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Interior**

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**National Park Service**

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**National Park System Units in Alaska**

**DEPARTMENT OF THE INTERIOR****National Park Service****36 CFR Part 13****National Park System Units in Alaska****AGENCY:** National Park Service.**ACTION:** Proposed rule.

**SUMMARY:** On December 2, 1980, President Carter signed into law the Alaska National Interest Lands Conservation Act (P.L. 96-487) which established or expanded units of the National Park System in Alaska, and provided management direction for these units. In today's publication, the National Park Service is proposing regulations to provide relief from existing regulations that govern public use and recreation (e.g., camping, picnicking, gathering of renewable resources, transportation methods, and the carrying of firearms) on lands administered by the National Park Service in Alaska, and also to establish administrative procedures necessary to implement or clarify various provisions of the Alaska National Interest Lands Conservation Act (e.g., subsistence, use of cabins, access). The National Park Service deems these proposed regulations as the minimal necessary to provide proper management in park areas in Alaska. These proposed regulations are not intended, however, to result in final comprehensive regulations for these park areas. The National Park Service will undertake additional rulemaking as appropriate for issues not covered in this proposal. Public comments on these proposed regulations are solicited for 45 days.

**DATES:** Written comments should be submitted on or before March 5, 1981.

**ADDRESS:** Comments should be directed to: Alaska Regional Director, National Park Service, 540 West 5th Avenue, Anchorage, Alaska 99501.

**FOR FURTHER INFORMATION CONTACT:** John Cook, Alaska Regional Director, National Park Service, 540 West 5th Avenue, Anchorage, Alaska 99501, Telephone: (907) 271-4196.

**SUPPLEMENTARY INFORMATION:****Background**

On December 2, 1980, President Carter signed into law the Alaska National Interest Lands Conservation Act ("Alaska Lands Act" or "Act") as Public Law 96-487. The Alaska Lands Act addresses a broad range of land-related conservation issues in the State of Alaska. Most relevant here, the Act established new units and expanded

existing units of the National Park System. It also established Federal policy concerning subsistence uses by rural Alaskan residents, access, fishing and hunting, mineral development, and cabin use within park areas in Alaska.

The Act specifically directs that 13 units of the National Park System be managed in accordance with the provisions of the Act and the provisions of the Act of August 25, 1916, as amended and supplemented (39 Stat. 535; 16 U.S.C. 1, 3, 4), under appropriate regulations. The Secretary delegated to the Director of the National Park Service administrative and regulatory authority over these units, and one wild and scenic river.

Under the Alaska Lands Act and secretarial delegations, the areas to be managed as units of the National Park System in Alaska are as follows: Aniakchak National Monument and Preserve, Bering Land Bridge National Preserve, Cape Krusenstern National Monument, Gates of the Arctic National Park and Preserve, Kenai Fjords National Park, Kobuk Valley National Park, Lake Clark National Park and Preserve, Noatak National Preserve, Wrangell-St. Elias National Park and Preserve, Yukon-Charley National Preserve, Denali National Park and Preserve, Katmai National Park and Preserve, Glacier Bay National Park and Preserve, and Alagnak National Wild River. These proposed regulations, when finalized, will provide public guidance on the permissible uses in these 14 park areas, as well as Klondike Gold Rush and Sitka National Historical Parks, which were established prior to the Alaska Lands Act and are affected by this Act.

With the recent relinquishment of certain State of Alaska land selections pursuant to section 1322 of the Alaska Lands Act, the Alaska National Monuments established by President Carter on December 1, 1980, were rescinded as of December 2, 1980, and the regulations of 36 CFR 7.87 are no longer applicable. Until this proposed rulemaking is finalized, the existing regulations of 36 CFR Parts 1-9 shall apply to National Park System units in Alaska, except as modified by the provisions of the Alaska Lands Act.

**Need for Expeditious Rulemaking**

These proposed rules for public uses of park areas in Alaska would provide relief from existing National Park System regulations in 36 CFR Parts 1-9 which are inappropriate in the unique Alaska setting. These proposed rules would also establish administrative procedures necessary to implement several provisions of the Alaska Lands

Act. For these reasons and as further developed below, the National Park Service has determined that there is a need for expeditious rulemaking. Accordingly, the Service has adopted a 45 day comment period (which is longer than required under 5 U.S.C. 553) for these proposed rules and plans to issue final regulations in March of 1981. The bases for this approach are summarized below.

First, many sections of these proposed regulations relieve restrictions on allowable public uses of park areas in Alaska that would otherwise be applicable under 36 CFR Parts 1-9. For example, opportunities for access, carrying of firearms for personal protection, camping, picnicking, and personal collection of natural resources are greatly enhanced under these proposed regulations. Since these proposed regulations would relieve restrictions and remove hardships on the Alaskan lifestyle that apply by virtue of 36 CFR Parts 1-9, NPS believes that there is a need for immediate public guidance.

Second, there is a need to establish administrative procedures for implementing the new directives of the Alaska Lands Act. The Act's provisions on subsistence, access, and cabins require administrative mechanisms for public guidance and necessary permits. These proposed regulations establish the administrative channels for obtaining these permits, and the public comment on these procedural rules is requested.

Third, with the new directives in the Alaska Lands Act, there is considerable confusion as to which public uses of park areas are authorized under 36 CFR Parts 1-9 and the Act. For instance, 36 CFR 2.2 and 2.34 generally prohibit aircraft and snowmobile use in parks subject to the penalties of 36 CFR 1.3, while section 1110(a) of the Alaska Lands Act authorizes aircraft and snowmobile use. Additionally, 36 CFR 2.32 prohibits hunting in parks, while Title II of the Alaska Lands Act authorizes sport hunting in preserves and subsistence hunting in certain park areas. In order to harmonize the statutory directives with existing regulations and to alleviate public fears of criminal prosecution, the Service desires to provide public guidance as soon as practicable.

Finally, as developed below in the "Previous Notice and Comment" section, the National Park Service has twice before solicited and received public comment on the identical issues addressed in these regulations. To the greatest extent possible consistent with the Alaska Lands Act, these proposed

regulations follow public desires on open access, carrying of firearms, subsistence and other issues. With this substantial prior public comment, the Service believes that a lengthy public comment period on identical issues is unwarranted.

The regulations proposed here constitute the bare minimum required for interim management of the Alaska park areas and implementation of the Alaska Lands Act. The proposed regulations either relieve regulatory restrictions which are inappropriate in the Alaska setting (e.g., carrying of firearms, camping, picnicking, unattended property), or implement crucial provisions of the Alaska Lands Act (e.g., subsistence, access, cabins, taking of fish and wildlife). The limited agenda of these proposed regulations in general covers only those topic areas which had been subject to prior public notice and comment in the Alaska National Monument rulemakings.

Additional topic areas not addressed in this proposed rulemaking may be the subject of future regulatory exercises. The National Park Service will strive for substantial public comment periods in any future rulemakings proposed by the Service or other parties.

#### Previous Notice and Comment

The proposed regulations presented here either repeat, or significantly relax, regulations which were published and subject to extensive public notice and comment during the administration of the Alaska National Monuments.

On December 1, 1978, President Carter signed proclamations establishing 15 new and enlarging two existing national monuments in Alaska. On December 26, 1978, the National Park Service promulgated interim rules to give short-term guidance on subsistence, access, firearms, hunting and fishing, and other uses of the new NPS-administered national monuments. Although these regulations were effective upon publication, the National Park Service invited comments and suggestions on this interim rule.

The National Park Service published an Advanced Notice of Proposed Rulemaking on February 28, 1979 (44 FR 11242). This notice identified the subject matter of the anticipated "final" rulemaking, including the subjects addressed here today, and posed questions for public consideration. The National Park Service received 248 letters from individuals, organized groups or associations, and State and local governments, as well as 1,731 form letters sponsored by the Alaska Outdoor Association in response to this Notice.

On June 28, 1979, the National Park Service published Proposed General Management Regulations for the Alaska National Monuments (44 FR 37732). Again, this proposed rulemaking included the subject matter addressed in today's interim rules. Informal public meetings were held in virtually every community affected by the proposed rules and formal public hearings were held in Anchorage and Fairbanks. A total of 245 letters from individuals, organized groups or associations, and State and local governments were received.

To the greatest extent possible, consistent with the Alaska National Interests Lands Conservation Act, today's proposed rulemaking responds positively to the public comments received on the two previous Federal Register publications on Alaska.

For example, today's proposed regulation on unattended and abandoned property responds to public comment by accommodating subsistence and recreational users who find it necessary to leave personal property unattended for reasonable periods of time. Almost all of the commentors on the above publication advocated the carrying of firearms for reasons of personal safety. These proposed regulations would permit the carrying of firearms within park areas in Alaska, except as restricted by the Superintendent in accordance with certain closure provisions. All of the public comments previously received were in support of the use of dead standing wood in Alaska. Today's proposed rules would provide for such use.

#### Section-by-Section Analysis: Subpart A—Public Use and Recreation

##### *Applicability and Scope*

The proposed regulations set forth herein would apply to all persons using, entering or visiting within the boundaries of park areas in Alaska. These regulations would supplement the regulations of Parts 1 through 9 of Title 36 of the *Code of Federal Regulations*. These Part 1-9 regulations would remain applicable except as they are modified by final regulations. The preamble material below attempts to identify the major provisions of 36 CFR Parts 1-9 which would be superseded or modified by these regulations. Anyone desiring more specific information on the applicability of 36 CFR Parts 1-9 in the interim period before final regulations may contact the NPS Alaska Regional Director for further clarification.

These proposed regulations are divided into three parts. Subpart A,

Public Use and Recreation, contains regulations that would govern activities such as use of aircraft, snowmobiles, and motorboats, carrying of weapons, camping, cabin occupancy and other activities related to access or general public use and recreation. These proposed regulations would apply to all of the park areas in Alaska, except as indicated in the regulations. They would amend the provisions of the general regulations found in 36 CFR, Parts 2 through 9, and are necessary to implement or clarify various provisions of the Alaska Lands Act.

Subpart B contains proposed regulations that would govern subsistence activities within the park areas in Alaska. These regulations would apply to all park areas except Kenai Fjords National Park, Katmai National Park, Glacier Bay National Park, Klondike Gold Rush National Historical Park, Sitka National Historical Park, and parts of Denali National Park (the former Mt. McKinley National Park area). The proposed regulations in Subpart B would amend the regulations contained in Parts 2 through 9 of 36 CFR and Subpart A of Part 13.

Subpart C contains proposed regulations for individual park areas. These proposed regulations would apply to a specific area and may amend the provisions of the general regulations found in 36 CFR, Parts 2 through 9, or Subpart A or B of this Part.

Sections 103(c) and 906(o) of the Alaska Lands Act generally restrict the applicability of National Park Service regulations to federally owned lands within park area boundaries. Consistent with the statute and the explanatory legislative history appearing at 126 *Congressional Record* H11115 (November 21, 1980) and S15130-15131 (December 1, 1980), § 13.2(e) would restrict the applicability of these regulations to "federally owned" lands (defined to mean all land interests held by the Federal government including unconveyed Native selections) within park area boundaries. With the legislative conveyance of 98 million acres of State selections in section 906 of the Act, no unconveyed State selections remain within park areas. These proposed regulations would not apply to activities occurring on State lands. Similarly, these proposed regulations would not apply to activities occurring on Native or any other non-federally owned land interests located inside park area boundaries.

*Access:* Sections 13.10-13.15 of these regulations would implement sections 1110 and 1111 of the Alaska Lands Act, concerning access by the public across

park areas. *See, also*, §§ 13.45 and 13.46. These proposed regulations generally relax restrictions on access that are applicable to National Park System units outside of Alaska. They are necessary to meet the special needs in Alaska for reasonable access across largely undeveloped park lands. The proposed access regulations of §§ 13.10-13.15 would supersede the access-related provisions of 36 CFR 2.2, 2.34, 3.2, 4.19, 7.23(a), 7.44, 7.46, 7.87 and Part 9 insofar as these new sections would authorize additional access (N.B., the public safety, endangered species, and other aspects of these earlier regulations, such as 36 CFR 2.34(d), 7.23(b)-(f), 9.5, and 9.7, would not be superseded). 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. Sections 13.10-13.12 would initially open all park areas to access by snowmobile, aircraft and motorboat for any purpose. (Additional provisions for access for subsistence uses are set forth in §§ 13.45 and 13.46, explained below.) Section 13.13 would provide a mechanism for establishing common corridors and areas for off-road vehicle use. In the less common situation where §§ 13.10-13.13 do not accommodate a park "inholder's" need for access, § 13.14 would provide for individual permits that guarantee adequate and feasible access, while minimizing damage to park resources. Finally, where §§ 13.10-13.14 do not otherwise provide temporary access, § 13.15 would create another means for obtaining desired access.

Sections 13.10-13.12 of these proposed regulations initially open all park areas in Alaska to access by snowmobile (on areas with adequate snow cover or frozen rivers), motorboat, and aircraft, without the need for individual access permits. Access by these methods of transportation is authorized for any purpose (e.g. travel between villages, to a homesite, for mineral development, for recreation, or for traditional activities) except as is specifically provided for subsistence uses in §§ 13.45 and 13.46 discussed below under subsistence. Sections 13.10-13.12 implement section 1110(a) of the Alaska Lands Act which provides access for "traditional activities . . . and for travel to and from villages and homesites." This approach extends the statutory concept to access for all purposes, except the special provisions concerning access for subsistence uses and the special rules for Glacier Bay National Park and Preserve. As provided in § 13.11, the special regulations of 36 CFR 7.23(b)-(f)

(*see* 45 FR 32228 (may 15, 1980) and 45 FR 85741 (December 30, 1980)) would continue to govern boating and fishing operations within Glacier Bay Park and Preserve, in order to protect the endangered humpback whale. Consistent with section 1110(a) of the Act, section 13.30 authorizes the closure of certain park areas to snowmobile, aircraft, and motorboats access only after notice and hearing. Even after closure, emergency landing of aircraft (e.g., because of severe weather or vehicle failure) would not be prosecuted. This general authorization of access by snowmobile, motorboat, and aircraft should greatly reduce the need for persons to obtain specific access permits under §§ 13.14 or 13.15, since, in most cases, reasonable access will already be granted under §§ 13.10-13.12.

Section 13.13 of these proposed regulations provides a procedure for supplementing access needs without the need for individual access permits.

While all park areas are initially closed to off-road vehicle use, § 13.13 authorizes the park Superintendent to designate off-road vehicle routes and areas. It is anticipated that this procedure will be used most often to designate common corridors for off-road vehicle travel between villages, and similar situations where a single route can satisfy the access needs of rural Alaskan groups. Section 13.13 implements the directive of section 1110(b) of the Alaska Lands Act to provide "adequate and feasible" access and does so through a methodology that will reduce the need for individual access permits. Furthermore, as in any situation involving rulemaking, persons may petition the Superintendent under the procedures of 43 CFR 14.6 to have a route or area designated as open for off-road vehicle use, should the Service fail to identify or propose that route or area as open.

If § 13.10-13.13 have not already provided "adequate and feasible" access for persons with valid property or occupancy interests which are surrounded or effectively surrounded by park area lands, proposed § 13.14 creates a procedure for obtaining this access. "Adequate and feasible" access is defined in § 13.1 in terms of an economically practicable method and route of access (but not necessarily the most economically feasible alternative), consistent with the legislative history appearing in *Senate Report 96-413*, 96th Congress, 2nd Session, 248-249 (November 14, 1979). Section 13.14 applies only when an area has been closed to snowmobile, aircraft or motorboat use, or when no designated

off-road vehicle route exists that would satisfy the "adequate and feasible" access needs of the landowner. In such cases, the landowner applies to the park Superintendent for an access permit (additional information is required for mineral exploration or development, as discussed below).

The park Superintendent is directed to issue an access permit for the routes and methods desired by the applicant unless the Superintendent determines that such access would cause significant damage to park resources, or would jeopardize public health and safety (including concerns for subsistence uses and adjacent landowners), and in either case, that adequate and feasible access otherwise exists (e.g. a different route exists which would minimize park damage, snowmobile or airplane access already provides "adequate and feasible" access).

If the Superintendent makes one of these adverse determinations, then he/she must specify in a permit such other alternate methods and routes of access as will provide adequate and feasible access to the applicant, while minimizing damage to park resources. A landowner may appeal the Superintendent's decision to the Regional Director under § 13.31. Of course, the access routes and methods finally authorized may be used by guests and invitees of the permittee.

Thus, proposed § 13.14 implements section 1110(b) of the Alaska Lands Act by guaranteeing adequate and feasible access to park "inholders" through an individual permit process, which should be utilized only when the non-permit provisions of § 13.10-13.13 do not provide reasonable access.

Subsection 13.14(c) provides special information requirements for access inside park areas for mineral exploration or development. Consistent with the open access for other purposes, these special information requirements are not applicable when the inholder does not require access across park area lands (e.g. aircraft landings on non-federally owned lands) or when access has already been provided pursuant to §§ 13.10-13.13 of these regulations (e.g., the information requirements of § 13.14(c) and 36 CFR Part 9 would not apply when access across park areas for mineral exploration or development is available by snowmobile, airplane, motorboat or off-road vehicle under §§ 13.10-13.13). This limits the special information requirements to situations where the potential for damage to park resources is the greatest (e.g. bulldozer and production equipment access). In the situations where § 13.14(c) is applicable, prospective mineral

developers must apply for an access permit and include information on planned access, mineral operations, and compliance with applicable laws. The more extensive information requirements of 36 CFR 9.9 and 9.36 would not be applicable.

This procedure will provide the Superintendent with necessary information on planned access and minerals operations, so that the adverse impacts on park resources of such access and operations can be reasonably assessed.

In accordance with section 1110(b) of the Alaska Lands Act, the Superintendent is directed to grant a mineral access permit providing adequate and feasible access, while minimizing park resource damage, in lieu of any other access standard contained in 36 CFR Part 9 or the Mining in the Parks Act (16 U.S.C. 1901 *et seq.*). Thus, § 13.14 is a new approach to access to mining claims within park areas in Alaska which would control over any inconsistent provision of 36 CFR Part 9.

Proposed § 13.15 completes the implementation of the Alaska Lands Act provisions for public use access by implementing section 1111 through a permitting mechanism for obtaining temporary access across a park area for purposes of survey, geophysical, exploratory, or other temporary uses of non-federal lands located outside park area boundaries. Section 13.15 requires an access permit only where §§ 13.10-13.13 do not provide the desired access, and where § 13.14 is not applicable (*e.g.*, if a park area "inholder" or a person effectively surrounded by Federal lands requires temporary access across park area, section 1110(b) of the Alaska Lands Act and § 13.14 of these regulations grant greater access privileges). Where temporary access is otherwise unavailable, the person applies to the park Superintendent for an access permit. The permit application must indicate the proposed route and method of access, what temporary use the applicant proposes to undertake, and, in the case of mineral exploration, the information on the planned mineral operations during the course of the permit. The Superintendent is directed to grant the desired temporary access if no permanent harm to park resources will result. If permanent harm would result, the Superintendent is directed to include such stipulations and conditions (*e.g.*, alternate methods and routes of access) on the temporary access as will ensure consistency with park purposes and no permanent harm to park resources.

In summary, §§ 13.10-13.15 of these proposed regulations would implement the array of access provisions contained in the Alaska Lands Act (except as specifically further provided for subsistence uses) through a series of sections designed to minimize the need for an individual access permit.

#### 1872 Mining Law Claims

Sections 13.10-13.14 of these proposed regulations would amend 36 CFR Part 9 insofar as access to mining claims within park areas is concerned. As described in the "access" section, where access to a patented or unpatented mining claim is available under §§ 13.10-13.13, there would be no requirement for an access permit and, therefore, no requirement to submit the information required by 36 CFR 9.9 to gain access.

Where access is not available under §§ 13.10-13.13, the mining claimant would apply for an access permit under § 13.14(c) and provide the information specified in paragraph (c)(2) prior to conducting mineral operations. The Superintendent will review the proposed access and operations, and permit adequate and feasible access for economic purposes which minimizes damage to park resources. The access standard of § 13.14(c) would be controlling in Alaska park areas.

However, in order to minimize park resource damage, NPS desires to retain the 36 CFR 9.7 waiver of assessment work requirements on unpatented mining claims within a park area. In any case where an access permit is applied for under § 13.14(c) solely for the purpose of assessment work, the permit request would be denied pursuant to 36 CFR 9.7. The National Park Service believes that this policy does not deny adequate and feasible access for economic purposes, because the economic purpose of preserving the validity of a mining claim through assessment work is not prejudiced by denial of access (*e.g.* 36 CFR 9.7 waives the Secretary's right to contest a mining claim based on lack of assessment work created by access denial). However, mining claimants are reminded that maintenance of a claim requires compliance with annual filing requirements, as provided in 36 CFR 9.5(c).

Additionally, mining claimants within park areas are reminded that section 206 of the Alaska Lands Act closed all park areas to new mining locations and entries. NPS reserves the right to refuse access where it is found that a valid mining claim does not exist, pursuant to sections 206 and 1110(b) of the Alaska Lands Act.

**Cabins and Other Structures:** Section 13.18 provides proposed procedures and guidance for those occupying and using existing cabins and those wishing to construct new cabins within park areas in Alaska.

Over the years, cabins and other structures have been built on unpatented Federal lands. The builders or occupants of these cabins had no legal right to occupy the land on which the cabins were located. Extended long-term use is not in the best interest of the general public. However, the long, customary use of such property, the uncertain status of land during the late 1960's and early 1970's, and the substantial investment that many people have made in the structures suggested the need for an equitable and orderly termination of use.

Section 1303 of the Alaska Lands Act provides the National Park Service with the authority to permit the continued use of cabins in Alaska even though the occupants may not hold legal title to these cabins and the lands on which they are located. The intent of this legislation clearly is to allow temporary use.

The Service, in compliance with the Act, is proposing regulations which grant use and occupancy privileges to individuals occupying cabins or other structures pursuant to a permit. The degree of privilege afforded an occupant is determined by the status of the Federal land at the time of original occupancy by the individual. Land status is determined by the public land orders that were in effect at the time of occupancy.

The permit system recognizes two categories of occupants. The first category is comprised of those persons who built or occupied cabins or other structures on unpatented Federal lands prior to December 18, 1973. The occupants may apply for a five (5) year renewable permit pursuant to § 13.18(c)(1).

These permits shall be renewed every five (5) 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 Superintendent determines, after notice and hearing and on the basis of substantial evidence, that the use under the permit is causing or may cause significant detriment to the principal purposes for which the park area was established. The Superintendent's decision may be appealed to the Director of the National Park Service, and ultimately to the Director, Office of Hearings and Appeals in the Department of the Interior.

The second category consists of those persons who built or occupied cabins or other structures between December 18, 1973, and December 1, 1978. These occupants may apply for a nontransferable, nonrenewable permit. The permit would be issued for a maximum term of one year.

Permits issued under this provision may be extended by the Superintendent for a period not to exceed one year for reasonable cause where extraordinary circumstances prevent vacating the cabin or structure and removal of all personal property within the original term of the permit.

Section 13.16(d) authorizes the Superintendent to issue a permit for the construction, reconstruction, temporary use, occupancy, and maintenance of new cabins or other structures when it is determined that the use is necessary to reasonably accommodate subsistence uses, or is otherwise authorized by law. This determination will be based on factors such as other public uses, public health and safety, and environmental and resource protection. This provision would implement sections 1315(d) and 1316 of the Alaska Lands Act, as well as providing for the reconstruction of cabins permitted under section 1303 of the Act.

The final provision of this proposed regulation provides for the renewal or continuation of valid leases or permits in effect as of December 2, 1980, for cabins, homesites, or similar structures on federally owned lands. These permits or leases shall be renewed unless a direct threat or a significant impairment to park values will occur. Any such findings must be issued by the Superintendent, following notice and an opportunity for the leaseholder or permittee to respond.

**Camping and Picnicking:** Section 13.17 on camping is necessary to provide relief from the Service's general regulations which permit camping only in designated areas. Section 13.17 would supersede 36 CFR 2.5, except § 2.5 (d) and (e). Camping within park areas would be permitted except at those times or locations temporarily or permanently closed or otherwise restricted by the Superintendent. The National Park Service would close an area to camping when the Superintendent determines that use of the area has resulted in resource damage or that other management considerations require closure as set forth in § 13.30. The Service does not, at this time, anticipate closing any areas to camping.

Current Service regulations prohibit picnicking within National Park System areas in Alaska except in those areas

designated by the posting of appropriate signs (36 CFR 2.18). This regulation was designed to protect the natural scenery and reduce damage in highly visited park areas with automobile access. The National Park Service has concluded that because of the type and pattern of visitation in the park areas in Alaska, existing restrictions on picnicking are unnecessary. Therefore, § 13.17 would allow picnicking in all park areas and would supersede 36 CFR 2.18 in Alaska. The Superintendent would retain the authority to close areas to picnicking for reasons of public health and safety or other management considerations.

**Weapons, Traps and Nets:** Existing regulations (36 CFR 2.11) prohibit the carrying of firearms within park areas, unless such firearms are unloaded and cased or otherwise deactivated. Section 13.18 would permit the carrying of firearms within park areas in Alaska (except Klondike Gold Rush National Historical Park and Sitka National Historical Park), except as restricted by the Superintendent pursuant to Section 13.30. The Superintendent would retain the authority to prohibit or restrict the carrying of firearms in those areas and at those times when the potential for injury or loss of life inflicted by dangerous animals is negligible or where necessary to insure public safety. For example, restrictions may prohibit the carrying of unloaded firearms in areas of concentrated public use.

The proposed regulations distinguish between the carrying of firearms for purposes of personal protection and the carrying of other weapons. Only firearms may be carried by recreational users in park areas. The carrying of nets, traps and other weapons such as spear guns, slingshots and other implements designed to discharge missiles would be prohibited. However, local rural residents authorized to engage in subsistence uses would be permitted to use, possess and carry weapons, traps and nets in accordance with applicable State and Federal law.

In order to provide transient relief for persons crossing park areas, the possession of weapons, traps and nets within or upon a device or animal used for transportation would be permitted provided such implements are unloaded and cased or otherwise packed in such a way as to prevent their ready use while in park areas.

**Preservation of Natural Features:** Existing regulations governing public use and recreation in units of the National Park System prohibit the cutting of standing dead trees and restrict the collection of rocks and minerals (36 CFR 2.20). The National Park Service has determined that the

use of dead or downed wood in fires within park areas in Alaska would not result in significant adverse impact. The Service also believes that the surface collection, by hand, of rocks and minerals would not be damaging to park resources in Alaska. Accordingly, § 13.19 would amend 36 CFR 2.20 to authorize the taking by hand for personal use of certain renewable resources and certain rocks and minerals. It is not the intent of this provision to allow the collection of semi-precious minerals gathered for trade or personal possession, but rather to allow the collection of individual rocks of a non-gem nature that have some souvenir value.

Therefore, the Service would be providing relief from the general regulations governing the use of park resources and plant materials and issuing guidelines for the consumption and use of certain renewable resources.

The Superintendent retains the authority to close an area to gathering or collecting where it is found that significant adverse impact on park resources, wildlife populations, subsistence uses, or visitor enjoyment of resources will result. This will be done through public notice.

**Taking of Fish and Wildlife:** The desire to continue sport fishing and hunting on all public lands in Alaska has been a consistent and dominant theme of the public participation process during the development and final passage of the Alaska National Interest Lands Conservation Act.

This Act provides for the continuation of sport fishing on all public lands administered by the National Park Service and for the continuation of sport hunting within the National Preserves.

