

For now, the Service intends to proceed with these regulations, which are necessary to protect bears using the O'Malley area. The Refuge will continue to monitor other brown bear concentration areas and limit public use, where necessary to protect bears.

(d) Concerns that closure to all public use is unnecessary:

Some commenters stated that the seasonal public use closure was excessive and/or unwarranted. Some recommended the Service consider alternatives that allow public use to continue, but in a manner not detrimental to resources of the area. Several commenters recommended limiting public use through a lottery or drawing permits, as an alternative to an expensive commercially operated bear viewing program. One commenter recommended providing all visitors with orientation and education materials to reduce human/bear conflicts.

Several years of research data reveal unrestricted public use at O'Malley is adversely affecting bear use of this area, indicating that public use restrictions are needed. The Service proposed allowing limited public use of the area through the Refuge-permitted O'Malley BVP, as an alternative to complete seasonal closure, but then canceled the BVP in light of problems in the selection process and heavy public criticism and opposition. Providing visitors with bear orientation and education materials will not, by itself, effectively alleviate the problems. Such materials are already available.

The Service agrees that a structured bear viewing program is not the only means of controlling public use of important bear habitat. In fact, the Kodiak PUMP addresses other means of regulating public uses of other important bear use areas (e.g., seasonal restrictions on overnight camping). The Service intends to proceed with public use closures or restrictions only as necessary to protect and conserve healthy populations of brown bears and other refuge wildlife resources.

(e) Comments about excessive area of restriction:

Some commenters stated that the area included in the O'Malley closure was larger than necessary to protect bears. Cancellation of the bear viewing program made it feasible to eliminate a safety buffer area and reduce the closure area by 36%, from about 3,955 acres to 2,560 acres. The Service considers the closure area delineated in this final rule the minimum size necessary to effectively protect bear use of the O'Malley area.

(f) Comments that justification for the restrictions was misleading and impacts were exaggerated or speculative:

Some commenters contended the justification or rationale for the public use restriction was misleading. They claimed it inappropriately implied that non-consumptive uses, such as wildlife viewing and photography, are causing adverse effects on bears, while ignoring impacts from hunting activities that will be allowed to continue. Some stated the impacts were exaggerated and/or speculative.

The proposed rule provided a simple summary and evaluation of extensive research data. The Service believes the impacts were accurately depicted. Formal research and general management experience with brown bears in the O'Malley River area clearly indicate that unrestricted human use is detrimental to the resource values of the Refuge.

The impacts of all public uses were evaluated. Though not clearly articulated in the rulemaking documents, impacts of all public uses were addressed in the environmental assessment (EA) and compatibility determination for the O'Malley BVP and the Kodiak PUMP. The EA for the O'Malley BVP and the Kodiak PUMP presented an evaluation of all public uses occurring in the area during the period of concentrated bear use. The Service did not intend to single out wildlife viewing and photography as the only public uses impacting bears. The decision to propose the closure was based upon the cumulative effect of all uses that occur during the period of heavy bear use. In regard to impacts on bears, the *period* of human use is just as important as the type of use.

Unfortunately some uses, such as wildlife viewing and photography, occur predominately during the critical season of concentrated bear feeding activities. The data compiled indicated that this intrusion on the critical season of bear feeding *would* have a higher adverse impact on the bear population as a whole, as opposed to controlled hunting, because it would lessen the chances of their surviving the winter if the bears were not allowed to feed unmolested by the public. Hunting does not occur during the critical season of bear use and, as hunting is controlled, the take (and ultimate impact on the bear population) is predictable and designed to be biologically acceptable.

#### Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of

Management and Budget under 44 U.S.C. 3501 *et seq.*

#### Environmental Considerations

The Final Public Use Management Plan and Environmental Assessment for Public Use Regulations for Kodiak National Wildlife Refuge was completed in October 1993, after a full public review process. It addresses the environmental considerations and need for the O'Malley seasonal public use closure, as well as for other important bear concentration areas. The environmental assessment for the Kodiak PUMP resulted in a Finding of No Significant Impact.

#### Economic Effect

Implementation of the rule will seasonally close slightly more than one tenth of one percent (0.13%) of Kodiak Refuge lands, to commercial operators and public use. Average use (commercial and non-commercial) of the O'Malley area was estimated at 266 user days during 1989 and 1990, and 353 user days during 1991. Most commercial use previously occurring in the closure area will be displaced to other locations and not lost to the local economy.

Changes in use of the resource will have no significant effect on national income. The public use closure will cause an insignificant impact on the local economy. Agency costs for monitoring the closure will be about \$4,000 less than expended during fiscal year 1994 for monitoring the commercial bear viewing program, and about \$40,000 less than expended during fiscal year 1992 for the Refuge to operate the program.

This rulemaking was not subject to Office of Management and Budget review under Executive Order 12866. In addition, a review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) has been done to determine whether the rulemaking would have a significant effect on a substantial number of small entities, which include businesses, organizations or governmental jurisdictions. This rule would have minimal effect on such entities. The Department of the Interior has determined this document is *not* a major rule.

#### List of Subjects in 50 CFR Part 36

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

Accordingly, Part 36 of Chapter I of Title 50 of the Code of Federal Regulations is amended as follows: