

## U.S. Fish and Wildlife Serv., Interior

## § 100.4

Harbor, Alice, Love, Fruit islands and a number of smaller unnamed islands.

(c) The regulations contained in this part apply on all public lands, excluding marine waters, but including all inland waters, both navigable and non-navigable, within and adjacent to the exterior boundaries of the following areas:

- (1) Alaska Peninsula National Wildlife Refuge;
- (2) Aniakchak National Monument and Preserve;
- (3) Becharof National Wildlife Refuge;
- (4) Bering Land Bridge National Preserve;
- (5) Cape Krusenstern National Monument;
- (6) Chugach National Forest;
- (7) Denali National Preserve and the 1980 additions to Denali National Park;
- (8) Gates of the Arctic National Park and Preserve;
- (9) Glacier Bay National Preserve;
- (10) Innoko National Wildlife Refuge;
- (11) Izembek National Wildlife Refuge;
- (12) Kanuti National Wildlife Refuge;
- (13) Katmai National Preserve;
- (14) Kenai National Wildlife Refuge;
- (15) Kobuk Valley National Park;
- (16) Kodiak National Wildlife Refuge;
- (17) Koyukuk National Wildlife Refuge;
- (18) Lake Clark National Park and Preserve;
- (19) Noatak National Preserve;
- (20) Nowitna National Wildlife Refuge;
- (21) Selawik National Wildlife Refuge;
- (22) Steese National Conservation Area;
- (23) Tetlin National Wildlife Refuge;
- (24) Togiak National Wildlife Refuge;
- (25) Tongass National Forest, including Admiralty Island National Monument and Misty Fjords National Monument;
- (26) White Mountain National Recreation Area;
- (27) Wrangell-St. Elias National Park and Preserve;
- (28) Yukon-Charley Rivers National Preserve;
- (29) Yukon Flats National Wildlife Refuge;
- (30) All components of the Wild and Scenic River System located outside the boundaries of National Parks, National Preserves, or National Wildlife Refuges, including segments of the Alagnak River, Beaver Creek,

Birch Creek, Delta River, Fortymile River, Gulkana River, and Unalakleet River.

(d) The regulations contained in this part apply on all other public lands, other than to the military, U.S. Coast Guard, and Federal Aviation Administration lands that are closed to access by the general public, including all non-navigable waters located on these lands.

(e) The public lands described in paragraphs (b) and (c) of this section remain subject to change through rule-making pending a Department of the Interior review of title and jurisdictional issues regarding certain submerged lands beneath navigable waters in Alaska.

[70 FR 76407, Dec. 27, 2005, as amended at 71 FR 49999, Aug. 24, 2006; 74 FR 34696, July 17, 2009]

### § 100.4 Definitions.

The following definitions apply to all regulations contained in this part:

*Agency* means a subunit of a cabinet-level Department of the Federal Government having land management authority over the public lands including, but not limited to, the U.S. Fish & Wildlife Service, Bureau of Indian Affairs, Bureau of Land Management, National Park Service, and USDA Forest Service.

*ANILCA* means the Alaska National Interest Lands Conservation Act, Public Law 96-487, 94 Stat. 2371, (codified, as amended, in scattered sections of 16 U.S.C. and 43 U.S.C.)

*Area, District, Subdistrict, and Section* mean one of the geographical areas defined in the codified Alaska Department of Fish and Game regulations found in Title 5 of the Alaska Administrative Code.

*Barter* means the exchange of fish or wildlife or their parts taken for subsistence uses; for other fish, wildlife or their parts; or, for other food or for nonedible items other than money, if the exchange is of a limited and non-commercial nature.

*Board* means the Federal Subsistence Board as described in §100.10.

*Commissions* means the Subsistence Resource Commissions established pursuant to section 808 of ANILCA.

*Conservation of healthy populations of fish and wildlife* means the maintenance of fish and wildlife resources and their habitats in a condition that assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystem, including the recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem; minimizes the likelihood of irreversible or long-term adverse effects upon such populations and species; ensures the maximum practicable diversity of options for the future; and recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and the manipulation of the components of the ecosystem.

*Customary trade* means exchange for cash of fish and wildlife resources regulated in this part, not otherwise prohibited by Federal law or regulation, to support personal and family needs; and does not include trade which constitutes a significant commercial enterprise.

