ice, you may retain them for subsistence purposes.

(5) *Bristol Bay Area.* The Bristol Bay Area includes all waters of Bristol Bay including drainages enclosed by a line from Cape Newenham to Cape Menchikof.

(i) Unless restricted in this section, or unless under the terms of a subsistence fishing permit, you may take fish at any time in the Bristol Bay area.

(ii) In all commercial salmon districts, from May 1 through May 31 and October 1 through October 31, you may subsistence fish for salmon only from 9:00 a.m. Monday until 9:00 a.m. Friday. From June 1 through September 30, within the waters of a commercial salmon district, you may take salmon only during open commercial salmon fishing periods.

(iii) In the Egegik River from 9:00 a.m. June 23 through 9:00 a.m. July 17, you may take salmon only from 9:00 a.m. Tuesday to 9:00 a.m. Wednesday and 9:00 a.m. Saturday to 9:00 a.m. Sunday.

(iv) You may not take fish from waters within 300 feet of a stream mouth used by salmon.

(v) You may not subsistence fish with nets in the Tazimina River and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14.

(vi) Within any district, you may take salmon, herring, and capelin only by drift and set gillnets.

(vii) Outside the boundaries of any district, you may take salmon only by

set gillnet, except that you may also take salmon as follows:

(A) By spear in the Togiak River excluding its tributaries;

(B) From August 30 through September 30, by spear, dip net, and gillnet along a 100 yard length of the west shore of Naknek Lake near the outlet to the Naknek River as marked by ADF&G regulatory markers;

(C) From August 15 through September 15, by spear, dip net, and gillnet at Johnny's Lake on the northwestern side of Naknek Lake;

(D) From October 1 through November 15, by spear, dip net, and gillnet at the mouth of Brooks River at Naknek Lake;

(E) At locations and times specified in paragraphs (i)(5)(vii) (B) through (D) of this section, gillnets may not exceed five fathoms in length and may not be anchored or tied to a stake or peg, and you must be present at the net while fishing the net.

(viii) The maximum lengths for set gillnets used to take salmon are as follows:

(A) You may not use set gillnets exceeding 10 fathoms in length in the Egegik River;

(B) In the remaining waters of the area, you may not use set gillnets exceeding 25 fathoms in length.

(ix) You may not operate any part of a set gillnet within 300 feet of any part of another set gillnet.

(x) You must stake and buoy each set gillnet. Instead of having the identifying information on a keg or buoy attached to the gillnet, you may plainly and legibly inscribe your first initial, last name, and subsistence permit number on a sign at or near the set gillnet.

(xi) You may not operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(xii) During closed commercial herring fishing periods, you may not use gillnets exceeding 25 fathoms in length for the subsistence taking of herring or capelin.

(xiii) You may take fish other than salmon, herring, capelin, and halibut by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(xiv) You may take salmon and char only under authority of a subsistence fishing permit.

(xv) Only one subsistence fishing permit may be issued to each household per year.

(xvi) After August 20, you may not possess coho salmon for subsistence purposes in the Togiak River section and the Togiak River drainage unless

the head has been immediately removed from the salmon.

(6) *Aleutian Islands Area.* The Aleutian Islands Area includes all waters of Alaska west of the longitude of the tip of Cape Sarichef, east of 172° East longitude, and south of 54° 36' North latitude.

(i) You may take fish, other than salmon, rainbow trout, and steelhead trout, at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) In the Unalaska District, you may take salmon for subsistence purposes from 6:00 a.m. until 9:00 p.m. from January 1 through December 31, except:

(A) That from June 1 through September 15, you may not use a salmon seine vessel to take salmon for subsistence 24 hours before, during, or 24 hours after an open commercial salmon fishing period within a 50-mile radius of the area open to commercial salmon fishing;

(B) That from June 1 through September 15, you may use a purse seine vessel to take salmon only with a gillnet and you may not have any other type of salmon gear on board the vessel while subsistence fishing; or

(C) As may be specified on a subsistence fishing permit.

(iii) In the Adak, Akutan, Atka-Amilia, and Umnak Districts, you may take salmon at any time.

(iv) You may not subsistence fish for salmon in the following waters:

(A) The waters between Unalaska and Amaknak Islands, including Margaret's Bay, west of a line from the "Bishop's House" at 53°52.64' N. lat., 166°32.30' W. long. to a point on Amaknak Island at 53°52.82' N. lat., 166°32.13' W. long., and north of line from a point south of Agnes Beach at 53°52.28' N. lat., 166°32.68' W. long. to a point at 53°52.35' N. lat., 166°32.95' W. long. on Amaknak Island;

(B) Within Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point, waters within 250 yards of any anadromous stream, except the outlet stream of Unalaska Lake, which is closed under paragraph (i)(6)(iv)(A) of this section;

(C) Waters in Reese Bay from July 1 through July 9, within 500 yards of the outlet stream terminus to McLees Lake;

(D) All freshwater on Adak Island and Kagalaska Island in the Adak District.

(v) You may take salmon by seine and gillnet, or with gear specified on a subsistence fishing permit.

(vi) In the Unalaska District, if you fish with a net, you must be physically present at the net at all times when the net is being used.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon, trout and char only under the terms of a subsistence fishing permit, except that you do not require a permit in the Akutan, Umnak and Atka-Amlia Islands Districts.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit, except that in the Unalaska and Adak Districts, you may take no more than 25 salmon plus an additional 25 salmon for each member of your household listed on the permit. You may obtain an additional permit.

(x) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(xi) The daily bag limit for halibut is two fish and the possession limit is two daily bag limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(7) *Alaska Peninsula Area.* The Alaska Peninsula Area includes all Pacific Ocean waters of Alaska between a line extending southeast (135°) from the tip of Kupreanof Point and the longitude of the tip of Cape Sarichef, and all Bering Sea waters of Alaska east of the latitude of the tip of Cape Menshikof.

(i) You may take fish, other than salmon, rainbow trout, and steelhead trout, at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries or through the ice, you may retain them for subsistence purposes.

(ii) You may take salmon, trout and char only under the authority of a subsistence fishing permit.

(iii) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(iv) You may take salmon at any time except within 24 hours before and within 12 hours following each open weekly commercial salmon fishing period within a 50-mile radius of the area open to commercial salmon fishing, or as may be specified on a subsistence fishing permit.

(v) You may not subsistence fish for salmon in the following waters:

(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;

(B) Trout Creek and within 500 yards outside its mouth.

(vi) You may take salmon by seine, gillnet, rod and reel, or with gear specified on a subsistence fishing permit.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may not use a set gillnet exceeding 100 fathoms in length.

(ix) You may take halibut for subsistence purposes only by a single handheld line with no more than two hooks attached.

(x) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on your subsistence fishing permit.

(xi) The daily bag limit for halibut is two fish and the possession limit is two daily bag limits. No person may possess sport-taken and subsistence-taken halibut on the same day.

(8) *Chignik Area.* The Chignik Area includes all waters of Alaska on the south side of the Alaska Peninsula enclosed by 156°20.22' West longitude (the longitude of the southern entrance to Imuya Bay near Kilokak Rocks) and a line extending southeast (135°) from the tip of Kupreanof Point.

(i) You may take fish, other than rainbow trout and steelhead trout, at any time, except as may be specified by a subsistence fishing permit. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may not take salmon in the Chignik River, upstream from the ADF&G weir site or counting tower, in Black Lake, or any tributary to Black and Chignik Lakes.

(iii) You may take salmon, trout and char only under the authority of a subsistence fishing permit.

(iv) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(v) If you hold a commercial fishing license, you may not subsistence fish for salmon from 48 hours before the first commercial salmon fishing opening in the Chignik Area through September 30.

(vi) You may take salmon by seines, gillnets, rod and reel, or with gear specified on a subsistence fishing

permit, except that in Chignik Lake you may not use purse seines.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take halibut for subsistence purposes only by a single handheld line with no more than two hooks attached.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(x) The daily bag limit for halibut is two fish and the possession limit is two daily bag limits. No person may possess sport-taken and subsistence-taken halibut on the same day.

(9) *Kodiak Area.* The Kodiak Area includes all waters of Alaska south of a line extending east from Cape Douglas (58° 51.10' N. lat.), west of 150° W. long., north of 55°30.00' N. lat.; and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (156°20.22' W. long.).

