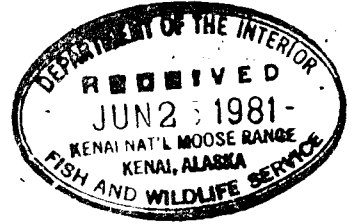


Federal Register

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Wednesday
June 17, 1981



Part II

Department of the Interior

Fish and Wildlife Service

Alaska National Wildlife Refuges; Interim Management Regulations

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

Alaska National Wildlife Refuges;
Interim Management Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule provides interim management regulations for the sixteen Alaska National Wildlife Refuges. The rule: (1) Relieves those restrictions imposed by the general National Wildlife Refuge System regulations that are generally inappropriate in Alaska, (2) implements and clarifies a number of provisions of the Alaska Lands Act that are of immediate importance to Alaskans and the general public, and (3) clarifies what public activities are authorized in Alaska National Wildlife Refuges. These regulations are the minimum necessary for interim administration of the Alaska refuges.

EFFECTIVE DATE: June 17, 1981.

FOR FURTHER INFORMATION CONTACT: Keith Schreiner, Alaska Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99507 (907-276-3800).

SUPPLEMENTARY INFORMATION:**Background**

The Alaska National Interest Lands Conservation Act, 94 Stat. 237, Pub. L. 96-487 (December 2, 1980) established, redesignated, or expanded sixteen National Wildlife Refuges in Alaska: Alaska Maritime, Alaska Peninsula, Arctic, Becharof, Innoko, Izembek, Kanuti, Kenai, Kodiak, Koyukuk, Nowitna Selawik, Tetlin, Togiak, Yukon Delta and Yukon Flats. Each of these areas is to be managed pursuant to applicable Alaska National Wildlife Refuge statutory law, most notably the National Wildlife Refuge System Administration Act, 16 U.S.C. 688dd *et seq.* and the provisions of the Alaska Lands Act.

On January 19, 1981, the Fish and Wildlife Service proposed rules to provide interim management guidelines for the Alaska National Wildlife Refuges (46 FR 5668 *et seq.*). The proposed rules addressed a limited number of items, many of which had undergone extensive public comment in other rulemakings or proceedings. (See, for example, 43 FR 60255 (December 26, 1978); 44 FR 11247 (February 28, 1979); 44 FR 15500 (March 14, 1979); 44 FR 37754 (June 28, 1979); 45 FR 2616 (January 11, 1980); 45 FR 14192

(March 4, 1980).) The Fish and Wildlife Service has carefully considered comments made during the course of these proceedings, and promulgates today final rules which generally are in accord with the public comments received. The public comment has proved invaluable in helping the Fish and Wildlife Service develop regulations that are workable yet flexible enough to deal with the exigencies of terrain, climate, resources and lifestyles encountered within the Alaska National Wildlife Refuges.

Need for Expeditious Rulemaking

Under the Administrative Procedure Act an agency is authorized to make a final regulation immediately effective when it relieves restrictions, is an interpretive rule, or when good cause exists for expeditious rulemaking. See 5 U.S.C. 553(d). The rules published today are immediately effective for the following reasons:

First, many of the provisions of these regulations relieve restrictions imposed by the general National Wildlife Refuge System regulations that are generally inappropriate in the unique Alaska setting. For example, standard restrictions on access, firearms and abandoned property are relieved by these regulations.

Second, certain portions of these regulations constitute interpretive rules giving the Department's view on existing legal duties. These interpretive rules are found in § 36.23(c).

Third, the Department has found that good cause exists for immediately effective rules. This good cause finding is based on many factors, including: (1) The need to provide definitive public guidance on permissible activities during the peak use season, (2) the need to alleviate confusion arising from directives in the Alaska Lands Act which are (or appear) inconsistent with existing regulations, (3) the need to have in place administrative procedures for obtaining statutory benefits created under the Alaska Lands Act (e.g. access to inholdings, temporary access, cabins) and (4) the substantial public comment received on past rules addressing the same issues, as well as public participation in legislation culminating in enactment of the Alaska Lands Act.

Summary of Comments

The January 19, 1981 proposed rules solicited comments for 45 days on the issues addressed therein (46 FR 5668). The comment period was subsequently extended until March 18, 1981 (46 FR 14021). During this period the Fish and Wildlife Service received 145 written comments on the proposed rule. Written

comments were received from 97 individuals, from 33 states, 2 corporations and businesses, 24 organizations, 17 local government entities, the State of Alaska, the Alaska Congressional Delegation, the Environmental Protection Agency, the Air Force, and the Heritage Conservation and Recreation Service.

Analysis of Comments**Subpart A—Introduction and General Provisions****Applicability and Scope**

Several commenters argued that the management regime created by the Alaska Lands Act and these regulations should have no effect on refuges, such as the Kenai Range, established prior to December 2, 1980. Specifically, they argued that neither the Act nor these regulations should be interpreted as amending existing special regulations in effect for these areas. The provisions of the Alaska Lands Act apply to all Alaska refuges; a generic distinction between old and new refuges is not legally supportable. The Service, however, does retain the discretion to adopt special regulations for individual refuges consistent with the provisions of the Alaska Lands Act and other statutory law. Existing special regulations remain in force and effect except as amended by the Alaska Lands Act and/or these regulations.

Several commenters suggested that the rules should apply only to "public lands" rather than "federally owned lands or interests." The Service has not accepted these comments. Sections 103(c) and 906(o) of the Alaska Lands Act generally restrict the applicability of Fish and Wildlife Service regulations to federally owned lands and interests within the boundaries of Alaska National Wildlife Refuges. Consistent with the Act and the explanatory legislative history (126 Cong. Rec. H11115 (daily ed. Nov. 21, 1980) and 126 Cong. Rec. S15150-51 (daily ed Dec. 1, 1980)), § 36.1(b) restricts the applicability of these regulations to "federally owned" lands, which is defined to include all interest held by the Federal government. With the legislative conveyance of 98 million acres of State selections in section 906 of the Act, no un conveyed State selections remain within the Alaskan refuges. Therefore, generally no State selected and conveyed lands within the boundaries of the Alaska National Wildlife Refuges will be subject to the provisions of these rules. Similarly, land interests intermly conveyed or patented to natives under the Alaska Native

Claims Settlement Act, where such interests are located within the boundaries of areas initially added to the National Wildlife Refuge System by the Alaska Lands Act, would not be affected by these regulations. Other private, patented inholdings within the Alaska National Wildlife Refuges would also generally not be subject to these rules.

Definitions

Many comments objected to the definition of "adequate and feasible access" which appeared in the proposed rule on the grounds that it would authorize the Fish and Wildlife Service to determine what is a "reasonable use or development" for an inholding. The definition has been revised to clarify that the inholder determines the desired land use or development of his property, and the Service provides reasonable access to meet the desired land use.

Section 1110(a) of the Alaska Lands Act authorizes the use of snowmachines for traditional activities and travel to and from villages and homesites during periods of adequate snow cover or frozen river conditions. In response to a number of comments, the Service has defined "adequate snow cover" as snow of sufficient depth to protect the underlying vegetation and soil.

Several comments suggested that the definition of "fish and wildlife" should specifically exclude domestic and exotic animals. Although the definition remains unchanged consistent with the specific language of the Alaska Lands Act (Section 102 (17)), the Service recognizes the clearly expressed congressional intent that the term does not include those animals the Service determines to be exotic or domestic (128 Cong. Rec. H10543 (daily ed. Nov. 12, 1980)). See also 48 FR 5669.

A few commenters suggested that the regulations should use and define the term "snowmachine", a term appearing in section 1110(a) of the Alaska Lands Act. The Service has adopted this suggestion by defining "snowmachine" in terms parallel to "snowmobile."

Subpart B—Subsistence Uses

General Comments

The Alaskan Congressional Delegation, the State of Alaska, and a number of sportsmen's groups opposed promulgation of any rules addressing subsistence, especially in the one year period provided by section 805(d) of the Alaska Lands Act for the State to establish an adequate subsistence program. Each commenter expressed concern that federal regulations could

foreclose the State in development of its program.

The Fish and Wildlife Service is sensitive to these concerns and therefore, has retained the narrow approach articulated in the proposed rules, one that addresses only issues of immediate importance or those definitively treated by the Alaska Lands Act. While the National Park Service is compelled by the Alaska Lands Act to distinguish subsistence users who are permitted to hunt within parks from others who are not, the Fish and Wildlife Service is under no such legal obligation. Accordingly, these regulations do not define "local rural resident" or establish an administrative procedure to distinguish such persons from other members of the public. Similarly, the regulations do not create an administrative framework to implement the subsistence priority required by section 804 of the Act. The regulations treat those subsistence issues of immediate importance in a manner calculated not to foreclose the State of Alaska's discretion in implementing its subsistence program. This restrained approach is consistent with the Fish and Wildlife Service's view that the subsistence issue is one best treated by the State. The Service looks forward to Secretarial approval of a State subsistence program implementing the requirements of the Alaska Lands Act.

Several native organizations urged the Fish and Wildlife Service to adopt regulations implementing Alaska Lands Act section 806 on "Federal Monitoring," section 807 on "Judicial Enforcement," and section 812 on "Research." Although the Service appreciates the importance of these statutory provisions, it determined during preparation of the proposed rules that these provisions do not lend themselves to expeditious implementation since they have not previously been the subject of notice and comment. The Alaska Congressional Delegation commented that proposed § 36.37 implementing section 810 of the Alaska Lands Act should be deleted for the same reason; they also pointed out that the proposed regulation did nothing more than repeat section 810 of the Act verbatim. For these reasons, today's final regulations do not contain provisions implementing sections 806, 807, 810 and 812 of the Act. It should be emphasized, however, that all parties must comply with these statutory provisions as long as they remain in effect.

Purpose and Policy

The Fish and Wildlife Service received various recommendations for

acknowledgement in the regulations of the State of Alaska's role in regulation of fish and wildlife for subsistence uses within Alaska refuges. In response, the Service is promulgating § 36.11(d) which recognizes State regulation of the taking of fish and wildlife in Alaska refuges consistent with applicable Federal law, including the Alaska Lands Act. For example, the Service expects the State to continue to regulate seasons and bag limits in refuge areas. Furthermore, as mentioned above, the Fish and Wildlife Service anticipates that a State subsistence program implementing the Alaska Lands Act's various substantive mandates will be approved.

One commenter requested that the Fish and Wildlife Service define the term "healthy populations" used in several instances in this section. The Service has not accepted this suggestion in the context of these interim rules. Guidance as to the meaning of this term is found in the Alaska Lands Act legislative history, which is quoted in relevant portion in the section-by-section analysis.

Definitions

Most comments on the definition of "subsistence uses" concerned the Fish and Wildlife Service's proposed definition of "customary trade." In general, the comments indicated strong support for the Service's inclusion of fur trading within the term. Three commenters objected, however, that the definition was too limited. For example, one commenter wrote that

[c]ustomary trade in Alaska is involved in more than the exchange of furs for cash. Quite often there is trade for specific items or merchandise including food and fuel.