Consistent with the Act, proposed § 13.22 permits the taking of fish and wildlife in accordance with applicable State and Federal laws, including 36 CFR 2.13, 7.23, 7.44(c) and 7.46(a). (Additional provisions on subsistence hunting, trapping, and fishing are provided in §§ 13.47 and 13.48.) By assimilating State law the National Park Service applies the same approach towards enforcement of fish and game laws that it uses everywhere else in the National Park System where sport hunting is allowed.

Congress was specific in its concern that "The intent is to allow individual Alaskans to continue to operate their own traplines within the preserves \* \* \* it is clearly not the intent of this Act that preserves would be a place where more extensive forms of commercial trapping would be allowed where, for example, the trapping itself becomes a business with employees paid to support the

trapping operation." 126 *Congressional Record* H10542 (November 12, 1980). This section would satisfy that intent by prohibiting trapping operations in which trappers are employees of a commercial trapping enterprise, while allowing individual Alaskans to continue to operate their traplines within National Preserves.

This regulation would also comply with Section 205 of the Alaska National Interest Lands Conservation Act which allows the continuation of valid commercial fishing rights and privileges within Cape Krusenstern National Monument, the Malaspina Glacier Forelands area of Wrangell-St. Elias National Preserve and the Dry Bay area of Glacier Bay National Preserve.

*Unattended and abandoned property:* The purpose of proposed § 13.21 is to modify 36 CFR 2.1 which prohibits leaving personal property unattended longer than 24 hours without the prior permission of the Superintendent. The National Park Service has determined that this regulation is too restrictive to accommodate adequately subsistence and recreational uses within park areas in Alaska. The proposed regulations will allow personal property to be left unattended up to 12 months before it would be deemed abandoned and subject to impoundment. In effect, this accords personal property within park areas a 12-month presumption that it is only temporarily unattended. Personal property may be left unattended for periods of time in excess of twelve months with the prior permission of the Superintendent.

The National Park Service is concerned that personal property not be located or maintained in such a manner as to constitute a threat to public safety or detract from the experience in the park area. In addition, this section is intended to allow the Superintendent to specify the conditions under which personal property is unattended to insure, for example, that food and equipment caches or other unattended personal property does not attract or is not accessible to animals.

The section provides that the Superintendent may establish limits on the amount and type of personal property that may be left unattended. In addition, the Superintendent is authorized to designate locations where personal property may be left unattended for periods of time to be designated by the posting of appropriate signs or by designating on a map which shall be available for public inspection at the office of the Superintendent.

Additionally, § 13.12 provides that aircraft downed after December 2, 1980, must be removed pursuant to the

conditions of a permit issued by the Superintendent unless he/she specifically waives this requirement. This proposed regulation is necessary to provide relief from 36 CFR 2.1, which prohibits leaving any vehicle or other property unattended for longer than 24 hours, and to preserve the values and experience of the park areas.

The National Park Service intends that each instance of a downed aircraft be treated on a case-by-case basis. Where the removal operation would present a significant risk to human life, result in extensive resource damage, or is otherwise impractical or impossible (including any situation in which removal of the aircraft would cause such a severe and significant hardship to the owner as to be economically prohibitive), waiver of removal requirements is appropriate. Factors such as the condition and size of the downed aircraft as well as the relief, elevation and vegetation of the surrounding terrain will be controlling in this analysis. In determining the times and means of removal to be specified in a permit when removal is required, these factors will be equally controlling.

Finally, this section would prohibit any attempt to salvage, remove, or possess a downed aircraft without a permit from the Superintendent. The intent here is to protect the aircraft and, most importantly its valuable and easily removed component parts, from being appropriated without authorization by the owner.

*Subsistence and land use decisions:* Section 13.22 would apply to all discretionary determinations by the National Park Service concerning whether to lease or otherwise permit the use or occupancy of park area lands where authorized by law. Alaska Lands Act Section 810. For example, the Superintendent must comply with the procedures of this section in determining whether to open routes or areas to off-road vehicles use under the provisions of § 13.13 of these regulations. In any such determination, § 13.22 requires the Alaska Regional Director or his/her designee to evaluate the effect on subsistence uses and needs (see Subpart B regulations), the availability of other lands to achieve the desired purposes, and other alternatives which would reduce or eliminate the use or occupancy of park area lands needed for subsistence purposes. Prior to any lease, permit, use, or occupancy which would significantly restrict subsistence uses, the National Park Service official must give notice to the appropriate State agency and local committees and regional councils; give notice to local

residents of the affected area and hold an informal public hearing in the area; and determine that such a significant restriction of subsistence uses is necessary and consistent with sound management principles for park areas, that the proposed activity will involve the minimal amount of park area lands necessary to accomplish the desired purposes, and that reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources. If the National Park Service is required to prepare an environmental impact statement (EIS) pursuant to the National Environmental Policy Act for the proposed use or occupancy, § 13.22 states that the required notice, hearing, and findings shall be provided in the EIS process.

Section 810 of the Alaska Lands Act makes clear that the above provisions are not to be construed as prohibiting or impairing the ability of the State or any Native Corporation to make land selections and receive land conveyances pursuant to the Alaska Statehood Act or the Alaska Native Claims Settlement Act.

It should be noted that the requirements of Section 810 of the Alaska Lands Act, and § 13.22 of the regulations implementing it, are procedural in nature. In other words, as explained in the section's legislative history:

Until the requirements of the section have been satisfied the proposed action may not proceed, but once the requirements of the section are satisfied and incorporated into existing land use planning processes the proposed action may proceed even though its effect may be adverse to subsistence uses. S. Rep. No. 96-413, *supra*, 234.

*Closure Procedures:* Section 13.30 authorizes the Superintendent 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. It provides for notice and hearing for temporary and permanent closure, and also includes a provision for notice and hearing prior to all closures for snowmobile, aircraft or motorboat use, consistent with section 1110(a) of the Act.

This proposed rulemaking establishes time limits for emergency closures (60 days) and temporary closures (12 months) which cannot be extended.

A final provision of this proposed regulation requires the Superintendent to provide public notice prior to determining whether to open an area to

a public use or activity. Upon request, a hearing in the affected vicinity will also be held.

*Permits:* Section 13.31 was developed to consolidate procedures regarding the issuance and denial of permits. The procedures specify to whom an application for a permit must be submitted. The Superintendent is directed to acknowledge the application promptly, and to approve the permit, deny the permit, or request additional information within a reasonable period of time. The proposed regulations further establish and set forth an administrative appeals system to the NPS Alaska Regional Director. The appeals system was established with a view toward minimizing the requirements imposed upon the applicant during the appeal process, yet establishing a procedure that would fairly meet the concerns of the applicant. Any person whose permit application has been denied by the Superintendent has a right to appeal that denial to the Regional Director. Whether the appeal will include an opportunity for an oral hearing must be determined by the Regional Director. The Regional Director *shall* provide a hearing opportunity if it is clear that the applicant would present new relevant information at such a hearing; in addition, the Regional Director *may* provide a hearing opportunity if he or she determines, as a matter of discretion, that such a hearing would be useful.

#### Section-by-Section Analysis: Subpart B—Subsistence

Subpart B of these proposed regulations would implement the authorization for subsistence uses in specified park areas contained in Title II of the Alaska Lands Act and the policies and procedures governing subsistence uses contained in Title VIII of the Act.

These proposed regulations for subsistence are necessary for several reasons. First, they would relieve restrictions in the otherwise applicable general park regulations for uses and activities integral to the subsistence lifestyle. In certain cases, the Alaska Lands Act does not specifically relieve these restrictions (*e.g.*, use of nets, seines, traps, and spears in subsistence fishing; cutting of live standing timber for firewood and house logs; carrying of firearms); in other cases, the Act allows the uses, but the Park Service's general regulations appear to prohibit them on pain of criminal penalty. Second, the proposed regulations would implement certain critical provisions of the Alaska Lands Act concerning subsistence (*e.g.*, the subsistence priority, the closure

standards and procedures for subsistence uses of fish and wildlife, subsistence and land use decisions), and would extend the principle of certain of these provisions to subjects not specifically mentioned by the Act (*e.g.*, closure standards and procedures for subsistence use of plants). In several cases, these proposed regulations would set up the administrative mechanisms for implementing the statutory provisions (*e.g.*, notice provision for closures). Third, these proposed regulations are necessary in order to establish methods for identifying genuine subsistence users (known as "local rural residents" in the regulations) who are authorized to hunt and trap in specified national parks and monuments, and for separating them from sport users who are prohibited from hunting and trapping in all parks and monuments. The National Park Service Organic Act (16 U.S.C. 1 *et seq.*), as well as Section 816 of the Alaska Lands Act, prohibit the taking of wildlife in parks and monuments except as specifically authorized. In the Alaska Lands Act, the authorization is limited to local residents engaged in subsistence uses in certain park areas. The Act does not, by its terms, prescribe the methods that the Park Service is to use to distinguish subsistence from sport users, though the legislative history for Title II of the Act indicates Congress' intent that methods like those in today's proposed regulations be established. S. Rep. No. 96-413, *supra*, 168-171; 126 Cong. Rec. H10540-41 (daily ed. Nov. 12, 1980). As described in detail below, the National Park Service has proposed the following two methods suggested by Congress to ensure that only "local rural residents" engage in subsistence uses in parks and monuments: (1) a system of "resident zones" and "subsistence permits" to identify local rural residents, and (2) a general prohibition on aircraft use for subsistence hunting, trapping, and fishing to separate the sport user from the subsistence user.

For the most part, the Subpart B regulations proposed today were proposed for comment as regulations for the Alaska National Monuments. 44 FR 37,731 (June 28, 1979). The National Park Service received extensive comment and has accordingly revised the proposed monument regulations in several places; moreover, the Park Service welcomes additional comment on these proposed regulations in the next forty-five days. It should also be noted that today's proposed regulations differ from the proposed monument regulations in certain respects because

of the now applicable mandates of the Alaska Lands Act.

The proposed regulations on subsistence are not comprehensive. They would not provide for implementing certain provisions of Title VIII of the Alaska Lands Act that, in the Park 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) and the Federal monitoring requirement of Section 806. It should be emphasized that all parties must comply with these statutory provisions as long as they remain in effect; however, the National Park Service will consider specific regulations and policies as appropriate for implementing these provisions in the future.

#### Purpose and Policy

*Purpose:* Section 13.40(a) would establish that, consistent with proper management of fish and wildlife and the purposes for which the park areas 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); 802(1). The proposed 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 park 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 would implement the Congressional directive to continue the opportunity for subsistence uses within all national preserves and certain national parks and monuments by local rural residents who have (or are a member of a family which has) an established or historical pattern of subsistence uses within such units. As noted in both the Senate and House of Representatives, "[L]ocal rural residents



who maintain their primary, permanent residence within such units should have the opportunity to decide for themselves the course, pace, and extent, if any, of their own lifestyle and community evolution." S. Rep. No. 96-413, 96th Congress, 1st Sess. 169 (1979); 126 Cong. Rec. H 10,541 (daily ed. November 12, 1980).

*Least Adverse Impact Possible.*

Toward the end of fulfilling the aforementioned purpose of the subsistence regulations, proposed § 13.40(b)-(d) 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); 804. First, consistent with sound management principles and the conservation of healthy populations of fish and wildlife, the utilization of park 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 would be implemented throughout the proposed regulations, particularly in the procedures mandated by § 13.22, the subsistence priority established by § 13.40(c)-(d), and the limitations on closure of §§ 13.46, 13.49, and 13.50.

*Subsistence Priority.* The second policy, articulated in § 13.40(c), would establish nonwasteful subsistence uses of fish, wildlife, and other renewable resources by local rural residents as the priority consumptive uses over any other consumptive uses permitted within park areas. Alaska Lands Act, section 802(2). This statutory policy would be implemented primarily, with respect to fish and wildlife resources, through the subsistence priority of § 13.40(d). *Id.*, section 804. According to the subsistence priority, whenever a park area's fish and wildlife resources are not sufficiently plentiful for taking by all consumptive users, the resources must be allocated in accordance with the three criteria of the subsistence priority: customary and direct dependence upon the resource as the mainstay of one's livelihood, local residency, and availability of alternative resources. For example, if consumptive uses must be restricted to assure the continued viability of the resource populations (including the conservation of healthy populations in preserves, and healthy and natural populations in parks and monuments) or to assure local rural residents the continued opportunity to engage in subsistence uses, consumptive uses would first be restricted to local rural residents engaged in subsistence

uses and then, if further restrictions were necessary, the resources would be allocated among the local rural residents. Ultimately, subsistence uses would have to be limited to local rural residents who have the most customary and direct dependence on the resources as the mainstay of their livelihoods and who have the least access to alternative resources.

For several reasons, today's proposed regulations merely repeat the three criteria of the subsistence priority set forth in section 804 of the Alaska Lands Act. The National Park Service deemed further interpretation of these three difficult and complex criteria inappropriate at this time without extensive prior notice, comment, and research. Furthermore, the National Park Service anticipates State regulation implementing the subsistence priority criteria and looks forward to local input on the criteria from the local advisory committees and regional advisory councils of section 805 of the Alaska Lands Act and the park and park monument commissions of section 808.

*Limitations.* In addition to establishing the purpose and policies of the Subpart B regulations, proposed § 13.40 also establishes the limitations of the purpose and policies. According to § 13.40(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 park area was established, designated, or expanded by the Alaska Lands Act. According to § 13.40(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 requirement that it be consistent with sound management principles and the conservation of healthy populations of fish and wildlife. And § 13.40(c) establishes the basic limitation of all the provisions of the proposed Subpart B regulations: subsistence uses of fish and wildlife populations must be appropriately regulated so as to assure conservation of healthy populations within national preserves, and conservation of natural and healthy populations within national parks and monuments. 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.

\* \* \* \* \*

The reference to "natural and healthy populations" with respect to national parks and monuments recognizes that the management policies of those units may entail methods of resource and habitat protection different from methods appropriate for other types of conservation system units. S. Rep. No. 96-413, *supra*, 233, 235.