*Customary and traditional use* means a long-established, consistent pattern of use, incorporating beliefs and customs which have been transmitted from generation to generation. This use plays an important role in the economy of the community.

*FACA* means the Federal Advisory Committee Act, Public Law 92-463, 86 Stat. 770 (codified as amended, at 5 U.S.C. Appendix II, 1-15).

*Family* means all persons related by blood, marriage, or adoption or any other person living within the household on a permanent basis.

*Federal Advisory Committees* or *Federal Advisory Committee* means the Federal Local Advisory Committees as described in § 100.12

*Federal lands* means lands and waters and interests therein the title to which is in the United States, including navigable and non-navigable waters in which the United States has reserved water rights.

*Fish and wildlife* means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory,

or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the carcass or part thereof.

*Game Management Unit or GMU* means one of the 26 geographical areas listed under game management units in the codified State of Alaska hunting and trapping regulations and the Game Unit Maps of Alaska.

*Inland Waters* means, for the purposes of this part, those waters located landward of the mean high tide line or the waters located upstream of the straight line drawn from headland to headland across the mouths of rivers or other waters as they flow into the sea. Inland waters include, but are not limited to, lakes, reservoirs, ponds, streams, and rivers.

*Marine Waters* means, for the purposes of this part, those waters located seaward of the mean high tide line or the waters located seaward of the straight line drawn from headland to headland across the mouths of rivers or other waters as they flow into the sea.

*Person* means an individual and does not include a corporation, company, partnership, firm, association, organization, business, trust, or society.

*Public lands* or *public land* means:

(1) Lands situated in Alaska which are Federal lands, except—

(i) Land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(ii) Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*, which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(iii) Lands referred to in section 19(b) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1618(b).

(2) Notwithstanding the exceptions in paragraphs (1)(i) through (iii) of this definition, until conveyed or interim

conveyed, all Federal lands within the boundaries of any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Forest Monument, National Recreation Area, National Conservation Area, new National forest or forest addition shall be treated as public lands for the purposes of the regulations in this part pursuant to section 906(o)(2) of ANILCA.

*Regional Councils* or *Regional Council* means the Regional Advisory Councils as described in §100.11.

*Reserved water right(s)* means the Federal right to use unappropriated appurtenant water necessary to accomplish the purposes for which a Federal reservation was established. Reserved water rights include nonconsumptive and consumptive uses.

*Resident* means any person who has his or her primary, permanent home for the previous 12 months within Alaska and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to: the address listed on an Alaska Permanent Fund dividend application; an Alaska license to drive, hunt, fish, or engage in an activity regulated by a government entity; affidavit of person or persons who know the individual; voter registration; location of residences owned, rented, or leased; location of stored household goods; residence of spouse, minor children, or dependents; tax documents; or whether the person claims residence in another location for any purpose.

*Rural* means any community or area of Alaska determined by the Board to qualify as such under the process described in §100.15.

*Secretary* means the Secretary of the Interior, except that in reference to matters related to any unit of the National Forest System, such term means the Secretary of Agriculture.

*State* means the State of Alaska.

*Subsistence uses* means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the mak-

ing and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.

*Take* or *taking* as used with respect to fish or wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

*Year* means calendar year unless another year is specified.

[69 FR 60962, Oct. 14, 2004]

#### § 100.5 Eligibility for subsistence use.

(a) You may take fish and wildlife on public lands for subsistence uses only if you are an Alaska resident of a rural area or rural community. The regulations in this part may further limit your qualifications to harvest fish or wildlife resources for subsistence uses. If you are not an Alaska resident or are a resident of a non-rural area or community listed in §100.23, you may not take fish or wildlife on public lands for subsistence uses under the regulations in this part.

(b) Where the Board has made a customary and traditional use determination regarding subsistence use of a specific fish stock or wildlife population, in accordance with, and as listed in, §100.24, only those Alaskans who are residents of rural areas or communities designated by the Board are eligible for subsistence taking of that population or stock on public lands for subsistence uses under the regulations in this part. If you do not live in one of those areas or communities, you may not take fish or wildlife from that population or stock, on public lands under the regulations in this part.

(c) Where customary and traditional use determinations for a fish stock or wildlife population within a specific area have not yet been made by the Board (e.g., "no determination"), all Alaskans who are residents of rural areas or communities may harvest for subsistence from that stock or population under the regulations in this part.

(d) The National Park Service may regulate further the eligibility of those individuals qualified to engage in subsistence uses on National Park Service