The definition of "subsistence uses" adequately covers these concerns in its provision for "barter". The "barter" definition, taken verbatim from Section 803 of the Alaska Lands Act, allows local rural residents to trade furs for fish, game, food, or nonedible items other than money for personal or family consumption. The Fish and Wildlife Service's definition of "customary trade" serves to expand the permissible exchange to include, in addition, furs for cash. One rural group, however, pointed out a customary trade practice that the proposed definition of "subsistence uses" did not cover: The customary and traditional making and selling of certain handicraft articles out of plant materials. In response to the comment, the Service specifically defines "customary trade" to include the exchange of furs for cash and authorizes Refuge Managers to specify in special

regulations other activities, if any, that fall within the scope of that term.

Use of Snowmobiles, Motorboats and Other Means of Surface Transportation Traditionally Employed by Local Rural Residents Engaged in Subsistence Uses

Several commenters argued that subsistence access modes should not be limited to those "traditionally employed" by local rural residents. The Service has retained this term, since it parallels the language of the subsistence access section (811(b)) of the Alaska Lands Act.

A number of commenters suggested that the regulations should specify that the use of dogsleds is authorized within Alaska refuges for subsistence uses. This suggestion comports with relevant legislative history and has been adopted.

The allowed use of motorized surface transportation in accordance with the provisions of § 36.12 evoked two objections. One organization commented that "the use of snowmobiles, motorboats and off-road vehicle is . . . abhorrent to the notion of subsistence hunting . . ." Section 811(b) of the Alaska Lands Act, however, mandates the Secretary to allow "appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation." Section 36.12 implements this statutory mandate, highlights its limitations and provides for appropriate restrictions, closures, and regulation. Another organization recommended that the Fish and Wildlife Service prohibit motorized surface transportation other than snowmachines and motorboats (e.g., ATV's) except by permit upon a demonstration of "traditional use" by the local rural resident. The Service has decided against this recommendation for this rulemaking exercise since (1) the Service wants to avoid another permit requirement, if possible, (2) the restrictions, closure, and other regulatory provisions of § 36.12 should adequately protect refuge values, at least for this interim period, and (3) the Service would not adopt such a new proposal without additional notice and comment.

Subsistence use of Timber and Plant Material

Many comments suggested that the cutting of live standing timber for subsistence uses should require a prior issuance of a permit by the Refuge Manager in the manner proposed by the National Park Service. The Service

agrees that a permit requirement is necessary in some cases to protect refuge resources. However, the cutting of small timber for casual uses does not present a resource problem, and imposition of such a requirement would be onerous to users. Accordingly, the regulations require a permit only for the cutting of live standing timber of diameter greater than three inches at ground height.

Closure

In response to comments asking for increased notice, local consultation, and hearings the Fish and Wildlife Service has made minor changes in § 36.16 that underscore the Service's intent to provide effective and meaningful notice and hearing in the affected vicinity "and other locations as appropriate."

One group objected to the "public safety" standard for closure on the grounds that "normally occurring accidents" should not be the reason for closure. The Service has not deleted this standard. The Alaska Lands Act establishes it as one of three closure standards for subsistence uses of fish and wildlife. In its experience, moreover, the Fish and Wildlife Service has found "public safety" to be a very important reason for closure. For example, in the case of subsistence hunting, allowing hunting in the immediate vicinity of a well-used hiking trail or camping site at certain times of the year might unnecessarily endanger lives. Or, in the case of snowmobiles, allowing snowmobiling in an area endangered by earthquake or avalanche would similarly risk lives. The closure provisions have many procedural and substantive provisions intended to insure that the closure is sufficiently justified and well discussed.

Subpart C—Use of Motorized Vehicles and Access

Snowmachines

Many commenters objected to the use of snowmachines within Alaskan refuges, or suggested that snowmachine use be restricted to that specifically mandated by the Alaska Lands Act. The Service is without legal authority to adopt the restrictive approach suggested by the former comments, since section 1110(a) of the Alaska Lands Act authorizes snowmachine use in all Alaska refuges for "traditional activities" and "travel to and from villages and homesites". The Service has adopted the latter suggestion—that of tracking the section language quoted above. For those activities not within the scope of section 1110(a), the Service must comply with other applicable law,

notably Executive Order 11644. The Service has determined that the findings required by the Executive Order for the general opening of areas to snowmachines use (as proposed in the January 19, 1981 regulations) cannot factually be made at this time. Consequently, as a legal matter snowmachine use may be authorized only during periods of adequate snowcover or frozen river conditions for traditional activities which are still permitted in refuge areas (snowmachine use to locate new mining claims would not be authorized, since that land use is prohibited by section 304 of the Alaska Lands Act) and travel to and from villages and homesites.

Motorboats

A few commenters recommended that the Service require a permit for the use of motorboats on Alaska National Wildlife Refuges. The Service has not adopted that suggestion at this time. If motorboat use problems arise in the future, they may be dealt with on a case-by-case basis through the issuance of a refuge special regulation.

Nonmotorized Surface Transportation

A number of commenters suggested that § 36.21 be expanded to specifically authorize the use of nonmotorized surface transportation on Alaska refuges. This suggestion, which parallels the requirements of section 1110(a) of the Alaska Lands Act, was adopted.

Aircraft

The Fish and Wildlife Service received a large number of comments recommending that helicopter use be authorized only after issuance of a permit by the Refuge Manager. This recommendation has been adopted for helicopter use other than at designated areas because of the direct and indirect effects of that activity on wildlife. The Service will solicit only that information from helicopter users that is necessary to insure the conservation of refuge resources.

One commenter suggested that the downed aircraft subsection should be modified to require only that such aircraft "may be required to be removed." The Service is not adopting this recommendation since it would eviscerate the waiver requirement of the subsection—the Refuge Manager may waive the requirements of the section upon a determination that the removal of downed aircraft would constitute an unacceptable risk to human life, result in extensive resource damage, or is otherwise impractical or impossible.

Off-Road Vehicles

Several organizations recommended that the regulations authorize ORV use on existing trails. The Service is without legal authority to authorize such uses across the board because of a number of statutory and executive requirements, such as Executive Order 11644 (Use of Off-Road Vehicles on Public Lands) and the Wilderness Act. However, the Service has adopted an ORV permit procedure which offers the maximum ORV use allowable under current law. Under this procedure, individuals can obtain permits for ORV use on existing trails in nonwilderness refuge areas after the Refuge Manager's finding of compatibility with refuge purposes. The Service also notes that persons desiring the opening of specific ORV trails may petition the Department to initiate this process under 43 CFR 14.6. Until such trail and/or area openings occur, off-road use is prohibited except by permit or pursuant to § 36.27.

Many commenters recommended that this section be modified to authorize the Service to designate only "routes" for ORV use, and not "areas." Several expressed concern that the inclusion of the latter term would leave the Refuge Manager vulnerable to suggestions that vast portions of Alaska refuges be open to ORV use. The Service has not adopted this suggestion; the designation of "areas" tracks the language of Executive Order 11644.

Access to Inholdings

Several comments indicated confusion over the scope of this section. The section has been revised to make clear that an access permit is required only when the inholder desires an access method that is not authorized by other provisions of these regulations. Consequently, the modes of access authorized by §§ 36.21 and 36.22 should greatly reduce the number of access permits that are required.

One commenter suggested the deletion of the reference in section 36.23(a) to alienating Federal property. This suggestion has been adopted solely for editorial reasons since it is unnecessary.

Many commenters argued that the proposed access permit information requirements were unduly onerous. The Service, in response to these comments, has significantly pared down the amount of information to be solicited from applicants. The application requirements published today are geared to obtaining information on whether the applicant has a valid property or occupancy interest as required by Alaska Lands Act section

1110(b), the location of that interest, the applicant's desired route and method of access and, when deemed necessary by the Refuge Manager, information on access alternatives and environmental impacts.

Several commenters objected to the requirement that the access permit be renewed in cases where no change in circumstances had occurred. This suggestion has been effectively accepted. Permit holders are required, however, to notify the Refuge Manager of any significant change in the method or level of access from that occurring at the time of issuance. The Service may modify the terms and conditions of the access permit in these cases, subject to the requirement that the modified permit must also assure "adequate feasible access."

A number of comments objected to the special information requirements for mineral assessment or development that appeared in the proposed rules.

This comment has been accepted. The information requirements of § 36.23(b) are sufficiently flexible to permit the Service to solicit that information relevant to authorize adequate and feasible access.

Many commenters argued that the distinction made in the proposed rules between ordinary access to inholdings and permanent access is not supported by applicable law. The revised § 36.23(c) responds to these comments, addresses access requiring permanent improvements on refuge lands (e.g. road or bridge construction) and is an interpretive rule on the relationship between Alaska Lands Act section 1110(b) access to inholdings and section 1101-1107 "transportation or utility system". The proposed rules had intimated that permanent improvements could not be a part of the Alaska Lands Act section 1110(b) access guarantee and had inappropriately referenced 50 CFR Chapter I, Subchapter C, Part 29 as the controlling rules for applying for permanent rights-of-way. The revised section also requires that an application for a "transportation or utility system" (a term defined in section 1102 of the Alaska Lands Act, the legislative history, and this subsection) be submitted on a consolidated application form, as required by section 1104 of the Alaska Lands Act. If a permanent improvement is required for adequate and feasible access to an inholding (e.g. a landing strip or road construction) within the meaning of Alaska Lands Act section 1110(b), then the recovery rights for the permanent improvement will be granted following *procedural* compliance with Alaska Lands Act section 1104—a relatively simple form

must be completed and submitted. Conversely, if this permanent improvement is not necessary for section 1110(b) access to inholdings (e.g. requests for powerlines and pipelines, or a request for a 4 lane highway to a recreational cabin), then both the procedural and substantive elements of Alaska Lands Act section 1104-1107 will be applicable in determining whether to authorize the permanent improvement.

Temporary Access

Many commenters favored reducing the application information requirements for temporary access. As in the case of § 36.23, this suggestion has been accepted, and no special information is requested from mineral exploration and development applicants.

Several commenters questioned the definition of "temporary access" in the proposed rules. The final rules respond to these comments by defining temporary access as limited, short term (up to one year) access, which does not require permanent facilities for access to undeveloped non-federal lands. Unlike access to inholdings under § 36.23, temporary access can be denied or conditioned where there would be permanent harm to refuge resources.

Subpart D—Other Refuge Uses

Recreational Activities

Several commenters suggested that this section should be modified to specifically authorize gold panning. The final rules adopt the substance of this suggestion by authorizing recreational gold panning that does not involve surface disturbance. Accordingly, the use of hand held gold pans is authorized; the use of sluice boxes, shovels, pick axes and dredges is prohibited.

Cabins and Other Structures

A few commenters objected to the prohibition on the construction of new cabins on federally owned land within Alaska refuges except as authorized pursuant to a non-transferable, five year special use permit. This requirement has not been changed since it is mandated by section 1303 of the Alaska Lands Act.

Several commenters objected to the § 36.33(b)(1) requirement of listing immediate family members residing in the cabin. This requirement has been retained since the Service believes this information is essential for accurate permit renewals to family members, and is necessary to protect the occupying interest of the immediate family. As individuals are added to the immediate family, they will be added to this listing.

Unattended Property

Comments on this issue addressed the length of time one should generally be authorized to leave unattended property within Alaska refuges, suggestions ranging from 7 days to 24 months. The Service has retained the 1 year standard of the proposed rules. The Service notes that it has authority to close areas to this use in appropriate circumstances.

Subsistence and Land Use Decision

Several comments suggested that this provision be deleted since it merely restates the requirements of section 810 of the Alaska Lands Act; other comments suggested that the provision be moved to subpart A to clarify its legislatively intended scope. The Service has decided to delete this section for reasons addressed in the subsistence section above, but recognizes its application to Service activities.

Subpart E—Permits and Public Participation and Closure Procedures

Permits

A number of comments requested that permit decisions be made as expeditiously as possible. In response to the sentiment expressed by these comments, the final rules require the Refuge Manager to approve or deny the permit, or request additional information within 45 days unless good cause exists for not meeting this target date.

Several commenters suggested that the Refuge Manager's decision should be supported by a written document setting forth the basis of his decision in order to facilitate later review. This comment has been accepted. The Service has also established a requirement that if a permit application is denied, the Refuge Manager is to notify the applicant in writing of the reasons for this denial.

A few comments recommended that the rules authorize appeals from the Refuge Manager's decision within 180 days of permit denial rather than the 90 day period established in the proposed regulations. This recommendation has been accepted since the shorter appeal time benefits neither the applicant or the government.

Several commenters argued that applicants should be afforded an informal meeting with the Regional Directors as a matter of right. The proposed rules authorized such a meeting only if certain standards were met. The Service has accepted the recommendation in an effort to allow the applicant another forum to present whatever information is available that is relevant to the decision.

Public Participation and Closure Procedures

Several commenters suggested that the Service be more specific in delineating closure criteria. The Service cannot forecast the complete range of criteria that would be applicable to protect Alaska refuges. Accordingly, while the Service expects the vast majority of closure decisions to be based on delineated factors like public safety and resource protection, the Service does not believe it prudent to specify a binding limited list of criteria.

The Fish and Wildlife Service received many comments arguing that the proposed rule limiting the public hearings requirements to the affected vicinity precluded, in some cases, public participation by urban uses who would also be affected. In response to this comment, the Service has adopted regulatory language that mandates such hearings in other locations, if appropriate.

Several commenters suggested that the Service adopt a temporary closure procedure similar to that proposed by the Park Service. This recommendation has been adopted. The temporary closure procedure allows the Service improved flexibility in responding to management problems. Although temporary closures may extend up to 12 months in appropriate cases, they need not if the problem requiring temporary closure is alleviated in less time.

Many commenters suggested that permanent closures be accompanied with a Federal Register notice. This suggestion has been adopted to more fully inform the general public of Service actions.

Many commenters suggested that areas be opened to uses previously prohibited only after prior notice in the Federal Register. This suggestion has also been accepted, again to more fully inform the general public of Service actions.

Section-by-Section Analysis

Subpart A—Introduction and General Provisions

Applicability and Scope—Section 36.1

The regulations published today establish interim management rules for the Alaska National Wildlife Refuges. The Alaska refuges are also subject to the general National Wildlife Refuge System regulations (see 50 CFR Chapter I, Subchapter C), as supplemented and modified by these rules. Existing special regulations now in force and effect will also apply to applicable Alaska National Wildlife Refuge lands, except where inconsistent with these rules or

the provisions of the Alaska Lands Act. These regulations generally apply only to "federally-owned" land within the Alaska National Wildlife Refuges. See the discussion of federally-owned land in the Analysis of Comments section above.

Definitions—Section 36.2

This section sets out the definitions of key terms used in these regulations. The definitions specified in these rules generally follow the language of the Alaska Lands Act where available or adopt generally accepted definitions used in prior regulations promulgated by the Fish and Wildlife Service for fish and wildlife conservation areas. The term "fish and wildlife," for instance, tracks the language of the statute although as noted above the Fish and Wildlife Service recognizes the clearly expressed Congressional intent that this term does not include those animals the Service determines to be exotic or domestic. Other definitions, such as those for "adequate and feasible access" and "subsistence uses", are discussed in connection with the substantive access and subsistence provisions and are not repeated here.

Subpart B—Subsistence Uses

Subpart B of these regulations implements the policies and procedures governing subsistence uses contained in Title III and VIII of the Alaska Lands Act.

The regulations for subsistence are necessary for several reasons. First, they relieve restrictions in the otherwise applicable general National Wildlife Refuge System regulations for uses and activities integral to the subsistence lifestyle. In certain cases, the Alaska Lands Act does not specifically relieve these restrictions; in other cases, the Act allows the uses, but the general refuge regulations appear to prohibit them under threat of criminal penalty. Second, the regulations implement certain critical provisions of the Alaska Lands Act concerning subsistence (e.g., the closure standards and procedures for subsistence uses of fish and wildlife), and extend the approach of certain of these provisions to subjects not specifically mentioned by the Act (e.g., closure standards and procedures for subsistence use of plants).

The subsistence regulations are not comprehensive. They do not provide for implementing certain provisions of Title VIII of the Alaska Lands Act that, in the Service's judgment, do not lend themselves to expeditious promulgation since they have not previously been the subject of notice and comment. Notable

among these statutory provisions are the State regulation opportunity of section 805(d), the Federal monitoring requirement of section 806, the judicial enforcement mechanism of section 807, the subsistence and land use-procedure of section 810, and the subsistence research provision of section 812. It should be emphasized that all parties must comply with these statutory provisions as long as they remain in effect.

Purpose and Policy—Section 38.11

Section 38.11(a) provides that, consistent with proper management of fish and wildlife and the purposes for which the Alaska National Wildlife Refuges were established, the purpose of Subpart B of the regulations is to provide the opportunity for local rural residents engaged in a subsistence way of life to do so pursuant to applicable State and Federal law.

Alaska Lands Act, sections 101(c) and 802(l). The Subpart B regulations are designed to accommodate and protect the unique subsistence relationship of certain local rural people in Alaska with their natural environment.

Alaska Native people have been living a subsistence way of life for thousands of years, and certain non-Native rural residents have developed a subsistence way of life in more recent times. Many of these local rural residents have customarily and traditionally taken the renewable resources which are now within the boundaries of refuge areas.

The resources satisfy both the physical needs of these local rural residents for food, shelter, fuel, clothing, tools, and transportation and their societal needs for cultural identity through skills, lore, and traditions. In light of the cultural and societal importance of the subsistence lifestyle in rural Alaska and its dependence on the renewable resources, therefore, Subpart B implements the Congressional directive to continue the opportunity for subsistence uses within Alaska National Wildlife Refuges by local rural residents.

Section 38.11(b)-(c) sets forth basic policies which the Alaska Lands Act adopted to guide the activities of the administering agencies. Alaska Lands Act, sections 802 (1), (2) and 804. First, consistent with sound resource management principles and the conservation of healthy population of fish and wildlife, the utilization of refuge areas is to cause the least adverse impact possible on local rural residents who depend upon subsistence uses of the resources of the public lands in Alaska for their economic and physical well-being and cultural vitality. This

statutory policy is implemented throughout the regulations, particularly in the subsistence priority recognized by § 38.11(c), and the limitations on closure, §§ 38.12, 38.15, and 38.16.

Section 38.11(c), establishes the nonwasteful subsistence uses of fish, wildlife, and other renewable resources by local rural residents as the priority consumptive use over any other consumptive uses permitted within refuge areas. The Fish and Wildlife Service anticipates State regulations implementing the subsistence priority.

Section 38.11(d) authorizes the State of Alaska to regulate the taking of fish and wildlife for subsistence uses within Alaska National Wildlife Refuges to the extent such regulation is consistent with applicable Federal law, including but not limited to the Alaska Lands Act.

In addition to establishing the purpose and policies of the Subpart B regulations, § 38.11(e) also establishes the limitations of the purpose and policies. According to § 38.11(a), the subsistence opportunity may only be provided in a manner and degree consistent with the management of fish and wildlife in accordance with recognized scientific principles and with the purposes for which each refuge area was established, designated, or expanded by the Alaska Lands Act. According to § 38.11(b), the utilization of the public lands is to cause the least adverse impact possible on local rural residents, but this policy is limited by the requirements that it be consistent with sound management principles and the conservation of healthy populations of fish and wildlife. Section 38.11(c) establishes the basic limitations of all the provisions of the Subpart B regulations: subsistence uses of fish and wildlife populations must be appropriately regulated so as to assure conservation of healthy populations within Alaska National Wildlife Refuges. Congress provided the following guidelines on the implementation of this concept:

The Committee intends the phrase "the conservation of healthy populations of fish and wildlife" to mean the maintenance of fish and wildlife resources and their habitats in a condition which assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystems, including 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; and ensures maximum practicable diversity of options for the future.

The greater the ignorance of the resource parameters, particularly of the ability and capacity of a population or species to

respond to changes in its ecosystem, the greater the safety factor must be. Thus, in order to insure that subsistence uses are compatible with the maintenance of healthy populations of fish and wildlife, it must be recognized that the likelihood of irreversible or long-term adverse effects to a population or species must be proportional to the magnitude of the risks caused by a proposed use of such population or species.

The Committee recognizes that the management policies and legal authorities of the National Park System and the National Wildlife Refuge System may require different interpretations and application of the "healthy population" concept consistent with the management objectives of each system. Accordingly, the Committee 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. S. Rep. No. 96-413, 96th Cong. 1st Sess., 233 (April 16, 1979).

Subsistence Definitions

Local Rural Resident. Throughout the regulations the Fish and Wildlife Service categorizes those people who may engage in subsistence uses as "local rural residents." This term derives from the term "local residents" in Title III of the Alaska Lands Act and the term "rural Alaska residents" in the definition of "subsistence uses" in Title VIII. Title III authorizes the opportunity for continued subsistence uses by local residents. Alaska Lands Act, sections 302 and 303. The definition of "subsistence uses" refers to "rural Alaska residents" Alaska Lands Act, Section 803. The relationship between this language in Title III and Title VIII was described as follows in the Congressional Record:

Since the definition of "subsistence uses" in section 803 limit such uses to "rural Alaska residents," a reading of Title VIII and Title III . . . together make it clear that the policy throughout is that only local rural residents are by statute provided the opportunity to engage in subsistence uses in areas of the . . . National Wildlife Refuge System. 128 Cong. Rec. S15129 (daily ed. Dec. 1, 1960).

Subsistence Uses. The definition of "subsistence uses" found in § 36.2 tracks the language of section 803 of the Alaska Lands Act with one modification: Today's definition offers some guidance on the meaning of the term "customary trade," which the statute leaves undefined.

The term "subsistence uses" means the customary and traditional uses by rural Alaska residents of fish, wildlife, and other wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and

selling of handicraft articles from the 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. The definition uses several terms which require further explanation. To begin with, the definition uses the phrase "customary and traditional" to modify the term "uses" in order to emphasize that Native and non-Native subsistence uses "have played a long established and important role in the economy and culture of the community and . . . (that) such uses incorporate beliefs and customs which have been handed down by word of mouth or example from generation to generation." S. Rep. No. 96-413, *supra*, 269; H. Rep. No. 96-97, 96th Congress, 1st Sess. 280 (1979).