\* \* \* \* \*

In authorizing subsistence uses within National Parks, Monuments, Preserves, and National Recreational Areas, it is the intent of the Committee that certain traditional National Park Service management values be maintained. It is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utilization of natural resources. Rather, the National Park System concept requires implementation of management policies which strive to maintain the natural abundance, behavior, diversity, and ecological integrity of native animals as part of their ecosystem, and the Committee intends that that concept be maintained. The National Park Service recognizes, and the Committee agrees, that subsistence uses by local rural residents have been, and are now, a natural part of the ecosystem serving as a primary consumer in the natural food chain. The Committee expects the National Park Service to take appropriate steps when necessary to insure that consumptive uses of fish and wildlife populations within National Park Service units not be allowed to adversely disrupt the natural balance which has been maintained for thousands of years. Accordingly, the Committee does not expect the National Park Service to engage in habitat manipulation or control of other species for the purpose of

maintaining subsistence uses within National Park System units. *Id.* at 171.

#### Applicability

The Alaska Lands Act mandates that subsistence uses by local rural residents be allowed in all national preserves in Alaska and, where specifically permitted by the Alaska Lands Act, in national parks and monuments in Alaska. Alaska Lands Act, section 203. Accordingly, proposed § 13.41, the applicability section, states that local rural residents may engage in subsistence uses pursuant to the regulations in Subpart B(1) in national preserves (Alaska Lands Act, section 203); (2) throughout Cape Krusenstern National Monument and Kobuk Valley National Park (*Id.*, section 201 (3) and (6)), and (3) where such uses are traditional (as may be further designated for each park or monument in Subpart C) in Aniakchak National Monument, Gates of the Arctic National Park, Lake Clark National Park, Wrangell-St. Elias National Park, and the December 2, 1980, addition to the newly named Denali National Park (*id.*, sections 201 (1), (4), (7), (9); 202(3)).

With respect to the last category of park areas—Aniakchak, Gates of the Arctic, Lake Clark, Wrangell-St. Elias, and the Denali Addition—the statute offers no further specifics as to the geographical areas where subsistence uses are traditional. The legislative history offers some guidance. For Gates of the Arctic, for example, the Senate report states as follows:

\*\*\* [S]ubsistence uses of some areas of the park may be essential periodically or continuously for the continued survival of the local people. The Committee \*\*\* feels \*\*\* that the subsistence patterns of the park are well known and can be identified. The Committee noted that the following drainages within the park have apparently been used for subsistence hunting: Etluk River, Outwash Creek, Kurupa River, Oolamnagavik River, Killik River (and all its tributaries), Okpikruat River, Alapah Creek, Kayak Creek, Erratic Creek, Nanushuk River, Kuhsuman Creek, Anaktuvuk River, Ernie Creek and the Itkillik River. It is not the intent of the committee that these drainages be considered the only places where subsistence can occur.

But it is the Committee's intent to restrict subsistence hunting in the park to traditional use areas. . . . S. Rep. No. 96-413, *supra*, 147; see also, 126 Cong. Rec. H10535 (daily ed. Nov. 12, 1980).

For the other specified areas, the legislative history indicates, at most, that subsistence uses may occur "where such uses have been traditional," "to the extent they [sic] now take place," "where they now occur," "at their present level." 126 Cong. Rec. H 10533, 10538, 10540. Since the legislative

guidance on where subsistence uses are traditional in the five specified areas is incomplete, the National Park Service has decided not to propose traditional "subsistence hunting zones" for these five areas at this time. Rather, the Park Service looks forward to developing additional information and to receiving public comment on this issue through research, further rulemaking endeavors, and advice from the local committees and regional councils of Section 805 of the Alaska Lands Act and particularly from the park and monument commissions of Section 808. In the meantime, the National Park Service believes that local rural residents should comply with the Congressional intent of § 13.41(c) of the proposed regulations by not hunting in any areas of Aniakchak National Monument, Gates of the Arctic National Park, Lake Clark National Park, Wrangell-St. Elias National Park, or the Denali Park addition where subsistence hunting has not, in recent history, occurred.

#### Definitions

*Local rural resident and resident zones.* Throughout the proposed regulations, the National Park Service identifies those people who may engage in subsistence uses where authorized in park areas as "local rural residents." This term derives from the term "local residents" in Title II of the Alaska Lands Act and the term "rural Alaska residents" in the definition of "subsistence uses" in Title VIII. Title II authorize the opportunity for continued "subsistence uses by local residents" in national preserves and, where specifically permitted by this Act, in national monuments and parks." Alaska Lands Act, section 203 (emphasis added); see, also, sections 201(1), (3), (4), (6), (7), (9); 202(3). The relationship between this language in Title II and Title VIII was described as follows in the Congressional Record:

Since the definition of "subsistence uses" in section 803 limits such uses to "rural Alaska residents," a reading of Title VIII and Title II \*\*\* 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 Park System \*\*\*. 126 Congressional Record S15129 (daily ed. December 1, 1980).

Section 13.42(a) would define "local rural residents" as persons who either live in designated "resident zones" (see § 13.43 and its explanation, below) or hold a "subsistence permit" (see § 13.44 and its explanation, below). In brief, "resident zones" would be designated, and "subsistence permits" would be issued, on the basis of customary and

traditional utilization of park area lands for subsistence uses without use of aircraft as a means of access. In the case of "resident zones," the National Park Service would apply this criterion to "preponderant concentrations" of people based on available information and research; in the case of "subsistence permits" for people who live outside resident zones, the Superintendent would apply this criterion to individual applicants.

The proposed definition of "local rural resident" makes clear that, for a person to qualify by virtue of residence in a resident zone, that person must have his or her primary, permanent home within the resident zone, and whenever absent from this home, have the intention of returning to it. The National Park Service would examine factors such as tax returns, hunting, fishing, and driver's licenses, voter registration, and any other evidence appropriate to establish the location of a person's primary, permanent home. In practice, this residence concept would not exclude a person from qualifying as a local rural resident merely because of a temporary absence for military duty or limited-term employment, for example. This concept would not impose a duration residency requirement.

*Subsistence uses.* The proposed definition of "subsistence uses" tracks the language of section 803 of the Alaska Lands Act with one modification: as explained below, today's proposed 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. This proposed 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 Session 280 (1979).

Next, the definition limits subsistence uses to uses "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. On the other hand, if they are included within a "resident zone" or obtain a "subsistence permit," 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." *Id.* It is important to emphasize that, in park areas, only "local rural residents" who permanently reside in a resident zone or have a subsistence permit may engage in subsistence uses. See 126 Congressional Record S 15129 (daily ed. December 1, 1980).

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. This definition of "family" is to be distinguished from the more limited definition used in § 13.44 on subsistence permits.

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 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" proposed today recognizes that a genuine subsistence lifestyle may also include limited involvement in the cash economy through the exchange of furs. Trapping furbearers is an integral and longstanding part of the subsistence lifestyle in many regions of 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 trapping is intended to provide continuity to the traditional and customary harvest of furbearers by those who are authorized to engage in subsistence uses within parks and monuments.

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

The Committee does not intend that "customary trade" be construed to permit the establishment of significant commercial enterprises 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.

Accordingly, this provision is not intended to allow trapping within parks and monuments to be or become a solely or predominantly commercial enterprise beyond its traditional role as part of the subsistence regimen.

Today's proposed definition of "customary trade" is the same as the definition proposed by the National Park Service in the regulations for the Alaska National Monuments (44 FR 37731 (June 28, 1979)). Most commentors on the definition supported it since, as one commentor wrote, "Nowhere in the Alaska bush today does anyone live without some items purchased from the 'outside,' and trapping is often the only way to earn the necessary cash." The Alaska Federation of Natives (AFN) suggested that the definition be expanded to include, in addition to the exchange of furs for cash, the exchange of other fish, wildlife, and plant resources for cash as may be specifically permitted for particular park areas by Subpart C regulations. AFN did not, however, propose any specific additions to the customary trade definition for particular park areas. Today's proposed interim regulations do not adopt AFN's suggested expansion. Information currently available to the National Park Service reveals no basis or need for such expansion, and the Alaska Lands Act does not invite new commercial enterprises under the guise of "subsistence uses." In fact, it should

be emphasized that customary trade may only derive from "customary and traditional" uses of resources under the definition of "subsistence uses." If new information is developed which shows that the definition of "customary trade" should be expanded through specific additions in Subpart C, however, the Service can undertake those additions at that time.

*Determination of Resident Zones:* By definition, the "resident zone" for each park area would encompass the area and communities within the park area boundaries as well as certain areas and communities just outside the boundaries where, in the judgment of the National Park Service, a genuine subsistence lifestyle predominates. Section 13.43(a). The areas and communities outside the boundaries for each new park area, proposed in Subpart C of the regulations, are as follows:

- (a) Aniakchak National Monument and Preserve: Chignik, Chignik Lagoon (Section 13.60(a)(1));
- (b) Bering Land Bridge National Preserve: Buckland, Deering, Shishmaref, Wales (Section 13.61(a)(1));
- (c) Cape Krusenstern National Monument: Kivalina, Kotzebue, Noatak (Section 13.62(a)(1));
- (d) Denali National Park and Preserve: Cantwell, Minchumina, Telida (Section 13.63(a)(1));
- (e) Gates of the Arctic National Park and Preserve: Alatna, Allakaket, Ambler, Anaktuvuk, Bettles, Kobuk, Shungnak (Section 13.64(a)(1));
- (f) Glacier Bay National Park and Preserve: none (Section 13.65);
- (g) Katmai National Park and Preserve: Egigik, Igiuigig, Kakhonak, Levelock (Section 13.66(a)(1));
- (h) Kenai Fjords National Park: subsistence uses prohibited (section 13.67(a));
- (i) Kobuk Valley National Park: Ambler, Kiana, Kobuk, Noorvik Shungnak (Section 13.68(a)(1));
- (j) Lake Clark National Park and Preserve: Nondalton, Port Alsworth (Section 13.69(a)(1));
- (k) Noatak National Preserve: Kivalina, Kotzebue, Noatak (Section 13.60(a)(1));
- (l) Wrangell-St. Elias National Park and Preserve: Chistochina, Chitina, Copper Center, Gakona, Gulkana, McCarthy, Mentasta Lake, Nabesna, Slana, Yakutat (Section 13.61(a)(1));
- (m) Yukon Charley National Preserve: Circle, Eagle, Eagle Village (Section 13.72(a)(1));

Under the proposed regulations, anyone who permanently resides within the park area boundaries or in one of the communities listed above may engage in subsistence uses in the appropriate park area. In other words, persons who live in the resident zone for Kobuk Valley National Park, for example, may engage in subsistence uses only in that park area (unless such person's community is

also listed in the resident zone for another park area—e.g., Shungnak is listed for both Kobuk Valley National Park and Gates of the Arctic National Park and Preserve).

In determining the proposed list of communities outside the boundaries for each park area, the National Park Service reviewed several documents, including the studies of subsistence communities prepared for the Park Service, the 1974 Environmental Impact Statement on the Alaska National Interest Lands, and the 1978 Environmental Supplement on Alternative Administrative Actions. The National Park Service also reviewed information from several of its employees who have studied the subsistence lifestyle throughout the State and, in some cases, have lived "in the bush" for years. The communities proposed in Subpart C derive primarily from the subsistence field research conducted by independent, qualified investigators on contract to the Park Service and from observations by NPS planning and field personnel. The resultant list is meant to include communities where most, and in some cases all, of the inhabitants qualify as local rural residents who, without using aircraft as a means of access for purposes of taking fish and wildlife for subsistence uses, have customarily and traditionally engaged in subsistence within the park area. It should be noted that a community or area may be added to a resident zone, or deleted from a resident zone, as circumstances change or information is developed that indicates that such community does or does not have the concentrations of local rural residents necessary for inclusion in the resident zone. Section 13.43(b).

The list of communities included in proposed Subpart C today is the same as the list proposed in the regulations for the Alaska National Monuments (44 FR 37731 (June 28, 1989)) with the addition of Cantwell to the resident zone for Denali National Park and Preserve. Although several commentators suggested additional communities, e.g., Glenallen and King Salmon, the information available to the National Park Service at this time does not support the suggestion that these communities are predominantly composed of subsistence users who have hunted in the park areas without using an aircraft for access. The National Park Service thinks that it would be undesirable to add any other communities to the list at this time without further supporting information, but the Park Service recognizes that

additional information may be developed through future research and through consultation with the State Department of Fish and Game Subsistence Division, local communities, regional councils, and park and monument commissions (Alaska Lands Act, Sections 805 and 808).

The National Park Service recognizes that certain communities outside the proposed resident zones contain persons who can qualify as local rural residents. Such communities include King Salmon, Naknek, and South Naknek for Katmai National Preserve; Glenallen for Wrangell-St. Elias National Park and Preserve; and Yakutat for Glacier Bay National Preserve (Yakutat is within the resident zone for Wrangell-St. Elias National Park and Preserve). For any communities or areas not included in a resident zone, the National Park Service encourages the residents who have customarily and traditionally used park area resources without using an aircraft for access to apply for a "subsistence permit."

*Subsistence Permits and Application Procedures for Subsistence Permits:* Under these proposed regulations, any person who permanently resides outside a resident zone must obtain a "subsistence permit" in order to engage in subsistence uses of park area resources. The availability of subsistence permits assures that subsistence users whose communities are not included in a resident zone for whatever reason may nevertheless have the opportunity to engage in subsistence uses in park areas. Section 13.44. The National Park Service has taken efforts to eliminate all unnecessary burdens from the application process while still providing procedural protections to assure fair and reasonable decisionmaking on the permit applications. Section 13.51.

Under the proposed regulations, the application process at the Superintendent's level is simple. The applicant must demonstrate to the Superintendent, preferably on a written form but otherwise by oral presentation, either of the following:

- (1) he or she has (or is a member of a family which has) customarily and traditionally engaged in subsistence uses within a park area without using aircraft as a means of access for purposes of taking fish or wildlife (Section 13.44(a)(1)); or
- (2) he or she qualifies as a "local rural resident" who may engage in subsistence uses in another park area, and his or her subsistence lifestyle—as supported by available research—involves a pattern of subsistence uses between the other park area and the

park area for which the applicant now seeks a permit (Section 13.44(a)(2)).

Proposed Section 13.44(c) makes clear that, for purposes of § 13.44(a)(1), the term "family" is limited to persons whose primary, permanent residence is in rural Alaska near the park areas. Unlike the definition of "family" in § 13.42(c) ("subsistence uses" definition), family members who live in cities or far from the park area would not qualify for the benefits of § 13.44.

The National Park Service believes that the Superintendent will be able to issue subsistence permits quickly and routinely in cases of genuine subsistence users. Proposed § 13.51(a) requires the Superintendent to grant or deny the application in a timely manner not to exceed sixty days from receipt of the completed application unless, in extraordinary cases, the Superintendent can show good cause for failing to meet the time deadline. The Superintendent shall explain any denial in writing and promptly forward a copy to the applicant.

Should the Superintendent deny the permit, the applicant who wishes to have his or her application reconsidered must so inform the Alaska Regional Director by letter, telephone, or any other means of communication within 60 days (except for good cause shown) of the Superintendent's issuing the denial. The permit applicant shall present the Alaska Regional Director with (1) any additional information demonstrating that the applicant qualifies for a permit, (2) the basis for the applicant's disagreement with the Superintendent's decision, and (3) any request for an informal hearing accompanied by a description of the new information to be presented and a listing of any persons to be questioned at the hearing. The Alaska Regional Director shall grant a hearing if it is clear that the applicant would present relevant information which is substantially distinguishable from or supplementary to the information presented to the Superintendent.

To accommodate the permit applicants who would be inconvenienced by travelling to Anchorage for a hearing, the Alaska Regional Director will periodically "ride circuit," scheduling hearings throughout the State.

The Alaska Regional Director shall decide to affirm, reverse or modify the Superintendent's denial within a reasonable period of time, shall explain his decision in writing, and shall promptly forward a copy to the applicant. This decision shall constitute final action by the Department of the Interior. In accordance with applicable

law, the permit applicant may, of course, seek judicial review of a denial on reconsideration.

The proposed regulations published today recognize that it may take several months to initiate the subsistence permit system envisioned by §§ 13.44 and 13.51 of the regulations, and that subsistence users who do not live in resident zones but nevertheless depend on park area resources must be able to engage in subsistence uses in park areas in the meantime. Consequently, §13.44(b) would allow such persons who would otherwise qualify for a subsistence permit (*see* § 13.44(a)) to engage in subsistence uses in a park area without a permit until July 15, 1981. However, it should be emphasized that such persons should begin the application process for a subsistence permit as soon as possible after these proposed regulations are finalized since a subsistence permit will be required as of July 15, 1981.

**Prohibition of Aircraft Use:** Section 13.45 of the Subpart B regulations generally would prohibit the use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish or wildlife for subsistence uses within the national park or monument.

The Subpart B regulations would not prohibit use of aircraft for subsistence uses in national preserves.

It is the National Park Service's determination, supported by numerous comments and by available research on the subsistence lifestyle, that local rural residents who have customarily and traditionally engaged in subsistence uses of park and monument resources do not, in the most cases, use aircraft for access for subsistence hunting, trapping, and fishing. What cash these local rural residents acquire is used to purchase necessities not otherwise supplied by subsistence uses. Certainly, as a general rule, the expense of aircraft use greatly exceeds the ability of the local rural resident to pay for it. On the other hand, aircraft is commonly used by sport hunters who are now prohibited from hunting in park and monument areas. In this respect, the prohibition of aircraft use for subsistence activities reinforces the ban on sport hunting in park and monument areas and assists the National Park Service in distinguishing sport from subsistence hunters.

The proposed Subpart C regulations for individual park areas, however, would afford the Park Service flexibility to make exceptions to the general prohibition. For any park or monument, the Park Service may designate "exempted communities" whose local rural residents may apply for a permit to use aircraft for subsistence hunting,

trapping, and fishing (Section 13.45(b)). The Superintendent will grant the permit only in extraordinary cases where, in the Superintendent's determination, no reasonable alternative to aircraft use exists. At this time, the National Park Service is proposing to designate two communities as "exempted communities," *i.e.*, Anaktuvuk in Gates of the Arctic National Park and Yakutat in Wrangell-St. Elias National Park, whose local rural residents presently rely on aircraft for access to their customary and traditional areas of harvest in the park. The people of Anaktuvuk, isolated, remote, surrounded by difficult terrain, are far removed from the wildlife populations whose harvest sustains them; moreover, they do not have adequate and available alternative resources populations for sustenance. Similarly, residents of Yakutat have customarily used aircraft for access to the Malaspina Forelands in the Wrangell-St. Elias area for subsistence purposes, since traveling by boat, the only other possible means of transportation, can be extremely dangerous due to the violent storms that frequent the Gulf of Alaska, S. Rep. 96-413, *supra*, 169; 126 Cong. Rec. H10541 (daily ed. Nov. 12, 1980). As Congress noted:

Although there may be similar situations in other areas of Alaska in which aircraft use for subsistence hunting may be appropriate and should be permitted to continue, the Committee believes that these types of situations are the exception rather than the rule and that only rarely should aircraft use for subsistence hunting purposes be permitted within national parks and monuments. It is not the intent of the Committee to invite additional aircraft use. S. Rep. No. 96-413, *supra*, 169; *see, also*, 126 Cong. Rec. H10541 ("It is not the intent to invite additional aircraft use, or new or expanded uses in parks and monuments where such uses have not traditionally and regularly occurred.")

In response to comments received on the proposed regulations for the Alaska National Monuments, moreover, the National Park Service has included in § 13.45(b)(2) of these proposed regulations the opportunity for any local rural resident aggrieved by the aircraft prohibition to seek an individual exception to the prohibition on aircraft pursuant to the procedures of § 13.51. It bears noting that this opportunity would be available only to local rural residents, *i.e.*, persons who live in a resident zone or have a subsistence permit. The Superintendent may grant the exception if he or she determines that the applicant has demonstrated an extraordinary situation where no reasonable alternative to aircraft use exists because of the location of the

subsistence resources depended upon and the difficulty of surface transportation to these resources, or other emergency situation (*e.g.*, unusual and unforeseeable acts of nature).

The permits issued pursuant to proposed § 13.45(b)(1) and (2) may contain terms and conditions which may limit the aircraft use as to area, time of operation, type of aircraft, duration of the permit, and any other factor necessary to restrict the permit to the limited and exceptional purposes it is meant to fulfill.

Section 13.45(c) would make clear that the prohibition on aircraft use is limited. It does not extend to any legal activity other than access for purposes of subsistence hunting, trapping, and fishing. Thus, a local rule resident may, for example, use aircraft in parks and monuments to carry supplies to a cabin, to visit another village, or even to gather berries. Although the National Park Service believes that such use of aircraft in the subsistence culture is rare for the reasons stated above, the Park Service does not have the same enforcement concerns for these activities as it does for the taking of fish and wildlife.

**Use of Snowmobiles, Motorboats, and Other Means of Surface Transportation:** In furtherance of Section 811 of the Alaska Lands Act, § 13.46 would provide local rural residents engaged in subsistence uses reasonable access to the subsistence resources on which they depend. This proposed regulation liberalizes the provisions of Subpart A 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 park areas. All routes and areas are open to subsistence use of these vehicles except as specifically restricted or closed. The Superintendent will implement such closures or restrictions on the basis of criteria which are more limited than the criteria for closure to general recreational use. Basically, in order to impose a restriction, the Superintendent must determine that the use in question is causing or may cause an adverse impact on public health or 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 park area was established. The Superintendent will arrange notice and public participation concerning closure proposals in order to involve those affected to the fullest extent possible in the decisionmaking.

It should be noted that the types of access vehicles covered by proposed § 13.46 include "other means of surface

transportation traditionally employed by local rural residents engaged in subsistence uses." The limitations of this phrase, if any, will be addressed as appropriate in future rulemaking efforts.

Under proposed § 13.46, 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 park 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 A 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 §§ 13.10, 13.11, and 13.13, respectively, and local rural residents seeking otherwise-closed access to inholdings or temporary access would comply with the provisions of §§ 13.14 and 13.15, respectively.

**Subsistence Fishing:** Local rural residents may, of course, engage in fishing in park areas in compliance with applicable State and Federal law. In addition, in § 13.47 of the regulations, the National Park Service proposes to relax its general public regulations in the case of local rural residents in order to allow the customary and traditional use in park areas of nets, seines, traps, or spears where permitted by State law. Section 13.50, explained below, would govern closures to fishing for subsistence purposes.

**Subsistence Hunting and Trapping:** Although all national parks and monuments in Alaska are closed to sport hunting and to trapping, many are open, in whole or part, to hunting and trapping by local rural residents engaged in subsistence uses. Alaska Lands Act, sections 816; 201(1), (3), (4), (6), (7), (9); 202(3); see also, § 13.41 (Applicability). Therefore, only local rural residents may engage in hunting and trapping where authorized in national parks and monuments. Of course, national preserves are open to both sport and subsistence hunting as well as trapping, unless the Superintendent has closed a preserve area to sport taking pursuant to proposed § 13.30 of Subpart A or to subsistence taking pursuant to proposed § 13.50 of Subpart B. As with sport

users, local rural residents engaged in subsistence hunting or trapping must comply with applicable State law governing hunting and trapping, e.g., bag limits, safety requirements, seasons and hours (proposed § 13.48). With respect to trapline cabins, § 13.16(d) would provide for their construction, reconstruction, temporary use, occupancy, and maintenance pursuant to a permit. In addition, § 13.16(c) and (e) would provide for existing cabin use and occupancy by persons with a possessory interest or right of occupancy in the cabin.

**Subsistence Use of Timber and Plant Material:** Section 13.49(a) would relax the general public use regulations by allowing local rural residents to obtain a permit to cut standing live timber for subsistence needs such as shelter or fuel. Before issuing a permit, the Superintendent must determine that the proposed cutting is compatible with the purposes for which the park area was established. Furthermore, the Superintendent will include in the permit any stipulations deemed necessary to protect the resources of the park area.

Section 13.49(b) would make clear that local rural residents do not need a permit to gather plant materials for subsistence uses, or to gather dead or downed timber for firewood for personal, not commercial, use.

Proposed § 13.49(c) sets forth the standards and procedures for closing a park area to the subsistence uses of a particular plant population. Although not required by the Alaska Lands Act, the National Park Service is proposing to 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 strict, 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 Uses of Fish and Wildlife:** According to Section 816 of the Alaska Lands Act and § 13.50 of the proposed Subpart B regulations, the Superintendent of each park area has the power to close or restrict any part or all of a park area 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, proposed § 13.50 provides protective 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 or 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 Superintendent to act in situations which threaten public health and welfare. For example, the Superintendent 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 Superintendent 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. 96-413, *supra*, 278; H. Rep. No. 96-97, *supra*, 289. Moreover, as stated in Section 815 of the Alaska Lands Act and Section 13.40(e) of the proposed regulations and explained previously, the subsistence provisions are not to be construed as permitting a level of subsistence use of fish and wildlife within national preserves to be inconsistent with the conservation of healthy populations, and within national parks and monuments to be inconsistent with the conservation of natural and 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." *Id.* Guided by this intent, the Superintendent can invoke the administration standard to protect the purposes and values of the park areas and otherwise to manage the park areas prudently. The limitation of Section 815 of the Act and § 13.40(e) of the proposed regulations would also be relevant to this closure standard.

Closures shall last only so long as reasonably necessary to achieve the purposes of the closure. 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. 96-97, *supra*, 289.

Thus, closures may be seasonal in nature, for example, if warranted by the situation.

In the normal case, a closure must 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 Superintendent may immediately close the area for a period not to exceed sixty days. The Superintendent may extend an emergency closure only if he or she establishes, after notice and informal public hearing in the vicinity, that the extension is justified under the applicable closure standards.

Finally, proposed § 13.50(c) provides thorough notice procedures designed to inform as many local rural residents as possible about any closures which may affect them.

#### Drafting Information

The primary authors of these proposed regulations are Michael V. Finley, Division of Legislation, and Maureen Finnerty, Division of Ranger Activities and Protection, National Park Service, Washington, D.C.; William F. Paleck, Alaska Regional Office, National Park Service, Anchorage, Alaska; and Molly N. Ross and Thomas R. Lundquist, Office of the Solicitor, Department of the Interior, Washington, D.C.

#### Impact Analysis

The Department of the Interior has made a determination that these proposed regulations are not significant, as that term is defined under Executive Order No. 12044 and 43 CFR Part 14, nor do they require the preparation of a regulatory analysis pursuant to the provisions of those authorities.

As required by the Regulatory Flexibility Act (Pub. L. 96-354), the National Park Service has made an initial determination that these proposed regulations will not have a significant economic effect on a substantial number of small businesses, small organizations, or small governmental jurisdictions. However, public comment is invited on whether the consequences of the rule will require this analysis.

A 28-volume environmental impact statement was prepared in 1974 concerning the establishment, management and public use of Alaska National Interest Lands conservation system units in Alaska, including the areas now designated as units of the National Park System in the Alaska Lands Act. The 1974 EIS was supplemented in November 1978 with an analysis of the impacts of alternative Executive Branch actions designed to

conserve the Alaska National Interest Lands.

In addition to those environmental documents which received extensive public comment, and the numerous studies included within their bibliographies upon which they were based, a wealth of other materials and analyses have been generated on the management of the Alaska National Interest Lands as a result of congressional action on the so called "d-2" legislation. As of the date of this proposed rulemaking, four separate committee reports, a background committee report, and extensive legislative history printed in the *Congressional Record* have been published by the House of Representatives. In the Senate, two extensive committee reports, a two-volume report concerning the results of a committee workshop in Alaska and extensive legislative history printed in the *Congressional Record* have been published.