(i) You may take fish, other than salmon, rainbow trout and steelhead trout, at any time unless restricted by the terms of a subsistence fishing permit. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may take salmon for subsistence purposes 24 hours a day from January 1 through December 31, with the following exceptions:

(A) From June 1 through September 15, you may not use salmon seine vessels to take subsistence salmon for 24 hours before, during, and for 24 hours after any open commercial salmon fishing period;

(B) From June 1 through September 15, you may use purse seine vessels to take salmon only with gillnets and you may have no other type of salmon gear on board the vessel.

(iii) You may not subsistence fish for salmon in the following locations:

(A) All waters closed to commercial salmon fishing in the Chiniak Bay and all waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek and north and west of a line from the tip of Last Point to the tip of River Mouth Point in Afognak Bay;

(B) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek;

(C) All freshwater systems of Afognak Island.

(iv) You must have a subsistence fishing permit for taking salmon, trout, and char for subsistence purposes. You

must have a subsistence fishing permit for taking herring and bottomfish for subsistence purposes during the commercial herring sac roe season from April 15 through June 30.

(v) With a subsistence salmon fishing permit you may take 25 salmon plus an additional 25 salmon for each member of your household whose names are listed on the permit. You may obtain an additional permit if you can show that more fish are needed.

(vi) You must keep a record of the number of subsistence fish taken each year. You must record on the reverse side of the permit the number of subsistence fish taken. You must complete the record immediately upon landing subsistence-caught fish, and must return it by February 1 of the year following the year the permit was issued.

(vii) You may take fish other than salmon and halibut by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon only by gillnet, rod and reel, or seine.

(ix) You must be physically present at the net when the net is being fished.

(x) You may take halibut only by a single hand-held line with not more than two hooks attached to it.

(xi) The daily bag limit for halibut is two fish and the possession limit is two daily bag limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(10) *Cook Inlet Area.* The Cook Inlet Area includes all waters of Alaska enclosed by a line extending east from Cape Douglas (58°51'06" N. lat.) and a line extending south from Cape Fairfield (148°50'15" W. long.).

(i) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish, other than rainbow trout and steelhead trout, at any time in the Cook Inlet Area. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries or through the ice, you may retain them for subsistence purposes.

(ii) You may not take salmon, Dolly Varden, trout, grayling, char, and burbot for subsistence purposes.

(iii) You may only take smelt with dip nets or gillnets in fresh water from April 1 through June 15. You may not use a gillnet exceeding 20 feet in length and two inches in mesh size. You must attend the net at all times when it is being used. There are no harvest or possession limits for smelt.

(iv) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit.

(11) *Prince William Sound Area.* The Prince William Sound Area includes all waters of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, you may take fish, other than rainbow trout and steelhead trout, at any time in the Prince William Sound Area.

(ii) You may take salmon in the Upper Copper River District only as follows:

(A) In the Glennallen Subdistrict, from June 1 through September 30;

(B) You may not take salmon in the Chitina Subdistrict.

(iii) You may take salmon, other than chinook salmon, in the vicinity of the former Native village of Batzulnetas only under the authority of a Batzulnetas subsistence salmon fishing permit issued by ADF&G and under the following conditions:

(A) You may take salmon only in those waters of the Copper River between ADF&G regulatory markers located near the mouth of Tanada Creek and approximately one-half mile downstream from that mouth and in Tanada Creek between ADF&G regulatory markers identifying the open waters of the creek;

(B) You may use only fish wheels and dip nets on the Copper River and only dip nets and spears in Tanada Creek;

(C) You may take salmon only from June 1 through September 1 or until the season is closed by emergency regulation; fishing periods are to be established by emergency regulation and are two days per week during the month of June and 3.5 days per week for the remainder of the season;

(D) You must release chinook salmon to the water unharmed; you must equip your fish wheel with a livebox or monitor it at all times;

(E) You must return the permit no later than September 30.

(iv) You may take salmon for subsistence purposes with no bag or possession limits in those waters of the Southwestern District and along the northwestern shore of Green Island from the westernmost tip of the island to the northernmost tip, only as follows:

(A) You may use seines up to 50 fathoms in length and 100 meshes deep with a maximum mesh size of four inches, or gillnets up to 150 fathoms in length, except that you may take pink salmon only in fresh water using dip nets;

(B) You may take salmon only from May 15 until two days before the commercial opening of the Southwestern District, seven days per week; during the commercial salmon

fishing season, only during open commercial salmon fishing periods; and from two days following the closure of the commercial salmon season until September 30, seven days per week;

(C) You may not fish within the closed waters areas for commercial salmon fisheries.