Next, the definition limits subsistence uses to those "by rural Alaska residents." Clearly, this limitation excludes residents of Ketchikan, Juneau, Anchorage, and Fairbanks from engaging in authorized "subsistence uses." See S. Rep. No. 96-413, *supra*, 233. Residents of "rural" Alaska—including communities such as Dillingham, Bethel, Nome, Kotzebue, Barrow, and other villages throughout the State (as long as such communities remain rural)—may engage in "subsistence uses." It is important to emphasize, however, that in refuge areas only local "rural residents" are accorded the subsistence priority. Thus, while the statutory definition of "subsistence uses" focuses more broadly on "rural Alaska residents" wherever they may live, the legislative history to Titles III and VIII clearly shows that it is only for the category of rural residents who are also local to the vicinity of a particular wildlife refuge that the subsistence priority is intended to apply. See 126 Cong. Rec. S15129 (daily ed., Dec. 1, 1960).

The term "family" is defined to include any person living within a local rural resident's household on a permanent basis as well as those persons living outside the household who are related by blood, marriage, or adoption (legal or equitable). The definition of "family" recognizes extended family patterns common in the subsistence culture of Alaska.

The definition of "subsistence uses" includes the making and selling of handicraft articles from the nonedible byproducts only of fish and wildlife resources taken for personal or family consumption. Accordingly, the definition covers such commercial activities only if the edible portions of the resource have

been used for personal or family consumption. The "subsistence uses" definition also includes "barter" for personal or family consumption in recognition that a genuine subsistence lifestyle includes certain foodstuffs and other items which may not be available through a non-cash exchange. Thus, barter of subsistence resources of a limited and noncommercial nature falls within the meaning of "subsistence uses."

Finally, the definition of "customary trade" recognizes that a subsistence lifestyle may also include limited involvement in the cash economy. Trapping of furbearers, for instance, is an integral and longstanding part of the subsistence lifestyle in many regions in Alaska. While some of the furs are utilized for personal or family use, it is recognized that a portion of the furs ultimately become items for sale on the commercial market. The cash remuneration, in turn, helps to provide the basic tools and supplies associated with trapping and the subsistence lifestyle of which trapping is a part. For example, local rural residents may engage in trapping to obtain the cash required for necessary store-bought supplies such as gasoline and ammunition. The allowance of cash interchange related to trappings is intended to provide continuity to the traditional and customary harvest of furbearers by those who engage in subsistence uses within refuge areas. Because the Service may find that other forms of customary trade for subsistence purpose may have occurred, the rules also provide the Refuge Manager the authority to designate these activities in refuge special rules.

It should be recognized, however that the definition of "customary trade" was intended to be narrow:

"The Committee does not intend "customary trade" to be construed to permit the establishment of significant commercial enterprise under the guise of "subsistence uses." The Committee expects the Secretary and the State to closely monitor the "customary trade" component of the definition and promulgate regulations consistent with the intent of the subsistence title." S. Rep. No. 96-413, *supra*, 234.

Access for Subsistence Purposes— Section 36.12

In furtherance of Section 811 of the Alaska Lands Act, this section provides local rural residents engaged in subsistence uses reasonable access to the subsistence resources on which they depend. This section liberalizes the provisions of subpart C on snowmobiles, motorboats, and certain off-road vehicles in the case of local rural

residents who are engaged in subsistence hunting, fishing, and gathering activities within the refuge areas. All routes and areas are open to use of these vehicles for subsistence purposes except as specifically restricted or closed. The Refuge Manager will implement such closures or restrictions on the basis of criteria which are more limited than the criteria for closure to general recreation use. Basically, in order to impose a restriction, the Refuge Manager must determine that the use in question is causing or is likely to cause an adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species or the purposes and values for which the refuge area was established. The Refuge Manager will arrange notice and public participation concerning closure proposals in order to involve those affected to the fullest extent possible in the decision making. It should be noted that the types of access vehicles covered by § 36.12 include "other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses." The regulations define this term to include use of dog teams. The limitations of the quoted phrase, if any, will be addressed as appropriate in future rulemaking efforts.

Under the regulations any person operating motorboats, snowmobiles, and other means of surface transportation must comply with applicable State and Federal laws governing such operation and must avoid causing waste or damage to fish, wildlife, terrain, or other values of the refuge area. In addition, consistent with State law, the vehicle operator may not use a motorized vehicle so as to herd, harass, haze, or drive wildlife for hunting or any other purpose.

At all times when not engaged in subsistence uses, local rural residents would be able to use snowmobiles, motorboats, and other means of surface transportation in accordance with the appropriate Subpart C regulations.

For example, local rural residents engaged in recreational uses of snowmobiles, motorboats, and other means of surface transportation would comply with the provisions of §§ 36.21 and 36.22 and local rural residents seeking otherwise closed access to inholdings or temporary access would comply with the provisions of §§ 36.23 and 36.24 respectively.

Subsistence Fishing—Section 36.13

This section authorizes local rural residents to engage in fishing in Alaska National Wildlife Refuges in compliance with applicable State and Federal law. Section 36.16, explained below, governs closures to fishing for subsistence purposes.

Subsistence Hunting and Trapping—Section 36.14

This section authorizes local rural residents to hunt or trap wildlife for subsistence uses in compliance with applicable State and Federal law. Closure of areas to subsistence hunting and trapping is treated in § 36.16.

Subsistence use of Timber and Plant Material—Section 36.15

This section addresses subsistence uses of timber and plant material. Section 36.15(a) authorizes subject to the terms of a permit the noncommercial cutting of live standing timber of diameter greater than 3 inches by local rural residents for appropriate subsistence uses. The cutting of smaller timber, as well as the noncommercial gathering of fruits, berries, mushrooms and other plant material by local rural residents for subsistence uses, is allowed unless otherwise restricted by the Refuge Manager.

Section 36.15(b) sets forth the standards and procedures for closing a refuge area to the subsistence uses of a particular plant population. Although not expressly required by the Alaska Lands Act, today's regulations apply similar closure provisions for subsistence uses of plants as the Act requires for subsistence uses of fish and wildlife. As discussed below in the latter context, the closure standards are narrow, and the closure procedures involve significant public participation in order to protect the affected local rural residents who depend on the resources.

Closure to Subsistence Use of Fish and Wildlife—Section 36.16

Pursuant to Section 815 of the Alaska Lands Act and this section, the Refuge Manager has the authority to close or restrict any part or all of an Alaska National Wildlife Refuge to subsistence uses of a particular fish or wildlife population only temporarily and only if necessary "for reasons of public safety, administration, or to assure the continued viability of such population." To implement Congress' intent, section 36.16 provides protection standards, time limitations, and notice requirements for closures to subsistence taking of fish and wildlife.

With respect to the standards for closure, the Act lists only three: Public safety, administration, and for assurance of the continued viability of a fish and wildlife population. No closure for purposes of administration, moreover, may be made prior to notice and hearing in the vicinity of the closure. The public safety standard clearly allows the Refuge Manager to act in situations which threaten public health and welfare. For example, the Refuge Manager may prohibit subsistence hunting and trapping for reasons of public safety in specified areas surrounding a public campground, roadway or hiking trail. The "fish or wildlife viability" standard allows the Refuge Manager to act for purposes of maintaining resource populations upon which local rural residents rely at levels adequately above the threatened level. As Congress stated, "it is not the intent that actual depletion of a population or an emergency exist before a closure under this section may be justified." S. Rep. No. 96-413, *supra*, 278; H. Rep. No. 96-67, *supra*, 289.

Moreover, as stated in Section 815 of the Alaska Lands Act and § 36.11(d) of these regulations and explained previously, the subsistence provisions are not to be construed as permitting a level of subsistence use of fish and wildlife within Alaska National Wildlife Refuges determined to be inconsistent with the conservation of healthy populations of fish and wildlife. The "administration" standard is potentially the broadest of the three closure standards, though "recognition of the importance of subsistence activities to most (local) rural residents requires that this authority be utilized narrowly and with consistent restraint." S. Rep. No. 96-413, *supra*, 278; H. Rep. No. 96-67, *supra*, 289. Guided by this intent, the Refuge Manager can invoke the administration standard to protect the purposes and values of the refuge areas and to otherwise manage the refuge prudently. The limitation of Section 815 of the Act and § 36.11(d) of the regulations would also be relevant to this closure standard.

Closures shall last only so long as reasonably necessary to achieve the purposes of the closures. In the case of closing an area around a hiking trail for reasons of public safety, for example, the closure "should remain in effect only so long as reasonably necessary to provide for the public safety during normal periods of consistent public use, and only apply to the minimum portion of the public lands reasonably necessary to achieve this purpose." S. Rep. No. 96-413, *supra*, 277-78; H. Rep.

No. 96-67, *supra*, 289. Thus, closures may be seasonal in nature, for example, if warranted by the situation.

In the normal case, a closure would be preceded by consultation with the State and adequate notice and informal public hearing in the vicinity of the closure. In an emergency situation, the Refuge Manager would immediately close the area for a period not to exceed sixty days. The Refuge Manager may extend an emergency closure only if he establishes, after notice and in formal public hearings in the vicinity, that the extension is justified under the applicable closure standards.

Finally, § 36.16(c) is designed to inform as many local rural residents as possible about any closures which may affect them.

Subpart C—Use of Motorized Vehicles and Access

Sections 36.21-36.24 of these regulations implement sections 1110 and 1111 of the Alaska Lands Act concerning access by the public across Alaska National Wildlife Refuges for nonsubsistence purposes. These proposed regulations generally relax restrictions on access that are applicable to National Wildlife Refuge units outside of Alaska, consistent with the requirements of the Alaska Lands Act. These sections are designed to and are presented in an order which will funnel the vast majority of access needs away from a system of individual access permits. Section 36.21 opens all refuges to access by snowmobile, aircraft, motorboat, and nonmotorized surface transportation for most purposes. (Additional access for subsistence uses is set forth in § 36.12). Section 36.22 provides a mechanism for establishing common corridors and areas for off-road vehicle use. In the less common situation where §§ 36.11 and 36.22 do not accommodate a refuge "holder's" need for access, § 36.23 provides for individual permits that insure adequate and feasible access while minimizing damage to refuge resources. Finally, where §§ 36.21-36.23 do not otherwise provide temporary access, § 36.24 creates another means for obtaining desired access.

Snowmachines, Motorboats, Aircraft, and Nonmotorized Surface Transportation—Section 36.21

This section treats the use of snowmachines, motorboats, aircraft and nonmotorized surface transportation for other than subsistence purposes. Motorboat, fixed wing aircraft and nonmotorized surface transportation use for all purposes are authorized on

Alaska Refuges. Snowmachine use on Alaska refuges is open to the maximum extent possible consistent with existing law. See the analysis of comments discussion above. Helicopter use is also authorized subject to the terms and conditions of a special use permit issued by the Refuge Manager.

