Dated: July 27, 1995. Dated: July 28, 1995.

#### Richard S. Pospahala,

Acting Chair, Federal Subsistence Board.

#### Robert W. Williams,

Acting Regional Forester, USDA-Forest Service.

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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-AC82

**Subsistence Management Regulations** for Public Lands in Alaska, Subparts C and D-1995-1996 Subsistence Taking of Fish and Wildlife Regulations for the Kenai Peninsula

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

ACTION: Final rule.

**SUMMARY:** This rule establishes customary and traditional use determinations and seasons and harvest limits related to the taking of moose for subsistence uses on Federal lands on the Kenai Peninsula during the 1995-1996 regulatory year.

**EFFECTIVE DATES:** The amendments to .24 are effective August 10, 1995. The amendments to § .25 are effective August 10, 1995, through June 30, 1996.

## FOR FURTHER INFORMATION CONTACT:

Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Richard S. Pospahala, Office of Subsistence Management, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3447. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau Alaska 99802-1628, telephone (907) 586-7921.

## SUPPLEMENTARY INFORMATION:

# **Customary and Traditional Use** Determinations

The Federal Subsistence Board (Board) implemented a systematic program for review of customary and traditional use determinations as

provided for in 36 CFR 242 and 50 CFR 100. As a priority consideration, the Board focused its determinations on community or area uses of large mammals (ungulates and bears), examining uses of species of large mammals by communities or areas rather than focusing on individual herds or populations. The Board recognized that subsistence resource use patterns of neighboring communities are often interrelated and should be analyzed concurrently.

Existing regulations at 36 CFR 242.16(b) and 50 CFR 100.16(b) identify eight factors that a community or area shall generally exhibit which exemplify customary and traditional subsistence uses. The eight factors are as follows:

1. A long-term consistent pattern of use, excluding interruptions beyond the control of the community or area:

2. A pattern of use recurring in specific seasons for many years;

3. A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditional by local characteristics;

4. The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from the

community or area;

5. A means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations including consideration of alteration of past practices due to recent technological advances, where appropriate;
6. A pattern of use which includes the

handing down of knowledge of fishing and hunting skills, values and lore from

generation to generation;

7. A pattern of use in which the harvest is shared or distributed within a definable community of persons; and

8. A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social and nutritional elements to the community or area.

Each Federal Subsistence Regional Advisory Council (Regional Council) has a substantial role in reviewing and developing information on which to base a recommendation to the Board concerning customary and traditional use determinations. The Southcentral Regional Council had available for consideration an extensive compilation of existing information on historic and contemporary large mammal resource use patterns by rural Kenai Peninsula communities. A draft report, dated December 8, 1993, incorporated information from historic ethnographic sources; census data; community surveys conducted by the Alaska Department of Fish and Game, Division of Subsistence; and harvest ticket and sealing records compiled by the Alaska Department of Fish and Game.

During its public meeting of February 28-March 2, 1995, the Southcentral Regional Council reviewed and discussed written information and oral testimony on resource use patterns as related to the eight factors for the Kenai Peninsula rural communities of Whittier, Hope, Cooper Landing, Ninilchik, the Homer rural area, Nanwalek (formerly known as English Bay), Port Graham and Seldovia. Based on this review and discussion, the Southcentral Regional Council developed and submitted to the Board recommendations for customary and traditional use determinations for rural communities in Units 7 and 15. The Board adopted these recommendations, and subsequently issued a proposed rule announcing its action. Following the public comment period for the proposed rule, the Southcentral Regional Council convened in a public session on July 12, 1995, and reevaluated the recommendations reflected in the proposed rule, revising its recommendation to the Board. The revised recommendations called for positive customary and traditional use determinations for moose in Unit 15 by the communities of Ninilchik, Seldovia, Nanwalek, and Port Graham. The revised recommendations also called for deferral of customary and traditional use findings for species other than moose, and for communities other than Ninilchik, Seldovia, Nanwalek, and Port Graham.

At its July 13, 1995, public meeting, the Board amended the proposed rule in response to several considerations. A primary consideration was the revised recommendations submitted by the Southcentral Regional Council. An additional consideration was compelling public testimony calling into question the factual basis for the proposed customary and traditional use determinations. A related concern was that the customary and traditional use determinations in the proposed rule may not have been supported by substantial evidence reflecting the eight factors used to access customary and traditional uses, particularly with regard to the factors concerning long-term consistent pattern of local resource use and the community's pattern of reliance upon a wide diversity of local resources for cultural, economic, social and nutritional needs.

The Board adopted the Southcentral Regional Council's revised