(v) You may take salmon for subsistence purposes with no bag or possession limits in those waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point, only as follows:

(A) You may use seines up to 50 fathoms in length and 100 meshes deep with a maximum mesh size of four inches, or gillnets up to 150 fathoms in length with a maximum mesh size of six and one-quarter inches, except that you may only take pink salmon in fresh water using dip nets;

(B) You may take salmon only from May 15 until two days before the commercial opening of the Eastern District, seven days per week during the commercial salmon fishing season, only during open commercial salmon fishing periods; and from two days following the closure of the commercial salmon season until October 31, seven days per week;

(C) You may not fish within the closed waters areas for commercial salmon fisheries.

(vi) If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(vii) You may take herring spawn on kelp for subsistence purposes from above water from March 15 through June 15 and underwater using dive gear only during open periods for the wild herring spawn-on-kelp commercial fishery.

(viii) You may not take salmon in the tributaries of the Copper River and waters of the Copper River not in the Upper Copper River District.

(ix) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit.

(x) You may take salmon only by the following types of gear:

(A) In the Glennallen Subdistrict by fish wheels, rod and reel, or dip nets; and

(B) In salt water by gillnets and seines.

(xi) You may not rent, lease, or otherwise use your fish wheel used for subsistence fishing for personal gain. You must register your fish wheel with ADF&G. Your registration number and name and address must be permanently affixed and plainly visible on the fish

wheel when the fish wheel is in the water; only the current year's registration number may be affixed to the fish wheel; you must remove any other registration number from the fish wheel. You must remove the fish wheel from the water at the end of the permit period. You may operate only one fish wheel at any one time. You may not set or operate a fish wheel within 75 feet of another fish wheel. No fish wheel may have more than two baskets. A wood or metal plate at least 12 inches high by 12 inches wide, bearing your name and address in letters and numerals at least one inch high, must be attached to each fish wheel so that the name and address are plainly visible.

(xii) You must personally operate the fish wheel or dip net. You may not loan or transfer a subsistence fish wheel or dip net permit except as permitted.

(xiii) You may take halibut only by a single hand-held line with not more than two hooks attached to it.

(xiv) You may take herring spawn on kelp only by a hand-held unpowered blade-cutting device. You must cut kelp plant blades at least four inches above the stipe (stem). The provisions of this paragraph do not apply to *Fucus* species.

(xv) Except as provided in this section, you may take fish other than salmon and freshwater fish species for subsistence purposes without a subsistence fishing permit.

(xvi) You may take salmon and freshwater fish species only under authority of a subsistence fishing permit.

(xvii) Only one subsistence fishing permit will be issued to each household per year.

(xviii) The following apply to Upper Copper River District subsistence salmon fishing permits:

(A) Only one type of gear may be specified on a permit;

(B) Only one permit per year may be issued to a household;

(C) You must return your permit no later than October 31, or you may be denied a permit for the following year;

(D) If your household has a Chitina Subdistrict personal use salmon fishing permit, you will not be issued a Copper River subsistence salmon fishing permit;

(E) A fish wheel may be operated only by one permit holder at one time; that permit holder must have the fish wheel marked as required by this section and during fishing operations;

(F) Only the permit holder and the authorized member of the household listed on the subsistence permit may take salmon;

(G) A permit holder must record on ADF&G forms all salmon taken immediately after landing the salmon.

(xix) The total annual possession limit for an Upper Copper River District subsistence salmon fishing permit is as follows:

(A) For a household with one person, 30 salmon, of which no more than 5 may be chinook salmon if taken by dip net;

(B) For a household with two persons, 60 salmon, of which no more than five may be chinook salmon if taken by dip net; plus 10 salmon for each additional person in a household over 2, except that the household's limit for chinook salmon taken by dip net does not increase;

(C) upon request, permits for additional salmon will be issued for no more than a total of 200 salmon for a permit issued to a household with one person, of which no more than 5 may be chinook salmon if taken by dip net; or no more than a total of 500 salmon for a permit issued to a household with 2 or more persons, of which no more than 5 may be chinook salmon if taken by dip net.