This section also sets out procedures for removal of aircraft downed after December 2, 1980 on Alaska National Wildlife Refuges. The regulations require that downed aircraft must be removed pursuant to the terms of a special use permit unless the Refuge Manager determines, on a case-by-case basis, that the removal of the aircraft would constitute an unacceptable risk to human life, would result in extensive resource damage, or would otherwise be impracticable or impossible. In evaluating this final criterion, the Service would not require removal of a downed aircraft in any situations when the removal of the aircraft would cause such a severe and significant hardship to the owner as to be economically prohibitive.

Off-Road Vehicles—Section 36.22

This section authorizes the use of off-road vehicles on roads and routes and areas designated by the Refuge Manager, and establishes a procedure for further designation of such routes and areas. Today's rules open refuges to ORV use in a manner designed to authorize such access to the extent possible consistent with refuge values.

Access to Inholdings—Section 36.23

This section provides further procedures to insure "adequate and feasible access" to inholdings. As noted above in the Analysis of Comments, this term is defined to make clear that the inholder determines the desired land use or development, and the Service provides reasonable access to meet the desired land use. In addition, instead of defining the term circularly in terms of access, the § 36.2 definition provides that only "personal and vehicular travel" (e.g., routes, trails, and landing strips, but not transmission lines and pipelines) fits within the statutory access guarantee, in accordance with the legislative history of section 1110(b) appearing in *S. Rep. No. 96-413*, 96th Cong. 1st Sess., 246 (Nov. 14, 1979) and in *H. Rep. No. 96-07*, Part I, 96th Cong., 1st Sess., 239-240 (April 18, 1979). Finally, the definition makes it clear that the access permitted must be economically practicable, but not necessarily the least costly access alternative.

Consistent with the statutory obligation (section 1110(b) of the Alaska

Lands Act) to provide adequate and feasible access, § 36.23(b) of the regulations strives to give the applicant his preferred access, unless there would be significant resource conflicts and alternative adequate and feasible access exists. This regulatory provision also attempts to fulfill the congressional directive in a manner calculated to ease public reporting burdens while insuring the conservation of refuge values.

Section 36.23(c) is an interpretive rule designed to clarify the relationship of sections 1101-1107 and 1110 of the Alaska Lands Act. See the discussion in the Analysis of Comments.

Temporary Access—Section 36.24

This section implements section 1111 of the Alaska Lands Act by establishing a permit mechanism for obtaining temporary access across an Alaska National Wildlife Refuge for purposes of survey, geophysical, exploratory, or other temporary uses of non-Federal lands located outside refuge boundaries. Section 36.24 requires an access permit only where §§ 36.21 and 36.22 do not provide the desired access, and where § 36.23 is not applicable (e.g., if a refuge "inholder" or a person effectively surrounded by Federal lands requires temporary access across a refuge, section 1110(b) of the Alaska Lands Act and § 36.23 of these regulations grant greater access privileges).

Subpart D—Other Refuge Uses

Recreational Activities—Section 36.31

This section authorizes public recreational activities such as boating, camping, hiking, and picnicking within an Alaska National Wildlife Refuge as long as these activities are conducted in a manner compatible with the purpose of the particular refuge. In reaching this regulatory decision, the Service has reviewed the extensive data accumulated through studies, environmental analyses and hearings preceding enactment of the Alaska Lands Act, as well as other information arising from the Federal Land Policy and Management Act, sections 204(c) and 204(e) withdrawals studies. On the basis of this extensive record, the historic use of these areas, and its professional expertise, the Service presently believes that all such activities are compatible with the purpose for which the refuges were established. The Refuge Manager retains authority to close or restrict these uses of refuge lands when he determines they are incompatible with refuge purposes.

Taking of Fish and Wildlife—Section 36.32

This section authorizes the taking of fish and wildlife on Alaska National Wildlife Refuges in accordance with applicable State and Federal law. (Additional provisions on subsistence hunting, trapping, and fishing are provided in §§ 36.13 and 36.14). A permit for these activities need not be obtained from the Refuge Manager, except that the presently existing requirement to obtain a permit before trapping on the Kenai, Izembek and Kodiak Refuges and the Aleutian Island's unit of Alaska Maritime Refuge is retained. The taking of fish and wildlife may be prohibited or restricted only in conjunction with notice and hearing pursuant to the requirements of § 36.42.

This section also treats commercial fishing in a manner that tracks the language of section 304 of the Alaska Lands Act. As expressly recognized by section 304, the Secretary retains the discretion to regulate commercial fishing activities in appropriate cases.

Cabins and other Structures—Section 36.33

This section provides procedures and guidance for those occupying and using existing cabins and those wishing to construct new cabins within Alaska National Wildlife Refuges. The regulations implement section 1303 of the Alaska Lands Act by addressing construction of new cabins, use of existing cabins by occupants who may not have a legal interest in them, and use of existing cabins by those with valid existing rights in cabins as of December 2, 1980.

Under the Alaska Lands Act new cabins are authorized in Alaska National Wildlife Refuges only pursuant to a non-transferable, five-year special use permit issued by the Refuge Manager. Section 36.33, tracking the language of the statute, authorizes issuance of such a permit only upon a determination that (1) the proposed use, construction, and maintenance of a cabin is compatible with the purposes for which the refuge was established and (2) that the use of the cabin is either directly related to the administration of the refuge or is necessary to provide for a continuation of an ongoing activity or use otherwise allowed within the refuge where the permit applicant has no reasonable alternative site for constructing a cabin outside the refuge. As prescribed by the Act, no special use permit may be issued to authorize the

construction of a cabin for private recreational use.

Subsection (b)(1) addresses the use of existing cabins by occupants who may not have a legal right to the cabin. The traditional and customary use of these existing cabins within an Alaska National Wildlife Refuge is authorized in accordance with a five-year, special use permit issued upon a determination by the Refuge Manager that the traditional and customary uses are compatible with the purposes of the refuge. As with new cabins, special use permits may not be issued to authorize the use of an existing cabin for private recreational uses.

Subsection (b)(2) addresses use of existing cabins by occupants who have a valid permit or lease in effect on December 2, 1980 for those structures. Such an occupant is entitled, as a matter of right, to continuation of such permit or lease unless the Refuge Manager determines, following notice and an opportunity for response, that such a continuation would directly threaten or significantly impair the purposes for which the refuge was established.

All permits authorized under this section must be renewed every five years until the death of the last immediate member of the claimant residing in the cabin. Permits need not be renewed, however, if the Refuge Manager determines, after a formal adjudicatory hearing, that the use of the cabin under the permit is causing or may cause significant detriment to the principal purposes for which the refuge was established.

Firearms—Section 36.34

This section authorizes, in accordance with State and Federal law, the possession, use and transporting of firearms on Alaska National Wildlife Refuges for purposes of hunting or personal protection. Such uses may be prohibited or restricted only in accordance with the public participation provision of § 36.42.

Unattended Property—Section 36.35

The general National Wildlife Refuge System regulations authorize the leaving of unattended personal property on a refuge for only short periods of time. Recognizing unique Alaska circumstances, such as the need to allow for trapping caches, this section generally extends the period to 12 months. In order to assure protection of refuge resources, the Refuge Manager may (1) designate areas where personal property may not be left unattended for any time period, (2) establish limits on the amount and type of personal property that may be left unattended, (3)

prescribe the manner in which personal property may be left unattended, and (4) establish limits on the length of time personal property may be left unattended.

Sled Dogs and House Pets—Section 36.36

This section relaxes the general trespass provisions of the general National Wildlife Refuge system regulations (50 CFR 26.11) for household pets and sled or pack dogs under the direct control of their owners or handlers.

Subpart E—Permits and Public Participation and Closure Procedures Permits—Section 36.41

This section provides consolidated procedures regarding the issuance and denial of permits required by the general National Wildlife Refuge System regulations and these regulations. The procedures specify to whom an application for a permit must be submitted, and direct the Refuge Manager to approve or deny an application, or request additional information, within 45 days of receipt of the request unless good cause is shown. This section also adopts an appeal procedure for applicants aggrieved by a decision of the Refuge Manager. Aggrieved parties must appeal within 180 days of the Refuge Manager's decision. Appellants are also guaranteed the opportunity for an informal meeting with the Regional Director to present their cases.

Public Participation and Closure Procedures—Section 36.42

Section 36.42 authorizes the Refuge Manager to close an area or restrict an activity on an emergency, temporary or permanent basis. A determination to close an area or restrict an activity will be based on factors such as public health and safety, resource protection, and subsistence uses. No closures are provided for by this regulation. The section provides for notice and hearing for temporary and permanent closure, and also includes a provision for notice and informal hearing prior to all closure for snowmobile, aircraft or motorboat use, consistent with section 1110(b) of the Act. This rule establishes time limits for emergency closures (30 days) and temporary closures (12 months) which cannot be extended. This section also provides that areas may be opened to a public activity or use otherwise prohibited only after notice in the Federal Register and providing an opportunity for an informal public hearing.

Compliance with Other Laws

The Service has prepared an Environmental Assessment on this rulemaking and has made a Finding of No Significant Impact pursuant to regulations implementing the National Environmental Policy Act (42 U.S.C. 4332). Copies of the Environmental Assessment and the finding of No Significant Impact are available for public review in the Service's Alaska Regional Office.

The Service has also determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193, Feb. 19, 1981) and that the rulemaking would not have a "significant economic effect on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act (Pub. L. 96-354) and 43 CFR Part 14 (45 FR 85378, Dec. 24, 1980). Finally, the Service has received approval from the Office of Management and Budget for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (Pub. L. 96-511).

Drafting Information

The primary authors of these regulations are Lou Swenson and Owen Vivion, Fish and Wildlife Service Alaska Regional Office and Ronald Fowler, Division of Refuge Management, Washington, D.C.

Dated: May 27, 1981.

G. Ray Amest,

Assistant Secretary, Fish and Wildlife and Parks.

In consideration of the foregoing, Title 50 of the Code of Federal Regulations is amended by establishment of a new Part 36 in Chapter I, Subchapter C, as follows:

PART 36—ALASKA NATIONAL WILDLIFE REFUGES

Subpart A—Introduction and General Provisions

- Sec.
- 36.1 Applicability and scope.
 - 36.2 Definitions.
 - 36.3 Information collection.

Subpart B—Subsistence Uses

- 36.11 Purpose and policy.
- 36.12 Use of snowmobiles, motorboats, dog teams and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.
- 36.13 Subsistence fishing.
- 36.14 Subsistence hunting and trapping.
- 36.15 Subsistence uses of timber and plant material.
- 36.16 Closure to subsistence uses.

Subpart C—Use of Motorized Vehicles and Access

- Sec.
 36.21 Use of snowmachines, motorboats, aircraft, and nonmotorized surface transportation.
 36.22 Use of off-road vehicles.
 36.23 Access to inholdings.
 36.24 Temporary access.

Subpart D—Other Refuge Uses

- 36.31 Recreational activities.
 36.32 Taking of fish and wildlife.
 36.33 Cabins and other structures.
 36.34 Firearms.
 36.35 Unattended property.
 36.36 Sled dogs and household pets.

Subpart E—Permits and Public Participation and Closure Procedures

- 36.41 Permits.
 36.42 Public participation and closure procedures.

