

{Federal Register Volume 76, Number 176 (Monday, September 12, 2011)}
{Rules and Regulations}
{Pages 56109-56114}
From the Federal Register Online via the Government Printing Office [www.gpo.gov]
{FR Doc No: 2011-23243}

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[Docket No. FWS-R7-SM-2011-0004; 70101-1261-0000L6]
RIN 1018-AX52

Subsistence Management Regulations for Public Lands in Alaska--
Subpart B, Federal Subsistence Board

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

ACTION: Final rule.

SUMMARY: This final rule revises the regulations concerning the composition of the Federal Subsistence Board (Board). On October 23, 2009, the Secretary of the Interior announced the initiation of a Departmental review of the Federal Subsistence Management Program in Alaska. The review focused on how the program is meeting the purposes and subsistence provisions of Title VIII of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), and how the program is serving rural subsistence users. The review proposed several administrative and regulatory changes to strengthen the program and make it more responsive to rural subsistence users. This rule expands the Federal Subsistence Board by two public members who possess personal knowledge of and direct experience with subsistence uses in rural Alaska. This action will afford additional stakeholder input to the process.

DATES: This rule is effective October 12, 2011.

ADDRESSES: The Board meeting transcripts are available for review at the Office of Subsistence Management, 1011 East Tudor Road, Mail Stop 121, Anchorage, Alaska 99503, on <http://www.regulations.gov> at Docket No. FWS-R7-SM-2011-0004, or on the Office of Subsistence Management Web site (<http://alaska.fws.gov/asm/index.cfm>).

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

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. The Secretaries published temporary regulations to carry out this program in the Federal Register

on June 29, 1990 (55 FR 27114), and final regulations were published in the Federal Register on May 29, 1992 (57 FR 22940). The Program has subsequently amended these regulations a number of times. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, "Parks, Forests, and Public Property," and Title 50, "Wildlife and Fisheries," at 36 CFR 242.1-28 and 50 CFR 100.1-28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

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

A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;

The Alaska Regional Director, U.S. Fish and Wildlife Service;

The Alaska Regional Director, U.S. National Park Service;

The Alaska State Director, U.S. Bureau of Land Management;

The Alaska Regional Director, U.S. Bureau of Indian Affairs; and

The Alaska Regional Forester, U.S. Forest Service.

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

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

Current Rule

On October 23, 2009, Secretary of the Interior Salazar announced the initiation of a Departmental review of the Federal Subsistence Management Program in Alaska. The review focused on how the Program is meeting the purposes and subsistence provisions of Title VIII of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), and how the Program is serving rural subsistence users as envisioned when the program began in the early 1990s.

On August 31, 2010, the Secretaries announced the findings of the review, which included several proposed administrative and regulatory changes to strengthen the Program and make it more responsive to those who rely on it for their subsistence uses. One proposal called for adding two public members representing rural Alaskan subsistence users to the Federal Subsistence Board, which would allow additional regional representation and increased stakeholder input in the decisionmaking process.

The Departments published a proposed rule on February 11, 2011 (76 FR 7758), to amend the regulations in subpart B of 36 CFR part 242 and 50 CFR part 100, "Federal Subsistence Board." The proposed rule opened a comment period, which closed on April 12, 2011. The Departments advertised the proposed rule by mail, radio, and newspaper. During the meeting period for the Federal Subsistence Regional Advisory Councils as published in the proposed rule, the Councils met and, in addition to other Council business, formulated recommendations to the Board on the proposed rule and received comments and suggestions from the public and Alaska Native organizations. The Board met on May 3, 2011, to receive additional comments and to discuss recommendations to the Secretaries on the proposed rule. The Board received a total of 6 comments from the public, 7 from Alaska Native organizations, 2 from subsistence resource commissions, 3 from State advisory committees, and 10 from Federal Subsistence Regional Advisory Councils. All comments were posted at <http://www.regulations.gov> at Docket No. FWS-R7-SM-2011-0004.

The Councils had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, a Council Chair, or a designated representative, presented each Council's recommendations at the Board meeting of May 3, 2011. These final regulations reflect Board review and consideration of Council recommendations and public and Alaska Native organizations' comments. The public received extensive opportunity to review and comment on all proposed changes. Conforming regulatory changes are also made to clarify the designation of alternates for Board members representing Federal agencies and to increase the size of a quorum.

Summary of Comments and Board Recommendation to the Secretaries

The Board received a total of 28 public comments. All but two supported the addition of two members to the Board. One comment was neutral, and another opposed the proposed rule. Both of these comments recommended that the Board membership be changed to be comprised solely of members of the public or Alaska Natives with no Federal agency representation.

