

DHS is currently considering, however, and seeks comments on, whether it is feasible to refine existing models or develop a new model for *uncontained* pool fires (*i.e.*, where the contents of one or more gasoline storage tanks escape from secondary containment),<sup>14</sup> so that such a model could be used for future consequence assessments for gasoline terminals—in lieu of or in addition to the modified VCE model.

#### IV. Issues for Commenters

Comments that will provide the most assistance to DHS should address the following issues and questions. Commenters should include explanations and relevant supporting materials with their comments whenever possible.

a. Comments on the inclusion of 6 CFR 27.203(b)(1)(v) (counting of Release-COI in gasoline, diesel, kerosene, or jet fuel in aboveground storage tanks) and 6 CFR 27.204(a)(2) (the flammable mixtures rule), as they apply to gasoline terminals.

b. Comments on the applicability of the modified VCE model to gasoline terminals, including: Whether the reduction of the vapor yield for gasoline from ten percent (as in EPA's VCE model) to one percent reasonably reflects the potential consequences for a vapor cloud explosion from gasoline (as compared to other liquid flammable chemicals); and whether a different yield factor adjustment might better reflect the potential consequences for a vapor cloud explosion from gasoline.

c. Comments on whether a reasonable model exists or should be developed for future use that would allow DHS to estimate the plausible worst-case consequences of an uncontained pool fire resulting from a successful attack on gasoline terminals.

of secondary containment may be taken into account, however, during the Department's determination as to whether a covered facility's Site Security Plan satisfies the CFATS risk-based performance standards.

<sup>14</sup> Models currently available for calculating the consequences of an uncontained pool fire include assumptions that may be appropriate for releases from certain small sources (*e.g.*, a gasoline tank truck) but that are not realistic or appropriate for worst-case modeling of large-scale releases (*e.g.*, a sudden release from an aboveground gasoline storage tank). For example, the current EPA RMP model assumes that the surface upon which the gasoline has been released is perfectly flat and non-permeable. See EPA's "RMP Guidance for Offsite Consequence Analysis" (April 1999) at <http://www.epa.gov/OEM/docs/chem/oca-all.pdf>.

Dated: January 12, 2010.

**Rand Beers,**

*Under Secretary for National Protection and Programs.*

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**BILLING CODE P**

## 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-2009-0061; 70101-1261-0000L6]

RIN 1018-AW71

### Subsistence Management Regulations for Public Lands in Alaska—2011–12 and 2012–13 Subsistence Taking of Fish and Shellfish Regulations

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish regulations for fishing seasons, harvest limits, methods and means related to taking of fish and shellfish for subsistence uses during the 2011–2012 and 2012–2013 regulatory years. The Federal Subsistence Board is presently on a schedule of completing the process of revising subsistence taking of fish and shellfish regulations in odd-numbered years and subsistence taking of wildlife regulations in even-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable cycle. When final, the resulting rulemaking will replace the existing subsistence fish taking regulations, which expire on March 31, 2011. Future rules will not have expiration dates but will be revised according to the applicable cycle. This rule would also amend the customary and traditional use determinations of the Federal Subsistence Board and the general regulations on subsistence taking of fish and wildlife.

**DATES:** *Public meetings:* The Federal Subsistence Regional Advisory Councils will hold public meetings to receive comments and make proposals to change this proposed rule on several dates between February 15 and March 26, 2010, and then hold another round of public meetings to discuss and

receive comments on the proposals, and make recommendations on the proposals to the Federal Subsistence Board, on several dates between August 24 and October 15, 2010. The Board will discuss and evaluate proposed regulatory changes during a public meeting in Anchorage, AK, on January 18, 2011. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

*Public comments:* Comments and proposals to change this proposed rule must be received or postmarked by March 24, 2010.

**ADDRESSES:** *Public meetings:* The Federal Subsistence Board and the Regional Advisory Councils' public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

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

- *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov> and search for FWS-R7-SM-2009-0061, which is the docket number for this rulemaking.