Table I—Summary Listing the National Wildlife Refuges in Alaska as Established by the Alaska Lands Act

Authority: The Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487 (December 2, 1980); the National Wildlife Refuge System Administration Act, as amended, 16 U.S.C. 668dd *et seq.*; Fish and Wildlife Act of 1956, 16 U.S.C. 742(a) *et seq.*; Refuge Recreation Act, 16 U.S.C. 460k *et seq.*; Paperwork Reduction Act of 1980, 94 Stat. 2812, Pub. L. 96-511.

Subpart A—Introduction and General Provisions

§ 36.1 Applicability and scope.

(a) The regulations contained in this part are prescribed for the proper use and management of all Alaska National Wildlife Refuges and supplement the general National Wildlife Refuge System regulations found in Title 50, Code of Federal Regulations, Chapter I, Subchapter C. The general National Wildlife Refuge System regulations are automatically applicable in their entirety to the Alaska National Wildlife Refuges except as supplemented or modified by these regulations or amended by ANILCA.

(b) The regulations contained in this part are applicable only on federally owned lands within the boundaries of any Alaska National Wildlife Refuge. For purposes of this part "federally owned lands" means land interests held or retained by the United States, but does not include those land interests: (1) Tentatively approved, legislatively conveyed, or patented to the State of Alaska, or (2) interim conveyed or patented to a Native Corporation or person.

§ 36.2 Definitions.

The following definitions shall apply to the regulations contained in this part.

(a) "Adequate and feasible access" means a reasonable method and route of

pedestrian or vehicular transportation which is economically practicable for achieving the use or development desired by the applicant on his/her non-federal land or occupancy interest, but does not necessarily mean the least costly alternative.

(b) "Adequate snow cover" means snow of sufficient depth to protect the underlying vegetation and soil.

(c) "ANILCA" means the Alaska National Interest Lands Conservation Act, 94 Stat 237, Pub. L. 96-487 (December 2, 1980).

(d) "Aircraft" means a machine or device that is used or intended to be used to carry persons or objects in flight through the air, including but not limited to, airplanes, helicopters and gliders.

(e) "Alaska National Wildlife Refuges" means all lands, waters and interests therein administered by the United States Fish and Wildlife Service within the following National Wildlife Refuges in Alaska: Alaska Maritime, Arctic, Alaska Peninsula, Becharof, Innoko, Kanuti, Kenai, Kodiak, Koyukuk, Nowitna, Selawik, Tetlin, Izembek, Togiak, Yukon Delta and Yukon Flats.

(f) "Downed aircraft" means an aircraft that as a result of mechanical failure or accident cannot take off.

(g) "Fish and wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, non-migratory, 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 dead body or part thereof.

(h) "Off-road vehicle" means any motor vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, wetland, or other natural terrain, except snowmobiles as defined in this section.

(i) "Person" means any individual, firm, corporation, society, association, partnership, or other private or public body.

(j) "Public lands" means lands situated in Alaska which are federally owned lands, except:

(1) Land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act (72 Stat. 339) 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;

(2) Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act (85 Stat. 688) which have not been conveyed to a

Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(3) Lands referred to in section 19(b) of the Alaska Native Claims Settlement Act.

(k) "Refuge Manager" means any Fish and Wildlife Service official in charge of an Alaska National Wildlife Refuge, the Alaska Regional Director of the Fish and Wildlife Service, or an authorized representative of either.

(l) "Snowmachine" or "snowmobile" means a self-propelled vehicle intended for off-road travel primarily on snow having a curb weight of not more than 1,000 pounds (450 kg), driven by track or tracks in contact with the snow and steered by a ski or skis in contact with the snow.

(m) "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 making 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. For purpose of this paragraph, the term—

(1) "Family" means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) "Barter" means the exchange of fish or wildlife or their parts taken for subsistence uses—

(i) For other fish or game of their parts; or

(ii) For other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature; and

(3) "Customary trade" shall be limited to the exchange of furs for cash, and such other activities, if any, as may be designated in special rules for Alaska National Wildlife Refuges.

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

(o) "Temporary" means a continuous period of time not to exceed 12 months, except as specifically provided otherwise.

§ 36.3 Information collection.

The information collection requirements contained in §§ 36.15, 36.21, 36.22, 36.23, 36.24, 36.33 and 36.41 of these regulations have been approved by the Office of Management and

Budget under 44 U.S.C. 3507 and assigned clearance number 1018-0035. The information is being collected to solicit information necessary for the Refuge Manager to issue permits and other benefits. The information will be used to grant statutory or administrative benefits. In all sections except § 36.21(f), the obligation to respond is required to obtain a benefit. In § 36.21(f), the obligation to respond is mandatory.

Subpart B—Subsistence uses

§ 36.11 Purpose and policy.

(a) Consistent with the management of fish and wildlife in accordance with recognized scientific principles and the purposes for which each Alaska National Wildlife refuge was established, designated, or expanded by ANILCA, the purpose of this subpart is to provide the opportunity for local rural residents engaged in a subsistence way of life to do so pursuant to applicable State and Federal law.

(b) Consistent with sound management principles and the conservation of healthy populations of fish and wildlife, the utilization of Alaska National Wildlife Refuges is to cause the least adverse impact possible on local rural residents who depend upon subsistence uses of the resources of the public lands in Alaska.

(c) Nonwasteful subsistence uses of fish, wildlife and other renewable resources by local rural residents shall be the priority consumptive uses of such resources over any other consumptive uses permitted within Alaska National Wildlife Refuge areas.

(d) The State of Alaska is authorized to regulate the taking of fish and wildlife for subsistence uses within Alaska National Wildlife Refuges to the extent such regulation is consistent with applicable Federal Law, including but not limited to ANILCA.

(e) Nothing in this subpart shall be construed as permitting the level of subsistence uses of fish and wildlife within Alaska National Wildlife Refuges to be inconsistent with the conservation of healthy populations of fish and wildlife.

§ 36.12 Use of snowmobiles, motorboats, dog teams and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.

(a) Notwithstanding any other provision of Subchapter C of Title 50, Code of Federal Regulations, the use of snowmobiles, motorboats, dog teams and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses is permitted within

Alaska National Wildlife Refuges except at those times and in those areas restricted or closed by the Refuge Manager.

(b) The Refuge Manager may restrict or close a route or area to the use of snowmobiles, motorboats, dog teams or other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses if the Refuge Manager determines that such use is causing or is likely to cause an adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species, or other purposes and values for which the refuge was established.

(c) No restrictions or closures shall be imposed without notice and a public hearing in the affected vicinity and other locations as appropriate. In the case of emergency situations, restrictions or closures shall not exceed sixty (60) days and shall not be extended unless the Refuge Manager establishes, after notice and public hearing in the affected vicinity and other locations as appropriate, that such extension is justified according to the factors set forth in paragraph (b) of this section. Notice of the proposed or emergency restrictions or closures and the reasons therefor shall be published in at least one newspaper of general circulation within the State and in at least one local newspaper if available, and information about such proposed or emergency actions shall also be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All restrictions and closures shall be designated on a map which shall be available for public inspection at the office of the Refuge Manager of the affected refuge and the post office or postal authority of every affected community within or near the refuge area, or by the posting of signs in the vicinity of the restrictions or closures, or both.

(d) Snowmobiles, motorboats, dog teams and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses shall be operated (1) in compliance with applicable State and Federal law, (2) in such a manner as to prevent waste or damage to the refuge, and (3) in such a manner as to prevent the herding, harassment, hazing or driving of wildlife for hunting or other purposes.

(e) At all times when not engaged in subsistence uses, local rural residents may use snowmobiles, motorboats, dog teams and other means of surface

transportation in accordance with Subpart C of this part.

§ 36.13 Subsistence fishing.

Fish may be taken by local rural residents for subsistence uses in compliance with applicable State and Federal law. To the extent consistent with the provisions of this part and other Federal law, applicable State laws and regulations governing the taking of fish which are now or will hereafter be in effect are hereby incorporated by reference as a part of these regulations.

§ 36.14 Subsistence hunting and trapping.

Local rural residents may hunt and trap wildlife for subsistence uses in Alaska National Wildlife Refuges in compliance with applicable State and Federal laws. To the extent consistent with the provisions of this part and other Federal law, applicable State laws and regulations governing the taking of wildlife which are now or will hereafter be in effect are hereby incorporated by reference as a part of these regulations.

§ 36.15 Subsistence uses of timber and plant material.

(a) Notwithstanding any other provision of this part, the noncommercial cutting of live standing timber by local rural residents for appropriate subsistence uses, such as firewood or house logs, may be permitted in Alaska National Wildlife Refuges as follows:

(1) For live standing timber of diameter greater than three inches at ground height, the Refuge Manager may permit cutting in accordance with the specifications of a permit if such cutting is determined to be compatible with the purposes for which the refuge was established;

(2) For live standing timber of diameter less than three inches at ground height, cutting is permitted unless restricted by the Refuge Manager.

(b) The noncommercial gathering by local rural residents of fruits, berries, mushrooms, and other plant materials for subsistence uses, and the noncommercial gathering of dead or downed timber for firewood, shall be allowed without a permit.

(c)(1) Notwithstanding any other provision of this part, the Refuge Manager, after notice and public hearing in the affected vicinity and other locations as appropriate, may temporarily close all or any portion of an Alaska National Wildlife Refuge to subsistence uses of a particular plant population only if necessary for reasons of public safety, administration, or to assure the continued viability of such

population. For purposes of this section, the term "temporary" shall mean only as long as reasonably necessary to achieve the purpose of the closure.

(2) If the Refuge Manager determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular plant population, the Refuge Manager may immediately close all or any portion of an Alaska National Wildlife Refuge to the subsistence uses of such population. Such emergency closure shall be effective when made, shall be for a period not to exceed sixty (60) days, and may not subsequently be extended unless the Refuge Manager establishes, after notice and public hearing in the affected vicinity and other locations as appropriate, that such closure should be extended.

(3) Notice of administrative actions taken pursuant to this section, and the reasons justifying such actions, shall be published in at least one newspaper of general circulation within the State and in at least one local newspaper if available, and information about such actions and reasons therefor also shall be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All closures shall be designated on a map which shall be available for public inspection at the office of the Refuge Manager of the affected refuge and the post office or postal authority of every affected community within or near the refuge, or by the posting of signs in the vicinity of the restrictions, or both.

§ 36.16 Closure to subsistence uses of fish and wildlife.

(a) Notwithstanding any other provision of this part, the Refuge Manager, after consultation with the State and adequate notice and public hearing in the affected vicinity and other locations as appropriate, may temporarily close all or any portion of an Alaska National Wildlife Refuge to subsistence uses of a particular fish or wildlife population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. For the purposes of this section, the term "temporarily" shall mean only so long as reasonably necessary to achieve the purpose of the closure.

(b) If the Refuge Manager determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular fish or wildlife population, he may immediately close all or any portion of a refuge to the

subsistence uses of such population. Such emergency closure shall be effective when made, shall not exceed sixty (60) days, and may not subsequently be extended unless the Refuge Manager establishes, after notice and public hearing in the affected vicinity and other locations as appropriate, that such closure should be extended.