All of these reports and histories concern the establishment, management, and public use of the new conservation system units in Alaska. This is in addition to more than 45 days of formal congressional committee hearings held throughout the United States on this matter. The joint Federal-State Land Use Planning Commission for Alaska also conducted more than a dozen public hearings throughout the country in its investigations concerning the proposed public use and classifications of the proposed conservation system units.

#### Public Participation

These proposed regulations would give interim, management guidance on subsistence, access, cabins, and public recreational uses of the park areas in Alaska. Public comment on these proposals is actively solicited and desired during the 45-day public review period. Following the consideration of public comment and appropriate revision of the regulations, it is anticipated that final regulations will be issued in March of 1981 to give the public interim management guidance on the permissible uses of parks areas in Alaska. This expedited schedule is necessary so that regulations will be in effect in time for the peak public use seasons.

With the substantial prior public comment and the emergency need for public guidance in advance of the peak public use seasons, the National Park Service believes that a 45-day public comment period is the maximum that can be afforded on this limited agenda rulemaking. Any longer public comment period would place the effective date of

these regulations beyond the Spring "break up" of deep winter conditions, and would create public confusion on allowable uses of park areas during peak public use (e.g., recreation, access, subsistence, mining) seasons. Thus, the National Park Service believes that a 45-day public comment period (which is longer than required under 5 U.S.C. 553) strikes an appropriate balance between desires for advance public review of proposed regulations and the need for interim management and public guidance.

In addition to comments on these proposed regulations, the National Park Service is also inviting comments on any other issues, including the need for special regulations for individual park areas, that should be considered in any future rulemaking.

(Section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. 3); Sections 1, 1c, 9a, 432 and 462 of Title 16 of the United States Code, and Pub. L. 96-487 (December 2, 1980))

Robert Herbst,

Assistance Secretary for Fish and Wildlife and Parks.

In consideration of the foregoing, title 36 of the *Code of Federal Regulations* is proposed to be amended by the establishment of a new Part 13 as follows:

### PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

#### Subpart A—Public Use and Recreation

- Sec.
- 13.1 Definitions.
  - 13.2 Applicability and scope.
  - 13.3 Penalties.
  - 13.10 Snowmobiles.
  - 13.11 Motorboats.
  - 13.12 Aircraft.
  - 13.13 Off-road vehicles.
  - 13.14 Access to inholdings.
  - 13.15 Temporary access.
  - 13.16 Cabins and other structures.
  - 13.17 Camping and picnicking.
  - 13.18 Weapons, traps and nets.
  - 13.19 Preservation of natural features.
  - 13.20 Taking of fish and wildlife.
  - 13.21 Unattended or abandoned property.
  - 13.22 Subsistence and land use decisions.
  - 13.30 Closure procedures.
  - 13.31 Permits.

#### Subpart B—Subsistence

- 13.40 Purpose and policy.
- 13.41 Applicability.
- 13.42 Definitions.
- 13.43 Determination of resident zones.
- 13.44 Subsistence permits for persons who permanently reside outside a resident zone.
- 13.45 Prohibition on aircraft use.
- 13.46 Use of snowmobiles, motorboats, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.

## Sec.

- 13.47 Subsistence fishing.
- 13.48 Subsistence hunting and trapping.
- 13.49 Subsistence use of timber and plant material.
- 13.50 Closure to subsistence uses.
- 13.51 Application procedures for subsistence permits and aircraft exceptions.

**Subpart C—Special Regulations—Specific Park Areas in Alaska**

- 13.60 Aniakchak National Monument and Preserve.
- 13.61 Bering Land Bridge National Preserve.
- 13.62 Cape Krusenstern National Monument.
- 13.63 Denali National Park and Preserve.
- 13.64 Gates of the Arctic National Park and Preserve.
- 13.65 Glacier Bay National Park and Preserve. (Reserved)
- 13.66 Katmai National Park and Preserve.
- 13.67 Kenai Fjords National Park.
- 13.68 Kobuk Valley National Park.
- 13.69 Lake Clark National Park and Preserve.
- 13.70 Noatak National Preserve.
- 13.71 Wrangell-St. Elias National Park and Preserve.
- 13.72 Yukon-Charley National Preserve.

Authority: Section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended; 16 U.S.C. 3); Sections 1, 1c, 9a, 432 and 462 of Title 16 of the United States Code, and Public Law 96-487 (December 2, 1980).

**§ 13.1 Definitions.**

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

(a) The term "adequate and feasible access" means a method and route of access which is economically practicable for achieving the reasonable use or development desired by an applicant of the applicant's non-federal land or occupancy interest, but does not necessarily mean the most economically feasible alternative.

(b) The term "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.

(c) The term "carry" means to wear, bear or carry on or about the person and additionally, in the case of firearms, within or upon a device or animal used for transportation.

(d) The term "downed aircraft" means an aircraft that as a result of mechanical failure or accident cannot take off.

(e) The term "firearm" means any loaded or unloaded pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of expanded gases, except that it does not include a pistol or rifle powered by compressed gas.

(f) The term "fish and wildlife" means any member of the animal kingdom,

including without limitation any mammal, fish, bird (including any migratory, nonmigratory or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, produce, egg, or offspring thereof, or the dead body or part thereof.

(g) The term "fossil" means any remains, impression, or trace of any animal or plant of past geological ages that has been preserved, by natural processes, in the earth's crust.

(h) The term "gemstone" means a silica or igneous mineral including, but not limited to (1) geodes, (2) petrified wood, and (3) jade, agate, opal, garnet, or other mineral that when cut and polished is customarily used as jewelry or other ornament.

(i) The term "National Preserve" shall include the following areas of the National Park System:

Alagnak National Wild and Scenic River, Aniakchak National Preserve, Bering Land Bridge National Preserve, Denali National Preserve, Gates of the Arctic National Preserve, Glacier Bay National Preserve, Katmai National Preserve, Lake Clark National Preserve, Noatak National Preserve, Wrangell-St. Elias National Preserve, and Yukon-Charley National Preserve.

(j) The term "net" means a snare, wire, net, fish trap, or other implement designed to entrap fish, except a landing net.

(k) The term "off-road vehicle" means any motor vehicle designed for or capable of crosscountry travel on or immediately over land, water, sand, snow, ice, marsh, wetland or other natural terrain, except snowmobiles as defined in this chapter.

(l) The term "park areas" means lands and waters administered by the National Park Service within the State of Alaska.

(m) The term "person" means any individual, firm, corporation, society, association or partnership.

(n) The term "possession" means exercising dominion or control, with or without ownership, over weapons, traps, nets or other property.

(o) The term "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.

(p) The term "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 a track or tracks in contact with the snow and steered by a ski or skis on contact with the snow.

(q) The term "superintendent" means any National Park Service official in charge of a park area, the Alaska Regional Director of the National Park Service, or an authorized representative of either.

(r) The term "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.

(s) The term "temporary" means a continuous period of time not to exceed 12 months, except as specifically provided otherwise.

(t) The term "trap" means a snare, trap, mesh, or other implement designed to entrap animals other than fish.

(u) The term "unloaded" means there is no unexpended shell or cartridge in the chamber or magazine of a firearm; bows, crossbows and spearguns are unstrung; muzzle-loading weapons do not contain a powder charge; and any other implement capable of discharging a missile in the air or under the water does not contain a missile or similar device within the loading or discharging mechanism.

(v) The term "weapon" means a firearm, compressed gas or spring powered pistol or rifle, bow and arrow, crossbow, blow gun, speargun, hand thrown spear, slingshot, irritant gas device, explosive device, or any other implement designed to discharge missiles in the air or under the water.

**§ 13.2 Applicability and scope.**

(a) The regulations contained in Part 13 of this chapter are prescribed for the proper use and management of park areas in Alaska and supplement the general regulations of this chapter. The regulations contained in this chapter are applicable except as modified by Part 13.

(b) Subpart A of Part 13 contains regulations applicable to all park areas. Such regulations amend in part the general regulations contained in this chapter. The regulations in Subpart A govern use and management, including



subsistence activities, within the park areas, except as modified by Subparts B or C.

(c) Subpart B of Part 13 contains regulations applicable to subsistence activities. Such regulations apply to all park areas except Kenai Fjords National Park, Katmai National Park, Glacier Bay National Park, Klondike Gold Rush National Historical Park, Sitka National Historical Park, and parts of Denali National Park. The regulations in Subpart B amend in part the regulations contained in this chapter and Subpart A of Part 13.

(d) Subpart C of Part 13 contains special regulations for specific park areas. Such regulations amend in part the regulations contained in this chapter and Subparts A and B of Part 13.

(e) The regulations contained in Part 13 of this chapter are applicable only on federally owned lands within the boundaries of any park area. 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.

#### § 13.3 Penalties.

Any person convicted of violating any provision of the regulations contained in Part 13, or as the same may be amended or supplemented, may be punished by a fine not exceeding \$500 or by imprisonment not exceeding 6 months, or both, and shall be adjudged to pay all costs of the proceedings (18 U.S.C. 3).

#### § 13.10 Snowmobiles.

The use of snowmobiles (during periods of adequate snow cover or frozen river conditions) is permitted within park areas, except where such use is prohibited or otherwise restricted by the Superintendent in accordance with the provisions of § 13.30, or as provided for in § 13.46.

#### § 13.11 Motorboats.

Motorboats may be operated on all park area waters, except where such use is prohibited or otherwise restricted by the Superintendent in accordance with the provisions of § 13.30, or as provided for in § 13.46, or in 36 CFR 7.23(b)-(f).

#### § 13.12 Aircraft.

(a) Aircraft may be landed and operated on lands and waters within park areas, except where such use is prohibited or otherwise restricted by the Superintendent in accordance with this section. The use of aircraft for access to

or from lands and waters within a national park or monument for purposes of taking fish and wildlife for subsistence uses therein is prohibited as set forth in § 13.45.

(b) In imposing any prohibitions or restrictions on aircraft use the Superintendent shall: (1) comply with the procedures set forth in § 13.30; (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."

(c) Except as provided in paragraph (d) 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 Superintendent. In establishing a removal procedure, the Superintendent 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.

(d) The Superintendent may waive the requirements of § 13.12(c) when he/she determines 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.

(e) 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 subsection (c); 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.

#### § 13.13 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 Superintendent or subject to a valid access permit as prescribed in §§ 13.14, 13.15, and 13.31. Such designations shall be made in accordance with procedures in this section.

(b)(1) In determining whether to designate a route or area for off-road travel, the Superintendent shall consider the criteria contained in Section 3 of Executive Order 11644, as amended (37 FR 2877), and such factors as other public uses, public health and safety, environmental and resource protection,

research activities, protection of historic or scientific values, subsistence values, endangered or threatened species conservation and other management considerations necessary to ensure that off-road vehicle use is compatible with the purposes for which the park area was established.

(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 § 13.30(f).

(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 § 13.30.

#### § 13.14 Access to inholdings.

(a) *Purpose.* Where adequate and feasible access is otherwise restricted pursuant to the provisions of this part (e.g. §§ 13.10, 13.13, 13.30), it is the purpose of this section to ensure access across park areas for any person who has a valid property or occupancy interest in lands. These regulations are not intended to grant an interest in or otherwise alienate Federal property, but rather to provide specific relief from other regulatory provisions that may unreasonably restrict access to non-federal property.

(b) *Application and Administration.* (1) Applications for a permit designating methods and routes of access across park areas not affirmatively provided for in this part shall be submitted to the Superintendent having jurisdiction over the affected park area as specified under § 13.31.

(2) 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, a map or physical description of the relevant property or occupancy interest, a map or physical description of the desired route of access, a description of the desired method of access, the purpose for which access is sought, and such other information deemed necessary by the Superintendent for consideration of the application.

(3) The Superintendent shall specify in a renewable permit, adequate and feasible routes and methods of access across park areas for any person who meets the criteria of paragraph (a) of this section. The Superintendent 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 park

area, 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 Superintendent makes one of the findings described in paragraph (b)(3) of this section, he/she shall specify such other alternate methods and routes of access as will provide adequate and feasible access to the applicant, while minimizing damage to natural and other values of the park area.

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

(c) *Special Information Requirements for Access for Mineral Exploration or Development.*

(1) *Applicability.* This subsection is applicable only when a person requires a permit for access across (e.g. situations where §§ 13.10-13.13 do not already provide adequate and feasible access) a park area to non-federally owned lands or interests therein or valid unpatented mining claims located within the exterior boundaries of a park area, for mineral exploration or development purposes.

(2) *Access Permit Application.* Any person described in paragraph (c)(1) of this section shall apply to the Superintendent for an access permit and shall provide, in addition to the information specified in paragraph (b)(2), a description of the proposed mineral operations and all steps by the applicant necessary to comply with applicable Federal, State and local laws and regulations. The information requirements of 36 CFR 9.9 and 9.36 shall not be applicable.

(3) *Permit approval.* The Superintendent is directed to utilize the permit granting standards of paragraph (b) of this section to grant such adequate and feasible access for economic purposes, while minimizing damage to the natural and other values of the park area, in lieu of the access standards of 36 CFR Part 9.

(4) Whenever an unpatented mining claim is located within the exterior boundaries of a park area, the person shall also submit the Supplemental Claim Information Statement described in 36 CFR 9.9(a)(5) in an access permit application.

(d) The establishment or modification of a route or method of access which requires the construction of permanent improvements, including, but not limited to, the construction of concrete bridges or runways is prohibited unless

authorized pursuant to the provisions of 36 CFR Part 14.

#### § 13.15 Temporary access.

(a) *Applicability.* This section is applicable to State and private landowners who desire temporary access across a park area for the purposes of survey, geophysical, exploratory permits and other temporary uses of such nonfederal lands, and where such temporary access is not affirmatively provided for in §§ 13.10-13.14 of this part. State and private landowners meeting the criteria of § 13.14(a) are directed to utilize the procedures of § 13.14 to obtain temporary access.

(b) *Temporary Access for Mineral Exploration.* (1) *Application.* A landowner requiring temporary access across a park area for mineral survey, geophysical, exploratory or similar mineral activities shall apply to the Superintendent for an access permit and shall provide the relevant information contained in § 13.14(c)(2), concerning the planned access and mineral exploration activities.