(xx) A subsistence fishing permit may be issued to a village council, or other similarly qualified organization whose members operate fish wheels for subsistence purposes in the Upper Copper River District, to operate fish wheels on behalf of members of its village or organization. A permit may only be issued following approval by ADF&G of a harvest assessment plan to be administered by the permitted council or organization. The harvest assessment plan must include: provisions for recording daily catches for each fish wheel; sample data collection forms; location and number of fish wheels; the full legal name of the individual responsible for the lawful operation of each fish wheel; and other information determined to be necessary for effective resource management. The following additional provisions apply to subsistence fishing permits issued under this paragraph (i)(11)(xx):

(A) The permit will list all households and household members for whom the fish wheel is being operated;

(B) The allowable harvest may not exceed the combined seasonal limits for the households listed on the permit; the permittee will notify the department when households are added to the list, and the seasonal limit may be adjusted accordingly;

(C) Members of households listed on a permit issued to a village council or other similarly qualified organization, are not eligible for a separate household

subsistence fishing permit for the Upper Copper River District.

(xxd) You may not possess salmon taken under the authority of an Upper Copper River District subsistence fishing permit unless both lobes of the caudal (tail) fin have been immediately removed from the salmon.

(xxii) In locations open to commercial salmon fishing other than described for the Upper Copper River District, the annual subsistence salmon limit is as follows:

(A) 15 salmon for a household of one person;

(B) 30 salmon for a household of two persons and 10 salmon for each additional person in a household;

(C) No more than five king salmon may be taken per permit.

(xxiii) The daily bag limit for halibut is two fish and the possession limit is two daily bag limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(12) *Yakutat Area.* The Yakutat Area includes all waters of Alaska between the longitude of Cape Suckling and the longitude of Cape Fairweather.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Yakutat Area.

(ii) You may not take salmon during the period commencing 48 hours before an opening until 48 hours after the closure of an open commercial salmon net fishing season. This applies to each river or bay fishery individually.

(iii) When the length of the weekly commercial salmon net fishing period exceeds two days in any Yakutat Area salmon net fishery, the subsistence fishing period is from 6:00 a.m. to 6:00 p.m. on Saturday in that location.

(iv) You may take salmon, steelhead trout in the Situk and Ahrnklin Rivers, other trout and char only under authority of a subsistence fishing permit.

(v) If you take salmon, trout, or char incidentally by gear operated under the terms of a subsistence permit for salmon, you may retain them for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your permit calendar.

(vi) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit.

(vii) In the Situk River, each subsistence salmon fishing permit holder shall attend his or her gill net at all times when it is being used to take salmon.

(viii) You may block up to two-thirds of a stream with a gillnet or seine used for subsistence fishing.

(ix) You must remove the dorsal fin from subsistence-caught salmon when taken.

(x) You may not possess subsistence-taken and sport-taken salmon on the same day.

(13) *Southeastern Alaska Area.* The Southeastern Alaska Area includes all waters between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance.

(i) Unless restricted in this section or under the terms of a subsistence fishing permit, you may take fish, other than rainbow trout and steelhead trout, in the Southeastern Alaska Area at any time.

(ii) You may take herring at any time, except that in the 72 hours before and 72 hours after an open commercial herring fishing period in the Southeastern Alaska Area, a vessel that, or crew member or permit holder who, participates in that commercial herring fishery opening may not take or possess herring in any district in the Southeastern Alaska Area.

(iii) From July 7 through July 31, you may take sockeye salmon in the waters of the Klawock River, and Klawock Lake only from 8:00 a.m. Monday until 5:00 p.m. Friday.

(iv) You must possess a subsistence fishing permit to take salmon, trout, or char.

(v) Permits will not be issued for the taking of chinook or coho salmon, but if you take chinook or coho salmon incidentally with gear operated under terms of a subsistence permit for other salmon, they may be kept for subsistence purposes. You must report any chinook or coho salmon taken in this manner on your permit calendar.

(vi) If you take salmon, trout, or char incidentally with gear operated under terms of a subsistence permit for other salmon, they may be kept for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your permit calendar.

(vii) No permits for the use of nets will be issued for the salmon streams flowing across or adjacent to the road systems of Petersburg, Wrangell, and Sitka.

(viii) You shall immediately remove the pelvic fins of all salmon when taken.

(ix) You may not possess subsistence-taken and sport-taken salmon on the same day.

§ 26.27 Subsistence taking of shellfish.

(a) Regulations in this section apply to subsistence taking of Dungeness crab, king crab, Tanner crab, shrimp, clams, abalone, and other shellfish or their parts.

(b) You may take shellfish for subsistence uses at any time in any area of the public lands by any method unless restricted by the subsistence fishing regulations of § 26.26 or this section.

(c) Methods, means, and general restrictions. (1) The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative. This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not after that, take any additional shellfish of that species under any other harvest limit specified for a State season.

(2) Unless otherwise provided in this section, you may use gear as specified in the definitions of § 26.26 for subsistence taking of shellfish.

(3) You are prohibited from buying or selling subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified.

(4) You may not use explosives and chemicals, except that you may use chemical baits or lures to attract shellfish.

(5) Marking requirements for subsistence shellfish gear are as follows:

(i) You shall plainly and legibly inscribe your first initial, last name, and address on a keg or buoy attached to unattended subsistence fishing gear, except when fishing through the ice, you may substitute for the keg or buoy, a stake inscribed with your first initial, last name, and address inserted in the ice near the hole; subsistence fishing gear may not display a permanent ADF&G vessel license number; (ii) kegs or buoys attached to subsistence crab pots also must be inscribed with the name or United States Coast Guard number of the vessel used to operate the pots.

(6) Pots used for subsistence fishing must comply with the escape mechanism requirements found in § 26.26.

(7) You may not mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(d) Taking shellfish by designated harvest permit. (1) Any species of shellfish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) If you are a Federally-qualified subsistence user (beneficiary), you may designate another Federally-qualified subsistence user to take shellfish on

your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest shellfish and must return a completed harvest report. The designated fisherman may harvest for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated harvest permit when taking, attempting to take, or transporting shellfish taken under this section, on behalf of a beneficiary.

(4) A person may not fish with more than one legal limit of gear as established by this section.

(5) You may not designate more than one person to take or attempt to take shellfish on your behalf at one time. You may not personally take or attempt to take shellfish at the same time that a designated fisherman is taking or attempting to take shellfish on your behalf.

(e) If a subsistence shellfishing permit is required by this section, the following conditions apply unless otherwise specified by the subsistence shellfishing regulations in this section:

(1) You may not take shellfish for subsistence in excess of the limits set out in the permit;

(2) You must obtain a permit prior to subsistence fishing;

(3) You must have the permit in your possession and readily available for inspection while taking or transporting the species for which the permit is issued;

(4) The permit may designate the species and numbers of shellfish to be harvested, time and area of fishing, the type and amount of fishing gear and other conditions necessary for management or conservation purposes;

(5) If specified on the permit, you shall keep accurate daily records of the catch involved, showing the number of shellfish taken by species, location and date of the catch and such other information as may be required for management or conservation purposes;

(6) Subsistence fishing reports must be completed and submitted at a time specified for each particular area and fishery;

(7) If the return of catch information necessary for management and conservation purposes is required by a subsistence fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the

mail, accident, sickness or other unavoidable circumstances.

(f) Subsistence take by commercial vessels. No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, Tanner crab, or Dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening until 14 days after the closure of a respective open season in the area or areas for which the vessel is registered. However, if you are a commercial fisherman, you may retain shellfish for your own use from your lawfully taken commercial catch.

(g) You may not take or possess shellfish smaller than the minimum legal size limits.

(h) Unlawful possession of subsistence shellfish. You may not possess, transport, give, receive or barter shellfish or their parts taken in violation of Federal or State regulations.

(i)(1) An owner, operator, or employee of a lodge, charter vessel, or other enterprise that furnishes food, lodging, or guide services may not furnish to a client or guest of that enterprise, shellfish that has been taken under this chapter, unless:

(i) the shellfish has been taken with gear deployed and retrieved by the client or guest;

(ii) the gear has been marked with the client's or guest's name and address; and

(iii) the shellfish is to be consumed by the client or guest or is consumed in the presence of the client or guest.