(c) Notice of administrative actions taken pursuant to this section and the reasons justifying such actions shall be published in at least one newspaper of general circulation within the State and in at least one local newspaper if available, and information about such actions and justifying reasons shall be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All closures shall be designated on a map which shall be available for public inspection at the office of the Refuge Manager of the affected refuge area and the post office or postal authority of every affected community within or near the refuge area, or by the posting of signs in the vicinity of the closures, or both.

Subpart C—Use of Motorized Vehicles and Access

§ 36.21 Use of snowmachines, motorboats, aircraft, and non-motorized surface transportation.

(a) The use of snowmachines (during periods of adequate snow cover or frozen river conditions) for traditional activities (where such activities are permitted by ANILCA or other law) and for travel to and from villages and homesites, is authorized within Alaska National Wildlife Refuges, except where such use is prohibited or otherwise restricted by the Refuge Manager in accordance with the provisions of § 36.42. Nothing in this section affects the use of snowmobiles by local rural residents engaged in subsistence uses as authorized by § 36.12.

(b) The use of motorboats, fixed-wing aircraft, and non-motorized surface transportation methods such as domestic dogs, horses and other pack or saddle animals is authorized in Alaska National Wildlife Refuges except where such use is prohibited or otherwise restricted by the Refuge Manager in accordance with the provisions of § 36.42. Nothing in this section affects the use by local rural residents engaged in subsistence uses of those modes of transportation authorized by § 36.12.

(c) The use of helicopters in Alaska National Wildlife Refuges, other than at landing areas designated in special regulations or pursuant to the terms and

conditions of a permit issued by the Refuge Manager, is prohibited.

(d) In imposing any prohibitions or restrictions on fixed-wing aircraft use the Refuge Manager shall: (1) Comply with the procedures set forth in § 36.42; (2) publish notice of prohibitions or restrictions as "Notices to Airmen" issued by the Department of Transportation; and (3) publish permanent prohibitions or restrictions as a regulatory notice in the United States Government Flight Information Service "Supplement Alaska".

(e) The operation of aircraft, at altitudes and in flight paths resulting in the herding, harassment, hazing, or driving of wildlife is prohibited.

(f) Except as provided in paragraph (g) of this section, the owners of any aircraft downed after December 2, 1980, shall remove the aircraft and all component parts thereof in accordance with procedures established by the Refuge Manager. In establishing a removal procedure, the Refuge Manager is authorized to: (1) Establish a reasonable date by which aircraft removal operations must be complete; and (2) determine times and means of access to and from the downed aircraft.

(g) The Refuge Manager may waive the requirements of § 36.21(f) when it is determined that: (1) The removal of downed aircraft would constitute an unacceptable risk to human life; or (2) the removal of a downed aircraft would result in extensive resource damage; or (3) the removal of a downed aircraft is otherwise impracticable or impossible.

(h) Salvaging, removing, possessing or attempting to salvage, remove or possess any downed aircraft or component parts thereof is prohibited, except in accordance with a removal procedure established under paragraph (f) of this section; *Provided, however,* That the owner or an authorized representative thereof may remove valuable component parts from a downed aircraft at the time of rescue without a permit.

§ 36.22 Use of off-road vehicles.

(a) The use of off-road vehicles in locations other than established roads and parking areas is prohibited, except on routes or in areas designated by the Refuge Manager or pursuant to a valid permit as prescribed in paragraph (b) or in §§ 36.23 and 36.24. Such designations shall be made in accordance with the procedures of this section. Nothing in this section affects the use of off-road vehicles by local rural residents engaged in subsistence uses as authorized by § 36.12.

(1) The Refuge Manager's determination of whether to designate a

route or area for off-road vehicle use shall be governed by Executive Order 11644, as amended.

(2) Route or area designations shall be published in the Federal Register.

(3) Notice of routes or areas on which off-road travel is permitted shall be in accordance with the provisions of § 36.42(d).

(4) The closure or restrictions on use of designated routes or areas to off-road vehicles use shall be in accordance with the provisions of § 36.42.

(b) The Refuge Manager is authorized to issue permits for the use of off-road vehicles in existing off-road vehicle trails located in refuge areas (other than areas designated as part of the National Wilderness Preservation System) upon a finding that such off-road vehicles use would be compatible with refuge purposes and values. The Refuge Manager shall include in any permit such stipulations and conditions as are necessary for the protection of refuge resources and values.

§ 36.23 Access to inholdings.

(a) *Purpose.* A permit for access to inholdings pursuant to this section is required only where adequate and feasible access is not affirmatively provided without a permit under §§ 36.21 and 36.22 of these regulations. Thus, it is the purpose of this section to ensure adequate and feasible access across refuge areas for any person who has a valid property or occupancy interest in lands within or effectively surrounded by a refuge area or other lands listed in section 1110(b) of ANILCA.

(b) *Application and administration.*

(1) Applications for a permit designating methods and routes of access across any Alaska National Wildlife Refuge not affirmatively provided for in this part shall be submitted to the Refuge Manager having jurisdiction over the affected refuge area as specified under § 36.41.

(2) Except as provided in paragraph (c) of this section, the access permit application shall contain the name and address of the applicant, documentation of the relevant property or occupancy interest held by the applicant (including for 1872 Mining Law claimants a copy of the location notice and recordings required under the 1872 Mining Law and 43 U.S.C. 1744), a map or physical description of the relevant property or occupancy interest sufficiently clear to locate the interest on the ground, a map or physical description of the desired route of access, a description of the desired method of access, and any other information necessary to determine the adequacy and feasibility of the route or

method of access and its impact on the natural and other values of the refuge area.

(3) The Refuge Manager shall specify in a nontransferable permit adequate and feasible routes and methods of access across refuge lands for any person who meets the criteria of paragraph (a) of this section. The Refuge Manager shall designate the routes and methods desired by the applicant unless it is determined that:

(i) The route or method of access would cause significant adverse impacts on natural or other values of the refuge, and adequate and feasible access otherwise exists; or

(ii) The route or method of access would jeopardize public health and safety, and adequate and feasible access otherwise exists.

(4) If the Refuge Manager makes one of the findings described in paragraph (b)(3) of this section, he shall specify such other alternate methods and routes of access as will provide the applicant adequate and feasible access, while minimizing damage to natural and other values of the refuge.

(5) Any person holding an access permit shall notify the refuge manager of any significant change in the method or level of access from that occurring at the time of issuance. In such cases, the Refuge Manager may modify the terms and conditions of the permit, provided that the modified permit also assures adequate and feasible access under the standards of paragraph (b)(3) of this section.

(6) Routes and methods of access permitted pursuant to this section shall be available for use by guests and invitees of the permittee.

(c) *Access requiring permanent improvements.* (1) Application form and procedure. Any application for access under this section which proposes the construction or modification of an improved road (e.g. construction or modification of a permanent, year-round nature and which involves substantial alteration of the terrain or vegetation, such as grading, graveling of surfaces, concrete bridges, or other such construction or modification), or any other permanent improvement on refuge lands qualifying as a "transportation or utility system" under section 1102 of ANILCA, shall be submitted on the consolidated application form specified in section 1194(b) of ANILCA and processed in accordance with the procedures of Title XI of ANILCA.

(2) *Decisionmaking standard:*

(i) If a permanent improvement is required for adequate and feasible access under this section (e.g. improved right of way or landing strip), the permit

granting standards of paragraph (b) of this section shall apply.

(ii) If the permanent improvement is not required as part of the applicant's right to adequate and feasible access to an inholding (e.g. pipeline, transmission line) the permit granting standards of sections 1104-1107 of ANILCA shall apply.

§ 36.24 Temporary access.

(a) *Applicability.* This section is applicable to State and private landowners who desire temporary access across an Alaska National Wildlife Refuge for the purposes of survey, geophysical, exploratory and other temporary uses of nonfederal lands, and where such temporary access is not affirmatively provided for an §§ 36.21-36.23. State and private landowners meeting the criteria of § 36.23(a) are directed to utilize the procedures of § 36.23 to obtain temporary access.

(b) *Application.* A landowner requiring temporary access across a refuge area for mineral survey, geophysical, exploratory or similar temporary activities shall apply to the Refuge Manager for an access permit and shall provide the relevant information described in § 36.23(b)(2) concerning the proposed access.

(c) *Permit Standards, Stipulations and Conditions.* The Refuge Manager shall grant the desired temporary access whenever he determines that such access will not result in permanent harm to refuge area resources. The Refuge Manager shall include in any permit granted such stipulations and conditions on temporary access as are necessary to ensure that the access granted would not be inconsistent with the purpose for which the refuge was established and to ensure that no permanent harm will result in refuge resources.

(d) *Definition.* For the purposes of this section, "temporary access" shall mean limited, short-term, (i.e. up to one year from issuance of the permit) access, which does not require permanent facilities for access to undeveloped State or private lands.

Subpart D—Other Refuge Uses

§ 36.31 Recreational activities.

(a) Public recreational activities within the Alaska National Wildlife Refuges are authorized as long as such activities are conducted in a manner compatible with the purposes for which the areas were established. Such recreational activities include, but are not limited to, sightseeing, nature observation and photography, sport

hunting, sport fishing, boating, camping, hiking, picnicking and other related activities. Any existing special regulations now in force and effect shall continue to apply to the applicable refuge lands in Alaska National Wildlife Refuges.

(b) Surface collection, by hand (including handheld gold pans) and for personal recreational use only, of rocks and minerals is authorized. *Provided however,* That (1) collection of silver, platinum, gemstones and fossils is prohibited, and (2) collection methods which may result in disturbance of ground surface, such as the use of shovels, pickaxes, sledge hammers and dredges, are prohibited. The recreation activities specified in paragraphs (a) and (b) of this section may be prohibited or otherwise restricted in accordance with the provisions of § 38.42.

§ 38.32 Taking of fish and wildlife.

(a) The taking of fish and wildlife for sport hunting, trapping and sport fishing is authorized in accordance with applicable State and Federal law and such laws are hereby adopted and made a part of these regulations. *Provided however,* That the Refuge Manager, pursuant to § 38.42, may designate areas where, and establish periods when, no taking of a particular population of fish or wildlife shall be permitted.

(b) The exercise of valid commercial fishing rights or privileges obtained pursuant to existing law, including any use of refuge areas for campsites, cabins, motorized vehicles and aircraft landing directly incident to the exercise of such rights or privileges, is authorized; *Provided, however,* That the Refuge Manager may restrict or prohibit the exercise of these rights or privileges or uses of federally owned lands directly incident to such exercise if he determines, after conducting a public hearing in the affected locality, that they are inconsistent with the purposes of the refuge and that they constitute a significant expansion of commercial fishing activities within such refuge beyond the level of such activities in 1979.

(c) The following provisions shall apply to any person while engaged in the taking of fish and wildlife within an Alaska National Wildlife Refuge:

(1) Trapping and Sport Hunting
 (i) Each person shall secure and possess all required State licenses and shall comply with the applicable provisions of State law unless further restricted by Federal law;

(ii) Each person shall comply with the applicable provisions of Federal law;

(iii) In addition to the requirements of paragraphs (a) and (b) of this section,

each person shall continue to secure a trapping permit from the appropriate Refuge Manager prior to trapping on the Kenai, Izembek and Kodiak Refuges and the Aleutian Islands Unit of the Alaska Maritime Refuge.