- *By hard copy:* U.S. mail or hand-delivery to: USFWS, Office of Subsistence Management, 1011 East Tudor Road, MS 121, Attn: Theo Matuskowitz, Anchorage, AK 99503-6199, or hand delivery to the Designated Federal Official attending any of the Federal Subsistence Regional Advisory Council public meetings. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

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

**FOR FURTHER INFORMATION CONTACT:** Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management; (907) 786-3888 or [subsistence@fws.gov](mailto:subsistence@fws.gov). For questions specific to National Forest System lands, contact Calvin H. Casipit, Acting Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 586-7918.

#### **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 subsistence uses of fish and wildlife resources on Federal public lands and waters in Alaska. The Secretaries first published regulations to carry out this program 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 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 A, B, and C, which set forth the basic program, and the subpart D regulations, which, among other things, set forth 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 Regional 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 Federal public lands in Alaska. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

**Public Review Process—Comments, Proposals, and Public Meetings**

The Regional Councils have a substantial role in reviewing this proposed rule and making recommendations for the final rule. The Federal Subsistence Board, through the Regional Councils, will hold meetings on this proposed rule at the following locations in Alaska, on the following dates:

Region 1—Southeast Regional Council .....	Ketchikan .....	March 16, 2010.
Region 2—Southcentral Regional Council .....	Anchorage .....	March 10, 2010.
Region 3—Kodiak/Aleutians Regional Council .....	TBD .....	March 23, 2010.
Region 4—Bristol Bay Regional Council .....	Togiak .....	March 3, 2010.
Region 5—Yukon-Kuskokwim Delta Regional Council .....	Bethel .....	March 2, 2010.
Region 6—Western Interior Regional Council .....	Fairbanks .....	February 23, 2010.
Region 7—Seward Peninsula Regional Council .....	Nome .....	March 9, 2010.
Region 8—Northwest Arctic Regional Council .....	Kotzebue .....	February 19, 2010.
Region 9—Eastern Interior Regional Council .....	Fairbanks .....	February 23, 2010.
Region 10—North Slope Regional Council .....	Barrow .....	February 16, 2010.

During April 2010, the written proposals to change the subpart D, take of fish and shellfish, regulations and subpart C, customary and traditional use, determinations will be compiled and distributed for public review.

During the 30-day public comment period, which is presently scheduled to end on May 14, 2010, written public comments will be accepted on the distributed proposals.

The Board, through the Regional Councils, will hold a second series of

meetings in August through October 2010, to receive comments on specific proposals and to develop recommendations to the Board at the following locations in Alaska, on the following dates:

Region 1—Southeast Regional Council .....	Sitka .....	September 28, 2010.
Region 2—Southcentral Regional Council .....	Cordova .....	October 13, 2010.
Region 3—Kodiak/Aleutians Regional Council .....	TBA .....	September 21, 2010.
Region 4—Bristol Bay Regional Council .....	Naknek .....	September 22, 2010.
Region 5—Yukon-Kuskokwim Delta Regional Council .....	Quinhagak .....	September 30, 2010.
Region 6—Western Interior Regional Council .....	McGrath .....	October 5, 2010.
Region 7—Seward Peninsula Regional Council .....	Nome .....	October 13, 2010.
Region 8—Northwest Arctic Regional Council .....	Kotzebue .....	September 1, 2010.
Region 9—Eastern Interior Regional Council .....	Central .....	October 13, 2010.
Region 10—North Slope Regional Council .....	Barrow .....	August 24, 2010.

A notice will be published of specific dates, times, and meeting locations in local and statewide newspapers prior to both series of meetings. Locations and dates may change based on weather or local circumstances. The amount of work on each Regional Council's agenda determines the length of each Regional Council meeting.

The Board will discuss and evaluate proposed changes to the subsistence management regulations during a public

meeting scheduled to be held in Anchorage, AK, on January 18, 2011. The Council Chairs, or their designated representatives, will present their respective Councils' recommendations at the Board meeting. Additional oral testimony may be provided on specific proposals before the Board at that time. At that public meeting, the Board will deliberate and take final action on proposals received that request changes to this proposed rule.

Proposals to the Board to modify fisheries harvest regulations and customary and traditional use determinations must include the following information:

- a. Name, address, and telephone number of the requestor;
- b. Each section and/or paragraph designation in this proposed rule for which changes are suggested;
- c. A statement explaining why each change is necessary;
- d. Proposed wording changes; and

e. Any additional information that you believe will help the Board in evaluating the proposed change.