(2) *Permit Standards, Stipulations and Conditions.* The Superintendent shall grant the desired temporary access whenever he/she determines that such access will not result in permanent harm to park area resources. The Superintendent 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 purposes for which the park area was reserved and to ensure that no permanent harm will result to park area resources.

(c) *Temporary Access for Other Purposes.* (1) *Application.* A landowner requiring access across a park area for survey, geophysical, exploratory or other temporary uses unrelated to mineral exploration shall apply to the Superintendent for an access permit. The applicant shall state the proposed method and route of access, and what temporary use the applicant proposes to undertake on his/her land.

(2) *Permit Standards, Stipulations and Conditions.* The permit granting standards, stipulations and conditions of subsection (b)(2) shall be applicable to permits granted under this subsection.

(d) *Definition.* For the purposes of this section, "temporary access" shall mean limited, short-term, non-successive access, which does not require permanent facilities for access, to undeveloped State or private lands.

#### § 13.16 Cabins and other structures.

(a) *Purpose.* It is the purpose of this section to provide procedures and guidance for those occupying and using existing cabins and those wishing to construct new cabins within park areas.

(b) This section applies to all park areas in Alaska except Klondike Gold Rush National Historical Park and Sitka National Historical Park.

(c) *Existing Cabins or Other Structures.* (1) Cabins or other structures existing prior to December 18, 1973, may be occupied and used by the claimants to these structures pursuant to a nontransferable, renewable permit. This use and occupancy shall be for terms of five years; *provided, however,* that the claimant to the structure, by application:

(i) Reasonably demonstrates by affidavit, bill of sale or other documentation proof of possessory interest or right of occupancy in the cabin or structure;

(ii) Submits an acceptable photograph or sketch which accurately depicts the cabin or structure and a map showing its geographic location;

(iii) Agrees to vacate and remove all personal property from the cabin or structure upon expiration of the permit;

(iv) Acknowledges in the permit that he/she has no interest in the real property on which the cabin or structure is located; and

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

Permits issued under the provisions of this paragraph 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 Superintendent determines after notice and hearing, and on the basis of substantial evidence in the administrative record as a whole, that the use under the permit is causing or may cause significant detriment to the principal purposes for which the park area was established. The Superintendent's decision may be appealed pursuant to the provisions of 43 CFR 4.700.

(2) Cabins or other structures, construction of which began between December 18, 1973, and December 1, 1978, may be used and occupied by the claimant to these structures pursuant to a nontransferable, nonrenewable permit. This use and occupancy shall be for a maximum term of 1 year; *provided, however,* that the claimant, by application, complies with § 13.16(c)(1)(i) through (iv) above. Permits issued under the provisions of this paragraph may be extended by the

Superintendent, subject to reasonable regulations, for a period not to exceed one year for good cause where extraordinary circumstances prevent vacating the cabin or structure and removing all personal property within the original term of the permit.

(3) Cabins or other structures, construction of which began after December 1, 1978, shall not be available for use and occupancy.

(4) Cabins or other structures, not under permit, shall be used only for official government business; *provided, however*, that during emergencies involving the safety of human life, or where designated for public use by the Superintendent through the posting of signs, these cabins may be used by the general public.

d. *New Cabins or Other Structures Necessary for Subsistence Uses or Otherwise Authorized by Law.* The Superintendent may issue a permit under such conditions as he/she may prescribe for the construction, reconstruction, temporary use, occupancy, and maintenance of new cabins or other structures when he/she determines that the use is necessary to accommodate reasonably subsistence uses or is otherwise authorized by law. In determining whether to permit the use, occupancy, construction, reconstruction or maintenance of cabins or other structures, the Superintendent 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 purposes for which the park area was established.

(e) *Existing Cabin Leases or Permits.* Nothing in this section shall preclude the renewal or continuation of valid leases or permits in effect as of December 2, 1980, for cabins, homesites, or similar structures on federally owned lands. Unless the Superintendent issues specific findings, following notice and an opportunity for the leaseholder or permittee to respond, that renewal or continuation of such valid permit or lease constitutes a direct threat or a significant impairment to the values for which the park area was established, he/she shall renew such valid leases or permits upon their expiration in accordance with the provisions of the original lease or permit subject to such reasonable regulations as he/she prescribe in keeping with the management objectives of the park area.

Subject to the provisions of the original lease or permit, nothing in this paragraph shall necessarily preclude the Superintendent from transferring such a lease or permit to another person at the election or death of the original permittee or leasee.

#### § 13.17 Camping and picnicking.

(a) *Camping.* Camping is permitted in park areas except where such use is prohibited or otherwise restricted by the Superintendent in accordance with the provisions of § 13.30.

(b) *Picnicking.* Picnicking is permitted in park areas except where such activity is prohibited by the posting of appropriate signs.

#### § 13.18 Weapons, traps and nets.

(a) This section applies to all park areas in Alaska except Klondike Gold Rush National Historical Park and Sitka National Historical Park.

(b) Firearms may be carried within park areas, except where such carrying is prohibited or otherwise restricted pursuant to § 13.30.

(c) Traps, bows and other implements authorized by State and Federal law for the taking of fish and wildlife may be carried within National Preserves only during those times when the taking of fish and wildlife is authorized by applicable law or regulation.

(d) In addition to the authorities provided in paragraphs (b) and (c) of this section, weapons (other than firearms) traps and nets may be possessed within park areas provided such weapons, traps or nets are within or upon a device or animal used for transportation and are unloaded and cased or otherwise packed in such a manner as to prevent their ready use while in a park area.

(e) Notwithstanding the provisions of this section, local rural residents who are authorized to engage in subsistence uses, including the taking of wildlife pursuant to § 13.48 of this part, may use, possess, or carry traps, nets and other weapons in accordance with applicable State and Federal laws.

#### § 13.19 Preservation of natural features.

(a) *Renewable Resources.* The gathering or collecting, by hand and for personal use only, of the following renewable resources is permitted:

(1) Natural plant food items, including fruits, berries and mushrooms, but not including threatened or endangered species;

(2) Driftwood and uninhabited seashells;

(3) Such plant materials and minerals as are essential to the conduct of

traditional ceremonies by Native Americans; and

(4) Dead or downed wood for use in fires within park areas.

(b) *Rocks and Minerals.* Surface collection, by hand and for personal use only, of rocks and minerals is permitted; *provided, however*, that (1) collection of gold, silver, platinum, gemstones and fossils is prohibited, and (2) no collection method may result in disturbance of the ground surface.

(c) *Closure and Notice.* Under conditions where it is found that significant adverse impact on park resources, wildlife populations, subsistence uses, or visitor enjoyment of resources will result, the Superintendent shall prohibit the gathering or otherwise restrict the collecting of these items.

Portions of a park area in which closures or restrictions apply shall be (1) published in at least one newspaper of general circulation in the State and designated on a map which shall be available for public inspection in the office of the Superintendent, or (2) designated by the posting of appropriate signs, or (3) both.

(d) *Subsistence.* Nothing in this section shall apply to the taking of renewable resources by subsistence users.

#### § 13.20 Taking of fish and wildlife.

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

(b) *Fishing.* Fishing is permitted in all park areas in accordance with applicable State and Federal law and such laws are hereby adopted and made a part of these regulations to the extent they are not inconsistent with § 2.13 of this chapter. With respect to the Cape Krusenstern National Monument, the Malaspina Glacier Forelands area of the Wrangell-St. Elias National Preserve, and the Dry Bay area of Glacier Bay National Preserve, the exercise of valid commercial fishing rights or privileges obtained pursuant to existing law—including any use of park area lands for campsites, cabins, motorized vehicles, and aircraft landings on existing airstrips which is directly incident to the exercise of such rights or privileges—may continue; *provided, however*, that the Superintendent may restrict the use of park area lands directly incident to the exercise of these rights or privileges if he/she determines, after conducting a public hearing in the affected locality, that such use of park area lands constitutes a significant expansion of the use of park area lands beyond the level of such use during 1979.

(c) *Hunting and Trapping.* Hunting and trapping are permitted in all

National Preserves in accordance with applicable State and Federal law, and such laws are hereby adopted and made a part of these regulations; *provided, however*, that engaging in trapping activities, as the employee or agent of another person is prohibited.

(d) *Closures and Restrictions.* The Superintendent may prohibit or restrict the taking of fish or wildlife in accordance with the provisions of § 13.30. Except in emergency conditions, such restrictions shall take effect only after consultation with the appropriate State agency having responsibility over fishing, hunting, or trapping and representatives of affected users.

**§ 13.21 Unattended or abandoned property.**

(a) This section applies to all park areas in Alaska except Klondike Gold Rush National Historical Park and Sitka National Historical Park.

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

(c) The Superintendent 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. Such designations and restrictions shall be (1) published in at least one newspaper of general circulation within the State, 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 community and designated on a map which shall be available for public inspection at the office of the Superintendent, 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 park area or is causing damage to the resources of the area, it may be impounded by the Superintendent at any time.

**§ 13.22 Subsistence and land use decisions.**

(a) In determining whether to lease or otherwise permit the use or occupancy of park area lands under any provision of the regulations of this part or other law authorizing such actions, the Alaska

Regional Director or his/her designee shall evaluate the effect of such use or occupancy on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use or occupancy of park area lands needed for subsistence purposes. No such lease, permit, or other use or occupancy of such lands which would significantly restrict subsistence uses shall be effected until the Alaska Regional Director or his/her designee—

(1) Gives notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to section 805 of the Alaska National Interest Lands Conservation Act, Pub. L. 96-487,

(2) Gives notice of, and holds, a hearing in the vicinity of the area involved, and

(3) Determines that (i) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of park area lands, (ii) the proposed activity will involve the minimal amount of park area lands necessary to accomplish the purposes of such use or occupancy, and (iii) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

(b) If an environmental impact statement pursuant to section 102(2)(C) of the National Environmental Policy Act is required with respect to the proposed use or occupancy, the notice, hearing, and findings required by subsection (A) of this section shall be provided as part of such environmental impact statement process.

(c) After compliance with the procedural requirements of this section and other applicable law, the Alaska Regional Director or his/her designee may manage park area lands for any of those uses or purposes authorized by law.

**§ 13.30 Closure procedures.**

(a) *Authority.* The Superintendent 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 on an emergency basis, the Superintendent shall be guided by factors such as public health and safety, resource protection, protection of historic 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 park area was established.

(c) *Emergency Closures.* (1) Emergency closures or restrictions relating to the use of aircraft, snowmobiles or motorboats, 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 and hearing; (3) other emergency closures shall become effective upon notice as prescribed in § 13.30(f); and (4) no emergency closure or restriction shall extend for a period exceeding 60 days, nor may it be extended.

(d) *Temporary closures or restrictions.* (1) Temporary closures or restrictions relating to the use of aircraft, snowmobiles or motorboats, or to the taking of fish and wildlife, shall not be effective prior to notice and hearing in the vicinity of the area(s) directly affected by such closures or restrictions; (2) other temporary closures shall be effective upon notice as prescribed in § 13.30(f); (3) temporary closures or restrictions shall not extend for a period exceeding 12 months and may not be extended.

(e) *Permanent closures or restrictions.* Permanent closures or restrictions shall be published as rulemaking in the Federal Register with a minimum public comment period of 60 days.

(f) *Notice.* Emergency, temporary and 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 appropriate, 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 Superintendent 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 Superintendent shall first provide notice as prescribed in paragraph (f) of this section, and shall, upon request, hold a hearing in the affected vicinity prior to making a final determination.

**§ 13.31 Permits.**

(a) *Application.* (1) Application for a permit required by any section of this part shall be submitted to the Superintendent having jurisdiction over the affected park area, or in the absence of the Superintendent, the Regional Director.

(2) The Superintendent shall promptly acknowledge, in writing, receipt of all requests for permits, access routes, or other requirements of this section.

(b) *Denial and appeal procedures.* (1) An applicant whose application for a permit, required pursuant to this part, has been denied by the Superintendent has the right to have the application reconsidered by the Regional Director by contacting him/her within sixty (60) days of the issuance of the denial. For purposes of reconsideration, the permit applicant shall present the following information:

(i) Any statement or 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.

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

(iii) Whether or not the permit applicant requests an informal hearing before the Regional Director, and if the permit applicant does request a hearing,

(A) A description of any information, in addition to that included in the initial application and any written materials presented to the Regional Director, which the permit applicant intends to present at the hearing;

(B) The name, addresses and brief description of the proposed presentation of any person which the applicant intends to present at the hearing on his behalf, and the name and addresses of any persons he/she would like to question at the hearing.

(2) If, after examining the information submitted by the applicant in support of a request for an oral hearing, it is clear that the applicant would present relevant information which is substantially distinguishable from or supplementary to the information presented to the Superintendent, the Regional Director shall grant the permit applicant's request for a hearing. After consideration of the written materials and oral hearing, if granted, and within a reasonable period of time, the Regional Director shall affirm, reverse, or modify the denial of the Superintendent 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.

#### Subpart B—Subsistence

##### § 13.40 Purpose and policy.

(a) Consistent with the management of fish and wildlife in accordance with recognized scientific principles and the

purposes for which each park area was established, designated, or expanded by the Alaska National Interest Lands Conservation Act, Pub. L. 96-487, 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 park 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.

(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 park areas pursuant to applicable State and Federal law.

(d) Whenever it is necessary to restrict taking of populations of fish and wildlife in order to assure the continued viability of such populations or the continuation of subsistence uses of such populations, after consultation with the State and notice of public hearing in the affected local vicinity, such populations shall be allocated in accordance with a subsistence priority system based on the following criteria:

(1) Customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) Local residency; and

(3) Availability of alternative resources.

(e) Nothing in this Subpart shall be construed as permitting a level of subsistence use of fish and wildlife within park areas to be inconsistent with the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife.