(2) The captain and crewmembers of a charter vessel may not deploy, set, or retrieve their own gear in a subsistence shellfish fishery when that vessel is being chartered.

(j) Subsistence shellfish areas and pertinent restrictions. (1) *Southeastern Alaska-Yakutat Area*. No marine waters under jurisdiction for Federal subsistence management.

(2) *Prince William Sound Area*. No marine waters under jurisdiction for Federal subsistence management.

(3) *Cook Inlet Area*. You may not take shellfish for subsistence purposes.

(4) *Kodiak Area*. (i) You may take crab for subsistence purposes only under the authority of a subsistence crab fishing permit issued by the ADF&G.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G before subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection. The permit shall specify the area and the date the vessel operator

intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) The daily harvest and possession limit is 12 male Dungeness crab per person; only male Dungeness crab with a shell width of six and one-half inches or greater may be taken or possessed. Taking of Dungeness crab is prohibited in water 25 fathoms or more in depth during the 14 days immediately before the opening of a commercial king or Tanner crab fishing season in the location.

(iv) In the subsistence taking of king crab:

(A) The annual limit is six crabs per household; only male king crab may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) You may not use more than five crab pots, each being no more than 75 cubic feet in capacity to take king crab;

(D) You may take king crab only from June 1-January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after open commercial fishing seasons for red king crab, blue king crab, or Tanner crab in the location;

(E) The waters of the Pacific Ocean enclosed by the boundaries of Womans Bay, Gibson Cove, and an area defined by a line 1/2 mile on either side of the mouth of the Karluk River, and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island are closed to the harvest of king crab except by Federally-qualified subsistence users.

(v) In the subsistence taking of Tanner crab:

(A) You may not use more than five crab pots to take Tanner crab;

(B) You may not take Tanner crab in waters 25 fathoms or greater in depth during the 14 days immediately before the opening of a commercial king or Tanner crab fishing season in the location;

(C) The daily harvest and possession limit is 12 male crab with a shell width five and one-half inches or greater per person.

(5) *Alaska Peninsula-Aleutian Islands Area*. (i) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial

shrimp fishing district, section, or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(ii) The daily harvest and possession limit is 12 male Dungeness crab per person; only crabs with a shell width of five and one-half inches or greater may be taken or possessed.

(iii) In the subsistence taking of king crab:

(A) The daily harvest and possession limit is six male crab per person; only crabs with a shell width of six and one-half inches or greater may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) You may take crabs only from June 1-January 31.

(iv) The daily harvest and possession limit is 12 male Tanner crab per person; only crabs with a shell width of five and one-half inches or greater may be taken or possessed.

(6) *Bering Sea Area*. (i) In that portion of the area north of the latitude of Cape Newenham, shellfish may only be taken by shovel, jigging gear, pots and ring net.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male Dungeness crab per person.

(iv) In the subsistence taking of king crab:

(A) In waters south of 60° N. lat., the daily harvest and possession limit is six male crab per person;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) In waters south of 60° N. lat., you may take crab only from June 1-January 31;

(D) In the Norton Sound Section of the Northern District, you must have a subsistence permit.

(v) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male Tanner crab.

Dated: December 22, 1998.

James A. Caplan,
Acting Regional Forester, USDA-Forest Service.

Dated: December 18, 1998.

Bruce Babbitt,
Secretary of the Interior.

[FR Doc. 99-11 Filed 1-5-99; 8:45 am]

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BEEN FILMED BUT IS AVAILABLE IN THE
ORIGINAL FILE.

Federal Subsistence Management

Jurisdiction for Subsistence Fisheries Management

Effective: October 1, 1999

- ~~~~~
- ~~~~~ Federal Jurisdiction
~~~~~ State Jurisdiction

## Federal Public Lands Open to Subsistence

- ~~~~~
- BLM Lands  
■ FWS Lands  
■ NPS Lands  
■ USFS Lands  
▨ Closed to Subsistence

Aleutian Islands

## Federal Subsistence Management

**Jurisdiction for Subsistence  
Fisheries Management**

**Effective: October 1, 1999**



**Federal Jurisdiction**

**State Jurisdiction**

**Federal Public Lands  
Open to Subsistence**



**BLM Lands**



**FWS Lands**



**NPS Lands**



**USFS Lands**



**Closed to Subsistence**