The Board rejects proposals that fail to include the above information, or proposals that are beyond the scope of authorities in § \_\_\_\_\_.24, subpart C (the regulations governing customary and traditional use determinations), and §§ \_\_\_\_\_.27, and \_\_\_\_\_.28, subpart D (the specific regulations governing the subsistence take of fish and shellfish). During the January 18, 2011 meeting, the Board may defer review and action on some proposals to allow time for local cooperative planning efforts, or to acquire additional needed information. The Board may elect to defer taking action on any given proposal if the workload of staff, Regional Councils, or the Board becomes excessive. These deferrals may be based on recommendations by the affected Regional Council(s) or staff members, or on the basis of the Board's intention to do least harm to the subsistence user and the resource involved. The Board may consider and act on alternatives that address the intent of a proposal while differing in approach.

#### *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 73 FR 18553 (April 4, 2008). The Alaska National Interest Lands Conservation Act does not specifically provide rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, because Tribal members are affected by subsistence fishing, hunting, and trapping regulations, the Secretaries have elected to provide Tribes an opportunity to consult on this rule.

The Secretaries will engage in outreach efforts for this rule, including a notification letter, to ensure that Tribes are advised of the mechanisms by which they can participate. The Board provides a variety of opportunities for consultation: Proposing changes to the existing rule; commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Advisory 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 Secretaries will commit to efficiently and adequately

reviewing the government-to-government consultation process with regard to subsistence rulemaking.

The Board will consider Tribes' information, input, and recommendations, and address their concerns as much as practicable. However, in keeping with ANILCA § 805(c), the Board will follow recommendations of the Regional Advisory Councils for the taking of fish and wildlife unless their recommendation is determined to be not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. The Board will inform the Tribes how their recommendations were considered.

#### **Developing the 2011–13 Fish and Shellfish Seasons and Harvest Limit Regulations**

Subpart D regulations are subject to periodic review and revision. The Federal Subsistence Board currently completes the process of revising subsistence take of fish and shellfish regulations in odd-numbered years and subsistence take of wildlife regulations in even-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable cycle.

The text of the final rule published March 30, 2009 (74 FR 14049) for the 2009–11 subparts C and D regulations is the text of this proposed rule. The regulations established in that final rule are set to expire March 31, 2011. However, those regulations will remain in effect on April 1, 2011, unless subsequent Board action changes elements as a result of the public review process outlined above in this document.

#### **Compliance With Statutory and Regulatory Authorities**

##### *National Environmental Policy Act*

A Draft Environmental Impact Statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual

regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

##### *Section 810 of ANILCA*

An ANILCA 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 and concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not 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 section 810. That evaluation also supported the Secretaries' determination that the rule will not reach the "may significantly restrict" threshold that would require notice and hearings under ANILCA section 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 proposed 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 242 and 50 CFR 100:

(1) Subsistence hunting and fishing applications, permits, and reports (OMB Control No. 1018–0075 expires December 31, 2009).

(2) Federal Subsistence Regional Advisory Council Membership

Application/Nomination and Interview Forms (OMB Control No. 1018–0120, expires March 31, 2012).

*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 2 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 Sections 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 specifically provide rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, the Secretaries have elected to provide Tribes an opportunity to consult on this rule. The Board will provide a variety of opportunities for consultation through: proposing changes to the existing rule; commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Advisory 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.

*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 Peter J. Probasco 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;
- Drs. Warren Eastland and Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Jerry Berg and Carl Jack, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Calvin H. Casipit, 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.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR 242 and 50 CFR 100 for the 2011–12 and 2012–13 regulatory years. The text of the proposed amendments to 36 CFR 242.24, 242.27, and 242.28 and 50 CFR 100.24, 100.27, and 100.28 is the final rule for the 2009–11 regulatory period (74 FR 14049; March 30, 2009), as modified by any subsequent Federal Subsistence Board action.

Dated: November 20, 2009.

**Peter J. Probasco,**

*Acting Chair, Federal Subsistence Board.*

Dated: November 23, 2009.

**Calvin H. Casipit,**

*Acting Subsistence Program Leader, USDA-Forest Service.*

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