

(156.65 MHz) or VHF-FM channel 16 (156.8MHz) to seek permission to transit the area.

(3) All persons and vessels must comply with the instructions of the COTP or the designated on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state and federal law enforcement vessels.

(4) The COTP or his designated representative will notify the maritime community of periods during which these zones will be enforced. The COTP or his designated representative will identify escorted vessel transits by way of marine information broadcast. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the COTP or his designated representative.

(e) *Enforcement.* The COTP will enforce these zones and may enlist the aid and cooperation of any Federal, state, county, municipal, or private agency to assist in the enforcement of the regulation.

Dated: April 14, 2003.

Mark P. O'Malley,

Commander, U.S. Coast Guard, Captain of the Port, Portland, Maine.

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018-AI31

Subsistence Management Regulations for Public Lands in Alaska, Subpart D—Subsistence Taking of Fish, Customary Trade

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

ACTION: Final rule.

SUMMARY: This rule revises regulations related to the customary trade of fish taken under Subsistence Management Regulations. The rulemaking is necessary because Title VIII of the Alaska National Interest Lands Conservation Act recognizes customary

trade as a use of subsistence-taken resources. However, the existing Federal regulations do not provide clear guidance as to what is or is not allowed in this regard. This rulemaking replaces a portion of the existing regulations included in the "Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2003 Subsistence Taking of Fish and Wildlife Resources," which expire on February 29, 2004.

DATES: This rule is effective May 28, 2003.

FOR FURTHER INFORMATION CONTACT:

Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786-3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 786-3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126) requires 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, 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 the 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 27114-27170). On January 8, 1999, (64 FR 1276), the Departments

published a final rule to extend jurisdiction to include waters in which there exists a Federal reserved water right. This amended rule became effective October 1, 1999, and conformed the Federal Subsistence Management Program to the Ninth Circuit's ruling in *Alaska v. Babbitt*. Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board (Board) to administer the Federal Subsistence Management Program. The Board's composition includes 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, USDA Forest Service. Through the Board, these agencies participate in the development of Federal Subsistence Management Regulations (Subparts A, B, C, and D).

The Board has reviewed and approved the publication of this final rule. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.24 and 36 CFR 242.1 to 242.24, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 will apply to regulations found in this subpart.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, 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 (1999) and 50 CFR 100.11 (1999), and for the purposes identified therein, we divide Alaska 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.