(2) Sport and Commercial Fishing

(i) Each person shall secure and possess all required State licenses and shall comply with the applicable provisions of State law unless further restricted by Federal law;

(ii) Each person shall comply with the applicable provisions of Federal law.

(d) Nothing in this section shall apply to the taking of fish and wildlife for subsistence uses.

(e) Nothing in these rules shall be interpreted as waiving the requirements of other fish and wildlife conservation statutes such as the Airborne Hunting Act or those provisions of Subchapter C of Title 50, Code of Federal Regulations, regarding the taking of depredating wildlife. Animal control programs shall only be conducted in accordance with a special use permit issued by the Refuge Manager.

§ 38.33 Cabins and other structures.

(a) *New Cabins.* (1) The construction of new cabins on federally owned lands within an Alaska National Wildlife Refuge is prohibited except as may be authorized pursuant to a nontransferable, five-year special use permit issued by the Refuge Manager.

(2) Such special use permit shall only be issued upon a determination that the proposed use, construction, and maintenance of a cabin is compatible with the purposes for which the refuge was established and that the use of the cabin is either directly related to the administration of the refuge or is necessary to provide for a continuation of an ongoing activity or use otherwise allowed within the refuge where the permit applicant has no reasonable alternative site for constructing a cabin outside of the Refuge. In determining whether to permit the use, occupancy, construction, reconstruction or maintenance of cabins or other structures, the Refuge Manager shall be guided by factors such as other public uses, public health and safety, environmental and resource protection, research activities, protection of historic or scientific values, subsistence uses, endangered or threatened species conservation and other management considerations necessary to ensure that the activities authorized pursuant to this section are compatible with the purpose for which the refuge was established. No special use permit shall be issued to authorize the construction of a cabin for private recreational use.

(b) *Existing Cabins.* (1) Traditional and customary uses of existing cabins and related structures on federally owned lands within a refuge may be allowed to continue in accordance with a nontransferable, renewable five-year special use permit issued by the Refuge Manager. Such special use permit shall be issued only upon a determination that the traditional and customary uses are compatible with the purposes for which the refuge was established. No special use permits shall be issued to authorize the use of an existing cabin for private recreational use.

(2) Where a valid permit or lease was in effect on December 2, 1980, for cabins, homesites or similar structures on federally owned lands within a refuge, the Refuge Manager shall provide for the continuation of the permit or lease, unless a finding is made, following notice and an opportunity for the leaseholder or permittee to respond, that the continuation of the lease or permit will directly threaten or significantly impair the purposes for which the refuge was established.

(c) No special use permit shall be issued under paragraphs (a) or (b)(1) of this section unless the permit applicant:

(1) In the case of existing cabins or structures, reasonably demonstrates by affidavit, bill of sale or other documentation, proof of possessory interests or right of occupancy in the cabin or structure;

(2) Submits an accurate sketch or photograph of the existing or proposed cabin or structure and a map showing its geographic location;

(3) Agrees to vacate the cabin or structure and remove all personal property from it upon nonrenewal or revocation of the permit;

(4) Acknowledges in the permit application that the applicant has no interest in the real property on which the cabin or structure is located or will be constructed; and

(5) Submits a list of the names of all immediate family members residing in the cabin or structure.

(d) Permits authorized under the provisions of this section shall be renewed every five years until the death of the last immediate family member of the claimant residing in the cabin or structure under permit. Renewal will occur unless the Refuge Manager determines after notice and hearing, on the basis of substantial evidence in the administrative record as a whole, that the use under the permit has caused or may cause significant detriment to the principal purposes for which the refuge area was established. The Refuge Manager's decision may be appealed

pursuant to the provisions of 43 CFR 4.700.

§ 36.34 Firearms.

The possession, use and transporting of firearms is authorized for hunting and personal protection in accordance with State and Federal laws unless prohibited or otherwise restricted by the Refuge Manager in accordance with the provisions of § 36.42.

§ 36.35 Unattended Property.

(a) Leaving any snowmachine, vessel, off-road vehicle or other personal property unattended for longer than 12 months without the prior permission of the Refuge Manager is prohibited, and any property so left may be impounded by the Refuge Manager.

(b) The Refuge Manager may (1) designate areas where personal property may not be left unattended for any time period, (2) establish limits on the amount and type of personal property that may be left unattended, (3) prescribe the manner in which personal property may be left unattended or (4) establish limits on the length of time personal property may be left unattended.

(c) Such designations and restrictions arising under paragraph (b) of this section shall be (1) published in at least one newspaper of general circulation within the State, posted at community post offices within the affected vicinity, made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected community, and designated in a map which shall be available for public inspection at the office of the Refuge Manager, or (2) designated by the posting of appropriate signs or (3) both.

(d) In the event unattended property interferes with the safe and orderly management of a refuge area or causes damage to refuge resources, it may be impounded by the Refuge Manager at any time.

§ 36.36 Sled dogs and Household pets

The general trespass provisions of 50 CFR 26.21 shall not apply to household pets and sled, work or pack dogs under the direct control of their owners or handlers, but such activities may be prohibited or otherwise restrict pursuant to the provisions of § 36.42. Refuge Manager has the right to have the application reconsidered by the

Regional Director by contacting him within 180 days of the issuance of the denial. For purposes of reconsideration, the permit applicant shall present the following information:

(a) Any statement of documentation, in addition to that included in the initial application, which demonstrates that the applicant satisfies the criteria set forth in the section under which the permit application is made;

(b) The basis for the permit applicant's disagreement with the prior findings and conclusions; and

(c) Whether or not the permit applicant requests an informal hearing before the Regional Director.

(d) The Regional Director shall provide a hearing if requested by the applicant. After consideration of the written materials and oral hearing, if any, and within a reasonable period of time, the Regional Director shall affirm, reverse or modify the denial of the Refuge Manager and shall set forth in writing the basis for the decision. A copy of the decision shall be forwarded promptly to the applicant and shall constitute final agency action.

§ 36.42 Public participation and closure procedures.

(a) *Authority.* The Refuge Manager may close an area or restrict an activity on an emergency, temporary, or permanent basis.

(b) *Criteria.* In determining whether to close an area or restrict an activity otherwise allowed, the Refuge Manager shall be guided by factors such as public health and safety, resource protection, protection of cultural or scientific values, subsistence uses, endangered or threatened species conservation, and other management considerations necessary to ensure that the activity or area is being managed in a manner compatible with the purposes for which the Alaska National Wildlife Refuge area was established.

(c) *Emergency closures or restrictions.*

(1) Emergency closures or restrictions relating to the use of aircraft, snowmachines, motorboats, or nonmotorized surface transportation shall be made after notice and hearing; (2) emergency closures or restrictions relating to the taking of fish and wildlife shall be accompanied by notice with a subsequent hearing; (3) other emergency

closures or restrictions shall become effective upon notice as prescribed in § 36.42(f); and (4) no emergency closure or restriction shall be for a period exceeding 30 days.

(d) *Temporary closures or restrictions.* (1) Temporary closures or restrictions relating to the use of aircraft, snowmachines, motorboats or nonmotorized surface transportation, or to the taking of fish and wildlife, shall not be effective prior to notice and hearing in the vicinity of the area(s) affected by such closures or restriction, and other locations as appropriate; (2) Other temporary closures shall be effective upon notice as prescribed in § 36.42(f); (3) temporary closures or restrictions shall extend only for so long as necessary to achieve their purposes, and in no case may exceed 12 months or be extended beyond that time.

(e) *Permanent closures or restrictions.* Permanent closures or restrictions shall be made only after notice and public hearings in the affected vicinity and other locations as appropriate, and after publication in the Federal Register.

(f) *Notice.* Emergency, temporary or permanent closures or restrictions shall be (1) published in at least one newspaper of general circulation in the State and in at least one local newspaper if available, posted at community post offices within the vicinity affected, made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected vicinity, and designated on a map which shall be available for public inspection at the office of the Refuge Manager and other places convenient to the public; or (2) designated by the posting of appropriate signs; or (3) both.

(g) *Openings.* In determining whether to open an area to public use or activity otherwise prohibited, the Refuge Manager shall provide notice in the Federal Register and shall, upon request, hold a hearing in the affected vicinity and other location, as appropriate prior to making a final determination.

(h) Except as otherwise specifically permitted under the provision of this part, entry into closed areas or failure to abide by restrictions established under this section is prohibited.

SUBPART E - PERMITS AND PUBLIC PARTICIPATION

§ 36.41 Permits.

(a) Application.

(1) Regulations generally applicable to the National Wildlife Refuge System and these regulations provide in several sections that permits may be obtained from the Refuge Manager. For activities on the Arctic and Yukon Flats Refuges, such permits are to be obtained from the respective Refuge Manager in Fairbanks, Alaska. For activities on the Becharof, Kodiak, Kenai, Izembek and Yukon Delta Refuges and for the Aleutian Islands Unit of the Alaska Maritime Refuge, such permits are to be obtained from the Refuge Manager, headquartered, respectively, in King Salmon, Kodiak, Soldotna, Cold Bay, Bethel and Adak, Alaska. For activities on all other Alaska Refuges, permits are to be obtained from the designated Refuge Manager in Anchorage, Alaska.

(2) If the applicant is unable or does not wish to submit the application in written form, the Refuge Manager shall provide the applicant an opportunity to present the application orally and shall keep a record of such oral application.

(3) The Refuge Manager shall grant or deny the application in writing within 45 days of its receipt, except for good cause. In the event the Refuge Manager cannot act upon the application within 45 days from its receipt, he shall so notify the applicant in writing.

(4) The Refuge Manager shall set forth in writing the basis for the decision. If the application is denied, the Refuge Manager shall notify the applicant in writing of the reasons for the denial.

(b) (1) Denial and Appeal Procedures. A person whose application for a permit, required pursuant to this part, has been denied by the

Table I—Summary Listing of the National
Wildlife Refuges in Alaska as established by
the Alaska Lands Act, Pub. L. 96-487,
December 2, 1980

1. Alaska Maritime, including:
 - Aleutian Island*
 - Bering Sea*
 - Bogoslof*
 - Chamisso*
 - Forrester Island*
 - Hazy Islands*
 - Pribilof*
 - Saint Lazaria*
 - Semidi*
 - Simeonof*
 - Tuxedni*
2. Alaska Peninsula
3. Arctic, including: William O. Douglas*
4. Becharof**
5. Innoko
6. Izembek*
7. Kanuti
8. Kenai*
9. Kodiak*
10. Koyukuk
11. Nowitna
12. Selawik
13. Tetlin
14. Togiak, including: Cape Newenham*
15. Yukon Delta, including:
 - Clarence Rhode*
 - Hazen Bay*
 - Nunivak*
16. Yukon Flats**

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*These indicated units were previously existing
refuges before the Alaska Lands Act of December 2,
1980, and are now part of the 16 National Wildlife
Refuges established by the Alaska Lands Act.