

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

RIN 1018-AU92

**Subsistence Management Regulations for Public Lands in Alaska; Kenai Peninsula Subsistence Resource Region**

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Forest Service and U.S. Fish and Wildlife Service, are proposing to amend the regulations governing subsistence use of fish and wildlife in Alaska by creating an additional subsistence resource region for the Kenai Peninsula. This addition of a separate subsistence resource region will allow for the creation of a separate Federal subsistence regional advisory council for that region. A new regional council responsible for only the Kenai Peninsula area will better ensure that residents with personal knowledge of the Kenai Peninsula area will have a meaningful role in the complex issues and management challenges of subsistence management on the Federal lands of the Kenai Peninsula.

**DATES:** We must receive your public comments no later than September 18, 2006.

**ADDRESSES:** You may submit comments electronically to [Subsistence@fws.gov](mailto:Subsistence@fws.gov). See **SUPPLEMENTARY INFORMATION** for file format and other information about electronic filing. You may also submit written comments to the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, AK 99503.

**FOR FURTHER INFORMATION CONTACT:** For Forest Service questions, contact Steve Kessler, Regional Subsistence Program Leader, USDA-FS Alaska Region, at (907) 786-3592. For Fish and Wildlife Service questions, contact Pete Probasco at (907) 786-3888.

**SUPPLEMENTARY INFORMATION:****Comments**

You may submit electronic comments (preferred method) and other data to [Subsistence@fws.gov](mailto:Subsistence@fws.gov). Please submit as a PDF or MS Word file, avoiding the use of any special characters and any form of encryption. The existing Southcentral

Regional Council will hold a meeting Thursday, August 24, 2006, in Anchorage, Alaska, to receive testimony and discuss the proposed Kenai Peninsula subsistence Resource Region. The specific time and place will be noticed in local and regional newspapers and by press release.

**Background**

In Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126), Congress found that “the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses \* \* \*” and that “continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened \* \* \*” As a result, Title VIII requires, among other things, that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in sections 803, 804, and 805 of ANILCA.

The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell v. State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court’s ruling in *McDowell* required the State to delete the rural preference from its subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990. As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114).

**Federal Subsistence Regional Advisory Councils**

Pursuant to the Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management

Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (2002) and 50 CFR 100.11 (2002), and for the purposes identified therein, we divided Alaska into 10 subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Regional Council). The Regional Councils provide a forum for residents of the regions, who have 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 varied geographical, cultural, and user diversity within each region.

**Current Rulemaking**

The Kenai Peninsula has unique fish and wildlife management challenges due to intense use of the Peninsula’s fish and wildlife by local and nonlocal residents and by nonresidents, and due to the recent Board actions to begin to provide a meaningful subsistence priority for fisheries in Federally managed fresh waters on the Kenai Peninsula. Kenai Peninsula lands primarily under Federal management include the Chugach National Forest and the Kenai National Wildlife Refuge. A new region and associated regional council will better ensure that residents with personal knowledge of the Kenai Peninsula area will have a meaningful role in subsistence use management on Federal public lands. The Board will create this Region by taking State Game Management Units 7, 14C, and 15, from the Southcentral Subsistence Resource Region.

The Board will recommend to the Secretaries that current Southcentral Regional Council members residing within the Kenai Peninsula Region be appointed to membership on the Kenai Peninsula Subsistence Regional Advisory Council and that members who reside in what will be the new Southcentral Region remain members of that Council. A special membership recruitment effort will be conducted this summer and fall to fill the additional vacancies on the Kenai Peninsula Council and to replace members on the Southcentral Council being appointed to the Kenai Peninsula Council.

Elsewhere in today’s **Federal Register**, we have published a direct final rule to promulgate the same regulatory changes to 36 CFR part 242 and 50 CFR part 100 proposed here. We published the direct final rule because we anticipate no significant adverse public comment on these changes. If we receive no significant adverse comments regarding these amendments on or before

September 18, 2006, then these changes will become effective September 29, 2006, and we will withdraw this proposed rule. If we do receive significant adverse comments, then this proposed rule initiates the normal notice-and-comment rulemaking process. We are opening this comment period for 45 days as it is desirable to have this regulatory change in place prior to the councils' recruitment and appointment process for the winter 2007 meeting cycle.

#### Required Determinations

*Regulatory Planning and Review [Executive Order (E.O.) 12866], Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))*

An economic analysis is not necessary, because this proposed rule would not have an economic impact on any entities, large or small. The Office of Management and Budget (OMB) has determined that this proposed rule is not a significant rule under E.O. 12866, and, therefore, OMB has not reviewed this proposed rule.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act:

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required.

(b) This rule will not produce a Federal mandate of \$100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

#### Takings

In accordance with E.O. 12630, this proposed rule would not have significant takings implications. A takings implication assessment is not required.

#### Federalism

In accordance with E.O. 13132, this proposed rule would not have significant Federalism effects. A Federalism assessment is not required.

#### Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and this proposed rule meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*Paperwork Reduction Act (44 U.S.C. 3501 et seq.)*

This proposed rule does not contain any new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995.

#### National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared for this proposed rule. This proposal does not constitute a major Federal action significantly affecting the quality of the human environment.

William Knauer drafted these regulations under the guidance of Peter J. Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Dennis Tol and Chuck Ardizzone, Alaska State Office, Bureau of Land Management; Greg Bos, Carl Jack, and Jerry Berg, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service; Dr. Warren Eastland, Pat Petrivelli, and Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, Alaska Regional Office, USDA-Forest Service provided additional guidance.

#### 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 propose to 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 would continue 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 C—Board Determinations

2. In § \_\_\_.22, paragraph (a) is revised by adding “; and” at the end of

paragraph (10) and a new paragraph (11) to read as follows:

#### § \_\_\_.22 Subsistence resource regions.

(a) \* \* \*  
(11) Kenai Peninsula Region.

\* \* \* \* \*

Dated: July 21, 2006.

**Peter J. Probasco,**

*Acting Chair, Federal Subsistence Board.*

Dated: July 20, 2006.

**Steve Kessler,**

*Subsistence Program Leader, USDA–Forest Service.*

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BILLING CODE 3410–11–P; 4310–55–P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R08–OAR–2006–0604; FRL–8208–7]

#### Approval and Promulgation of Air Quality Implementation Plans; State of South Dakota; Revisions to the Administrative Rules of South Dakota

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to take direct final action approving a State Implementation Plan (SIP) revisions submitted by the State of South Dakota on January 14, 2005. The January 14, 2005 submittal revises the Administrative Rules of South Dakota, Air Pollution Control Program, by modifying the chapters pertaining to definitions, ambient air quality, air quality episodes, operating permits for minor sources, regulated air pollutant emissions, new source review, performance testing, control of visible emissions, and continuous emission monitoring systems. In addition, the State made revisions to the Prevention of Significant Deterioration program, which has been delegated to the State. The intended effect of this action is to make these revisions federally enforceable. We are also announcing that on March 23, 2005, we updated the delegation of authority for the implementation and enforcement of the New Source Performance Standards to the State of South Dakota. These actions are being taken under sections 110 and 111 of the Clean Air Act.

In the “Rules and Regulations” section of this **Federal Register**, EPA is approving the State’s SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and