All 10 Federal Subsistence Regional Advisory Councils supported the proposed rule. While the majority of comments supported the proposed rule, a majority also recommended that the proposed language be changed from `` * * * two public members representing rural Alaskan subsistence users * * * '' to `` * * * two public members who are rural Alaskan subsistence users * * * ''.

After careful review of all public, Tribal, and Native Corporation comments and consideration of the Councils' recommendations, the Board recommended the above language to the Secretaries. The Board's justification for this recommended modification to the language in the proposed rule was:

To truly represent subsistence users, public members need to be actively participating in the subsistence way of life;

With the exception of the Chair, active subsistence users are not represented on this Board, but their knowledge and current hunting, fishing, and gathering experience would clearly benefit this Board; and

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This recommendation would demonstrate a genuine commitment to listening to what the Board heard through the public comment process on the proposed rule.

In addition to recommendations and comments on the proposed regulatory language, the Councils' and public comments recommended several selection criteria for new public Board members. While these criteria was not addressed in the proposed rule, the Board consolidated these recommendations and forwarded them to the Secretaries.

On July 25, 2011, Secretary of the Interior Salazar, with concurrence of Secretary of Agriculture Vilsack, notified the Federal Subsistence Board that they approved the addition of two public members to the Board with the following language, `` * * * two public members who possess personal knowledge of and direct experience with subsistence uses in rural Alaska * * * ''. The approved language, while differing slightly from the Board's recommendation, captures the intent of the Board and recommendations made by the Councils, and the majority of comments from Alaska Native organizations and members of the public. The Secretaries responded positively to the recommended selection criteria for public members to the Board.

Tribal Consultation and Comment

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

Title VIII of the Alaska National Interest Lands Conservation Act does not provide rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, because Tribal members are affected by subsistence regulations, the Secretaries, through the Board, have provided Federally recognized Tribes and Alaska Native corporations an opportunity to consult on this rule.

The Board engaged in outreach efforts for this rule, including a notification letter, to ensure that Tribes and Alaska Native corporations were advised of the mechanisms by which they could participate. The Board provided a variety of opportunities for consultation: Commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, e-mail, or phone at any time during the rulemaking process. The Board is committed to efficiently and adequately providing opportunities to Tribes and Alaska Native corporations for consultation

with regard to subsistence rulemaking.

The Board considered Tribes' and Alaska Native corporations' information, input, and recommendations, and addressed their concerns as much as practicable. A total of seven Alaska Native organizations provided comments and recommendations on this rule.

Conformance With Statutory and Regulatory Authorities

Administrative Procedure Act Compliance

The Board has provided extensive opportunity for public input and involvement in compliance with Administrative Procedure Act requirements, including publishing a proposed rule in the Federal Register, and receiving public comment on the proposed regulatory change through <http://www.regulations.gov>. There were also opportunities for participation during multiple Regional Council meetings at which Council recommendations were made in consideration of public comments received and opportunity for additional public comment during the Board meeting prior to deliberation and forming a recommendation to the Secretaries. Therefore, the Board believes that sufficient public notice and opportunity for involvement have been given to affected persons regarding the Board's recommendation and the Secretaries' decision.

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. Based on the public comments received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, selected Alternative IV as identified in the DEIS and FEIS. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations. Several alternatives were considered for the composition of the Board including all Federal agency heads and all public members representing subsistence users. This regulation adding two additional public members to the Board falls within the scope of alternatives. For this reason, the impacts described in the FEIS and ROD are deemed sufficient for this regulation and require no further analysis.

Even in the absence of the consideration of alternatives in the existing programmatic FEIS and ROD, no further NEPA analysis would be required in this instance. There are two reasons for this. The first is that this action is merely administrative in nature and has no environmental impact. The second is that activities of this nature are categorically excluded from the requirements of NEPA under both Department of the Interior (DOI) regulations and Department of Agriculture (USDA) regulations. Specifically, DOI regulations at 43 CFR 46.210 set forth categorical exclusions for both internal organizational changes and the adoption of regulations that are of an administrative nature. Similarly, USDA regulations at 7 CFR 1b.3(a) provide a categorical exclusion for routine activities such as personnel and organizational changes, and similar administrative functions.

The final rule for subsistence management regulations for public lands in Alaska, subparts A, B, and C, implemented the Federal Subsistence Management Program and included a framework for a regulatory cycle for the subsistence taking of wildlife and fish. The following Federal Register documents pertain to this rulemaking:

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Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C: Federal Register Documents Pertaining to the Final Rule

Federal Register citation	Date of publication	Category	Details
57 FR 22940.....	May 29, 1992.....	Final Rule.....	Subsistence Management Regulations for Public Lands in Alaska; Final Rule' was published in the Federal Register.