##### § 13.41 Applicability.

Subsistence uses by local rural residents are allowed pursuant to the regulations of this Subpart in the following park areas:

(a) In national preserves;

(b) In Cape Krusenstern National Monument and Kobuk Valley National Park;

(c) Where such uses are traditional (as may be further designated for each park or monument in Subpart C of this part) in Aniakchak National Monument, Gates of the Arctic National Park, Lake Clark National Park, Wrangell-St. Elias

National Park, and the Denali National Park addition.

##### § 13.42 Definitions.

(a) *Local rural resident:* (1) As used in this part, the term "local rural resident" shall mean either of the following:

(i) Any person who has his/her primary, permanent home within the resident zone as defined by this section, and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to, the permanent address indicated on licenses issued by the State of Alaska Department of Fish and Game, driver's license, and tax returns, and the location of registration to vote.

(ii) Any person authorized to engage in subsistence uses in a park area by a subsistence permit issued pursuant to §§ 13.44 and 13.51 of this part.

(b) *Resident zone:* As used in this part, the term "resident zone" shall mean the area within, and the communities and areas near, a park area in which persons who have customarily and traditionally engaged in subsistence uses within the park area permanently reside. The communities and areas near a park area included as part of its resident zone shall be determined pursuant to § 13.43 of this part and listed for each park area in Subpart C of this part.

(c) *Subsistence uses:* As used in this part, the term "subsistence uses" shall mean 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 by-products 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 the purposes of this paragraph, the term—

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

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

(i) for other fish or game or 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.

**§ 13.43 Determination of resident zones.**

(a) As determined by available information and research on subsistence uses in the area, a resident zone shall include—

(1) The area within a park area, and  
 (2) The communities and areas near a park which contain preponderant concentrations of local rural residents who, without using aircraft as a means of access for purposes of taking fish or wildlife for subsistence uses (except in extraordinary cases where no reasonable alternative existed), have customarily and traditionally engaged in subsistence uses within a park area.

(b) After notice and comment, including public hearing in the affected local vicinity, a community or area near a park area may be—

(1) Added to a resident zone, or  
 (2) Deleted from a resident zone, when available information and research demonstrates that such community or area does or does not meet the criteria set forth in paragraph (a) of this section, as appropriate.

**§ 13.44 Subsistence permits for persons whose primary, permanent home is outside a resident zone.**

(a) Any rural resident whose primary, permanent home is outside the boundaries of a resident zone of a park area may apply to the appropriate Superintendent pursuant to the procedures set forth in § 13.51 for a subsistence permit authorizing the permit applicant to engage in subsistence uses within the park area. The Superintendent shall not grant the permit unless the permit applicant demonstrates that,

(1) Without using aircraft as a means of access for purposes of taking fish and wildlife for subsistence uses, the applicant has (or is a member of a family which has) customarily and traditionally engaged in subsistence uses within a park area; or

(2) The applicant is a local rural resident within a resident zone for another park area, or meets the requirements of paragraph (a)(1) of this section for another park area, and available research shows a pattern of subsistence uses (without use of an aircraft as a means of access for purposes of taking fish and wildlife for subsistence uses) between the park area previously utilized by the permit applicant and the park area for which the permit applicant seeks a subsistence permit.

(b) In order to provide for subsistence uses pending application for and receipt of a subsistence permit, until July 15, 1981, any rural resident whose primary permanent home is outside the

boundaries of a resident zone of a park area and who meets the criteria for a subsistence permit set forth in paragraph (a) of this section may engage in subsistence uses in the park area without a permit in accordance with applicable State and Federal law. Effective July 15, 1981, however, such rural resident must have a subsistence permit as required by paragraph (a) of this section in order to engage in subsistence uses in the park area.

(c) For purposes of this section, the term "family" shall mean all local rural residents related by blood, marriage, or adoption, or any person living within a local rural resident's household on a permanent basis.

**§ 13.45 Prohibition of aircraft use.**

(a) Notwithstanding the provisions of § 13.12 of this part, the use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish or wildlife for subsistence uses within the national park or monument is prohibited except as provided in this section.

(b) *Exceptions.* (1) In extraordinary cases where no reasonable alternative exists, the Superintendent shall allow, pursuant to the terms and conditions of a permit, a local rural resident who permanently resides in an "exempted community" to use aircraft for access to or from lands and water within a national park or monument for purposes of taking fish or wildlife for subsistence uses therein.

(i) A community shall qualify as an "exempted community" if, because of the location of the subsistence resources upon which it depends and the extraordinary difficulty of surface access to these subsistence resources, the local rural residents who permanently reside in the community have no reasonable alternative to aircraft use for access to the subsistence resources.

(ii) A community which is determined, after notice and comment (including public hearing in the affected local vicinity), to meet the description of an "exempted community" set forth in paragraph (b)(1) of this section shall be included in the appropriate special regulations for each park and monument set forth in Subpart C of this part.

(iii) A community included as an "exempted community" in Subpart C of this part may be deleted therefrom upon a determination, after notice and comment (including public hearing in the affected local vicinity) that it does not meet the description of an "exempted community" set forth in paragraph (b)(1) of this section.

(2) Any local rural resident aggrieved by the prohibition on aircraft use set forth in this section may apply for an exception to the prohibition pursuant to the procedures set forth in § 13.51. In extraordinary cases where no reasonable alternative exists, the Superintendent may grant the exception upon a determination that the location of the subsistence resources depended upon and the difficulty of surface access to these resources, or other emergency situation, requires such relief.

(c) Nothing in this section shall prohibit the use of aircraft for access to lands and waters within a national park or monument for purposes of engaging in any activity allowed by law other than the taking of fish and wildlife. Such activities include, but are not limited to, transporting supplies.

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

(a) Notwithstanding any other provision of this chapter, the use of snowmobiles, motorboats, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses is permitted within park areas except at those times and in those areas restricted or closed by the Superintendent.

(b) The Superintendent may restrict or close a route or area to use of snowmobiles, motorboats, or other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses if the Superintendent determines that such use is causing or may cause 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 park area was established.

(c) No restrictions or closures shall be imposed without notice and a public hearing in the affected vicinity. In the case of emergency situations, restrictions or closures shall not exceed sixty (60) days and shall not be extended unless the Superintendent establishes, after notice and public hearing in the affected vicinity, 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 appropriate, 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 Superintendent of the affected park area and the post office or postal authority of every affected community within or near the park area, or by the posting of signs in the vicinity of the restrictions or closures, or both.

(d) Motorboats, snowmobiles, 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 park areas, 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, and other means of surface transportation in accordance with §§ 13.10, 13.11 and 13.13 of this chapter, respectively.

#### § 13.47 Subsistence fishing.

Fish may be taken by local rural residents for subsistence uses in compliance with applicable State and Federal law, including the provisions of §§ 2.13 and 13.22 of this chapter, provided, however, that local rural residents in park areas may fish with a net, seine, trap, or spear where permitted by State law. To the extent consistent with the provisions of this chapter, 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.

#### § 13.48 Subsistence hunting and trapping.

Local rural residents may hunt and trap wildlife for subsistence uses in compliance with applicable State and Federal law. To the extent consistent with the provisions of this chapter, 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.

#### § 13.49 Subsistence use 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 accordance with the

specifications of a permit issued by the Superintendent of the affected park area if such cutting is determined to be compatible with the purposes for which the park area was established.

(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 Superintendent, after notice and public hearing in the affected vicinity, may temporarily close all or any portion of a park area 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 the purposes of this section, the term "temporarily" shall mean only so long as reasonably necessary to achieve the purposes of the closure.

(2) If the Superintendent 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 Superintendent may immediately close all or any portion of a park area 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 Superintendent establishes, after notice and public hearing in the affected vicinity, 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 at least one local newspaper if appropriate, and information about such actions and reasons 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 Superintendent of the affected park area and the post office or postal authority of every affected community within or near the park area, or by the posting of signs in the vicinity of the restrictions, or both.

#### § 13.50 Closure to subsistence uses of fish and wildlife.

(a) Notwithstanding any other provision of this part, the Superintendent, after consultation with the State and adequate notice and

public hearing in the affected vicinity, may temporarily close all or any portion of a park area 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 purposes of this section, the term "temporarily" shall mean only so long as reasonably necessary to achieve the purposes of the closure.

(b) If the Superintendent 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, the Superintendent may immediately close all or any portion of a park area 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 Superintendent establishes, after notice and public hearing in the affected vicinity, 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 appropriate, and information about such actions and reasons 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 Superintendent of the affected park area and the post office or postal authority of every affected community within or near the park area, or by the posting of signs in the vicinity of the restrictions, or both.

#### § 13.51 Application procedures for subsistence permits and aircraft exceptions.

(a) Any person applying for the subsistence permit required by § 13.44(a) of this Subpart, or the exception to the prohibition on aircraft use provided by § 13.45(b)(2) of this Subpart, shall submit his/her application to the Superintendent of the appropriate park area. If the applicant is unable or does not wish to submit the application in written form, the Superintendent shall provide the applicant an opportunity to present the application orally and shall keep a record of such oral application. Each application must include (1) a statement which acknowledges that providing false information in support of the application is a violation of Section

1001 of Title 18 of the United States Code, and (2) additional statements or documentation which demonstrates that the applicant satisfies the criteria set forth in § 13.44(a) for a subsistence permit or § 13.345(b)(2) for the aircraft exception, as appropriate. Except in extraordinary cases for good cause shown, the Superintendent shall decide whether to grant or deny the application in a timely manner not to exceed sixty (60) days following the receipt of the completed application. Should the Superintendent deny the application, he/she shall include in the decision a statement of the reasons for the denial and shall promptly forward a copy to the applicant.

(b) An applicant whose application has been denied by the Superintendent has the right to have his/her application reconsidered by the Alaska Regional Director by contacting the Regional Director within sixty (60) days of the issuance of the denial. The Regional Director may extend the sixty (60) day time limit to initiate a reconsideration for good cause shown by the applicant. For purposes of reconsideration, the applicant shall present the following information:

(1) Any statement or documentation, in addition to that included in the initial application, which demonstrates that the applicant satisfies the criteria set forth in paragraph (a) of this section;

(2) The basis for the applicant's disagreement with the Superintendent's findings and conclusions; and

(3) Whether or not the applicant requests an informal hearing before the Regional Director, and if the applicant does request a hearing.

(i) A description of any information, in addition to that included in the initial application and any written materials presented to the Regional Director, which the applicant intends to present at the hearing;

(ii) The names, addresses, and brief description of the proposed presentation of any person which the applicant intends to present at the hearing on his/her behalf, and the names and addresses of any persons he/she would like to question at the hearing.

(c) If, after examining the information submitted by the applicant in support of a request for an oral hearing, it is clear that the applicant would present relevant information which is substantially distinguishable from or supplementary to the information presented to the Superintendent, the Regional Director shall grant the applicant's request for a hearing. After consideration of the written materials and oral hearing, if granted, and within a reasonable period of time, the

Regional Director shall affirm, reverse, or modify the denial of the Superintendent 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.

### Subpart C—Special Regulations— Specific Park Areas in Alaska

#### § 13.60 Aniakchak National Monument and Preserve.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Aniakchak National Monument and Preserve:

Chignik.  
Chignik Lagoon.

#### § 13.61 Bering Land Bridge National Preserve.

(a) *Subsistence.*  
(1) *Resident Zone.* The following communities and areas are included within the resident zone for Bering Land Bridge National Preserve:

Buckland  
Deering  
Shishmaref  
Wales

(b) *Off-Road Vehicles.* The use of off-road vehicles for purposes of reindeer grazing may be permitted in accordance with a permit issued by the Superintendent.

#### § 13.62 Cape Krusenstern National Monument.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Cape Krusenstern National Monument:

Kivalina  
Kotzebue  
Noatak

#### § 13.63 Denali National Park and Preserve.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Denali National Park and Preserve:

Cantwell  
Minchumina  
Telida

#### § 13.64 Gates of the Arctic National Park and Preserve.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Gates of the Arctic National Park and Preserve:

Alatna  
Allakaket  
Ambler  
Anaktuvuk  
Bettles  
Kobuk

Shungnak

(2) *Aircraft Use.* In extraordinary cases where no reasonable alternative exists, local rural residents who permanently reside in the following exempted community(ies) may use aircraft for access to lands and waters within the park for subsistence purposes in accordance with a permit issued by the Superintendent:

Anaktuvuk

#### § 13.65 Glacier Bay National Park and Preserve. [Reserved]

#### § 13.66 Katmai National Park and Preserve.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Katmai National Park and Preserve:

Egigik  
Igiugig  
Kakhonak  
Levelock

#### § 13.67 Kenai Fjords National Park.

(a) *Subsistence.* Subsistence uses are prohibited in, and the provisions of Subpart B of this part shall not apply to, Kenai Fjords National Park.

#### § 13.68 Kobuk Valley National Park.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Kobuk Valley National Park:

Ambler  
Kiana  
Kobuk  
Noorvik  
Shungnak

#### § 13.69 Lake Clark National Park and Preserve.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Lake Clark National Park and Preserve:

Nondalton  
Port Alsworth

#### § 13.70 Noatak National Preserve.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Noatak National Preserve:

Kivalina  
Kotzebue  
Noatak

#### § 13.71 Wrangell-St. Elias National Park and Preserve.

(a) *Subsistence.* (1) *Resident Zone.* The following communities and areas are included within the resident zone for Wrangell-St. Elias National Park and Preserve:

Chistochina  
Chitina



Copper Center  
Gakona  
Gulkana  
McCarthy  
Mentasta Lake  
Nabesna  
Slana  
Yakutat

(2) *Aircraft Use.* In extraordinary cases where no reasonable alternative exists local rural residents who permanently reside in the following exempted communities(ies) may use aircraft for access to lands and waters within the park for subsistence purposes in accordance with a permit issued by the Superintendent:

Yakutat

**§ 13.72 Yukon Charley National Preserve.**

(a) *Subsistence.* (1) *Resident Zone.*  
The following communities and areas are included within the resident zone for Yukon Charley National Preserve:

Circle  
Eagle  
Eagle Village

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