64 FR 1276.....	January 8, 1999.....	Final Rule.....	Amended the regulations 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. Extended 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 to an Alaska Native Corporation. Specified and clarified the Secretaries' authority to determine when hunting, fishing, or trapping activities taking place in Alaska off the public lands interfere with the subsistence priority.
66 FR 31533.....	June 12, 2001.....	Interim Rule.....	Expanded the authority that the Board may delegate to agency field officials and clarified the procedures for enacting emergency or temporary restrictions, closures, or openings.
67 FR 30559.....	May 7, 2002.....	Final Rule.....	Amended the operating regulations in response to comments on the June 12, 2001, interim rule. Also corrected some inadvertent errors and oversights of previous rules.
68 FR 7703.....	February 18, 2003.....	Direct Final Rule.....	Clarified how old a person must be to receive certain subsistence use permits and removed the requirement that Regional Councils must have an odd number of members.
68 FR 23035.....	April 30, 2003.....	Affirmation of Direct Final Rule.	Because no adverse comments were received on the direct final rule (67 FR 30559), the direct final rule was adopted.
69 FR 60957.....	October 14, 2004.....	Final Rule.....	Clarified the membership qualifications for Regional Advisory Council membership and relocated the definition of "regulatory year" from subpart A to subpart D of the regulations.
70 FR 76400.....	December 27, 2005.....	Final Rule.....	Revised jurisdiction in marine waters and clarified jurisdiction relative to military lands.
71 FR 49997.....	August 24, 2006.....	Final Rule.....	Revised the jurisdiction of the subsistence program by adding submerged lands and waters in the area of Makhnati Island, near Sitka, AK. This allowed subsistence users to

			harvest marine resources in this area under seasons, harvest limits, and methods specified in the regulations.
72 FR 25688.....	May 7, 2007.....	Final Rule.....	Revised nonrural determinations.
75 FR 63088.....	October 14, 2010.....	Final Rule.....	Amended the regulations for accepting and addressing special action requests and the role of the Regional Advisory Councils in the process.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available from the office listed under FOR FURTHER INFORMATION CONTACT. The Secretary of the Interior with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction did not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA Sec. 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 Sec. 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly. During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of this rule was conducted in accordance with Sec. 810. That evaluation also supported the Secretaries' determination that the rule

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will not reach the "may significantly restrict" threshold that would require notice and hearings under ANILCA Sec. 810(a).

Paperwork Reduction Act

An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule does not contain any new collections of information that require OMB approval. OMB has reviewed and approved the following collections of information associated with the subsistence regulations at 36 CFR part 242 and 50 CFR part 100: Subsistence hunting and fishing applications, permits, and reports, Federal Subsistence Regional Advisory Council Membership Application/Nomination and Interview Forms (OMB Control No. 1018-0075 expires January 31, 2013).

Regulatory Planning and Review (Executive Order 12866)

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

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

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions.

In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that two million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of \$3.00 per pound, this amount would equate to about \$6 million in food value statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.), this rule is not a major rule. It does not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

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

Unfunded Mandates Reform Act

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

Executive Order 12988

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

Executive Order 13132

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

Executive Order 13175

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

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

Executive Order 13211

This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. However, this rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

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

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

List of Subjects

36 CFR Part 242

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

50 CFR Part 100

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

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Regulation Promulgation

For the reasons set out in the preamble, the Federal Subsistence Board amends title 36, part 242, and title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

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

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

Subpart B--Program Structure

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2. Amend Sec. ----.10 by revising paragraphs (b)(1) and (d)(2) to read as follows:

Sec. ----.10 Federal Subsistence Board.

* * * * *

(b) * * *

(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; two public members who possess personal knowledge of and direct experience with subsistence uses in rural Alaska to be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; Alaska Regional Director, National Park Service; Alaska Regional Forester, U.S. Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Regional Director, Bureau of Indian Affairs. Each Federal agency member of the Board may appoint a designee.

* * * * *

(d) * * *

(2) A quorum consists of five members.

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Dated: August 31, 2011.

Ken Salazar,
Secretary of the Interior, Department of the Interior.

Dated: August 16, 2011.

Beth G. Pendleton,
Regional Forester, USDA--Forest Service.
[FR Doc. 2011-23243 Filed 9-9-11; 8:45 am]
BILLING CODE 4310-55-P; 3410-11-P