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36 CFR Ch. I (7–1–01 Edition)

(v) The term *unload* means there is no unexpended shell or cartridge in the chamber or magazine of a firearm; bows, crossbows and spearguns are stored in such a manner as to prevent their ready use; muzzle-loading weapons do not contain a powder charge; and any other implement capable of discharging a missile into the air or under the water does not contain a missile or similar device within the loading or discharging mechanism.

(w) 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, explosive device, or any other implement designed to discharge missiles into the air or under the water.

[46 FR 31854, June 17, 1981, as amended at 62 FR 30234, June 3, 1997; 65 FR 15090, Mar. 21, 2000]

§ 13.2 Applicability and scope.

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

(b) Subpart A of this part 13 contains regulations applicable to 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 this part 13 contains regulations applicable to subsistence uses. Such regulations apply on federally owned lands and interests therein within park areas where subsistence is authorized. Subsistence uses are not allowed in Kenai Fjords National Park, Katmai National Park, Glacier Bay National Park, Klondike Gold Rush National Historical Park, Sitka National Historical Park, the former Mt. McKinley National Park. The regulations in subpart B amend in part the general regulations contained in this chapter and the regulations contained in subpart A of this part 13.

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

(e) Subpart D of this part 13 contains regulations applicable to authorized visitor service providers operating within certain park areas. The regulations in subpart D of this part amend in part the general regulations contained in this chapter.

(f) For purposes of this chapter, “federally owned lands” does not include those land interests:

(1) Tentatively approved to the State of Alaska; or

(2) Conveyed by an interim conveyance to a Native corporation.

[46 FR 31854, June 17, 1981, as amended at 61 FR 35137, July 5, 1996; 61 FR 54339, Oct. 18, 1996; 65 FR 37878, June 19, 2000]

§ 13.3 [Reserved]

§ 13.4 Information collection.

The information collection requirements contained in §§ 13.13, 13.14, 13.15, 13.16, 13.17, 13.31, 13.44, 13.45, 13.49, and 13.51 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1024–0015. The information is being collected to solicit information necessary for the Superintendent to issue permits and other benefits. This information will be used to grant statutory or administrative benefits. In all sections except 13.13, the obligation to respond is required to obtain a benefit. In § 13.13, the obligation to respond is mandatory.

§§ 13.10–13.16 [Reserved]

§ 13.17 Cabins and other structures.

(a) *Purpose and policy.* The policy of the National Park Service is to manage the use, occupancy and disposition of cabins and other structures in park areas in accordance with the language and intent of ANILCA, the National Park Service Organic Act (16 U.S.C. 1 *et seq.*) and other applicable law. Except as Congress has directly and specifically provided to the contrary, the use, occupancy and disposition of cabins

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and other structures in park areas shall be managed in a manner that is compatible with the values and purposes for which the National Park System and these park areas have been established. In accordance with this policy, this section governs the following authorized uses of cabins and other structures in park areas:

- (1) Use and/or occupancy pursuant to a valid existing lease or permit;
- (2) Use and occupancy of a cabin not under valid existing lease or permit;
- (3) Use for authorized commercial fishing activities;
- (4) Use of cabins for subsistence purposes;
- (5) General public use cabins;
- (6) Cabins in wilderness areas;
- (7) Use of temporary facilities related to the taking of fish and wildlife; and
- (8) New cabins and other structures otherwise authorized by law.

(b) *Applicability.* Unless otherwise specified, this section applies to all park areas in Alaska except Klondike Gold Rush National Historical Park and Sitka National Historical Park.

(c) *Definitions.* The following definitions apply to this section:

“Cabin” means a small, usually one-story dwelling of simple construction, completely enclosed, with a roof and walls which may have windows and door(s).

“Claimant” means a person who has occupied and used a cabin or other structure as a primary, permanent residence for a substantial portion of the time, and who, when absent, has the intention of returning to it as his/her primary, permanent residence. Factors demonstrating a person’s primary, permanent residence include, but are not limited to documentary evidence, e.g. the permanent address indicated on licenses issued by the State of Alaska and tax returns and the location where the person is registered to vote.

“Immediate family member” means a claimant’s spouse, or a grandparent, parent, brother, sister, child or adopted child of a claimant or of the claimant’s spouse.

“Possessory interest” means the partial or total ownership of a cabin or structure.

“Right of occupancy” means a valid claim to use or reside in a cabin or other structure.

“Shelter” means a structure designed to provide temporary relief from the elements and is characterized as a lean-to having one side open.

“Substantial portion of the time” means at least 50 percent of the time since beginning occupancy and at least 4 (four) consecutive months of continuous occupancy in every calendar year after 1986.

“Temporary campsite” means a natural, undeveloped area suitable for the purpose of overnight occupancy without modification.

“Temporary facility” means a structure or other manmade improvement that can be readily and completely dismantled and/or removed from the site when the authorized use terminates. The term does not include a cabin.

“Tent platform” means a structure, usually made of manufactured timber products, constructed to provide a solid, level floor for a tent, with or without partial walls not exceeding three feet in height above the floor, and having only the tent fabric, the ridge pole and its support poles extending higher than three feet above the floor.

(d) *Administration*—(1) *Permit application procedures.* Except as otherwise specified in this section, the procedures set forth in §13.31(a) of this chapter govern application for any permit authorized pursuant to this section.

(2) *Notice and comment on proposed permit.* Before a permit for the use and occupancy of a cabin or other structure is issued pursuant to this section, the Superintendent shall publish notice of the proposed issuance in the local media and provide a public comment period of at least sixty days, subject to the following exceptions: Prior notice and comment are not required for a permit authorizing use and occupancy for 14 days or less of a public use cabin or use and occupancy of a temporary facility for the taking of fish or wildlife for sport or subsistence purposes.

(3) *Permit revocation.* (i) The superintendent may revoke a permit or lease issued pursuant to this section when the superintendent determines that the

use under the permit or lease is causing or may cause significant detriment to the principal purposes for which the park area was established. *Provided, however,* that if a permittee submits a written request for a hearing concerning the revocation, based on the cause listed above, of a permit or lease issued pursuant to paragraph (e)(1), (e)(2), (e)(4) or (e)(8) of this section, the matter shall be assigned to an administrative law judge who, after notice and hearing and based on substantial evidence in the administrative record as a whole, shall render a recommended decision for the superintendent's review. The superintendent shall then accept, reject or modify the administrative law judge's recommended decision in whole or in part and issue a final decision in writing.

(ii) The superintendent may revoke or modify any permit or lease issued pursuant to this section when the permittee violates a term of the permit or lease.

(4) *Appeal procedures.* The procedures set forth in §13.31(b) of this chapter govern appeals of a permit denial, a denial of a permit renewal, a permit revocation and a superintendent's final decision on a permit revocation issued pursuant to paragraph (d)(3)(i) of this section.

(5) *Permittee's interest.* (i) A permittee shall not accrue a compensable interest in a cabin or other structure in a park area unless specifically authorized by Federal statutory law.

(ii) A cabin or other structure in a park area may not be sold, bartered, exchanged, assigned or included as a portion of any sale or exchange of other property by a permittee unless specifically authorized by Federal statutory law.

(iii) The Superintendent shall determine the extent and nature of a permittee's possessory interest at the time a permit is issued or denied.

(6) *Cabin Site Compatibility.* The Superintendent shall establish permit conditions that require a permittee—

(i) When constructing, maintaining or repairing a cabin or other structure authorized under this section, to use materials and methods that blend with and are compatible with the immediate and surrounding landscape; and

(ii) When terminating an activity that involves a structure authorized under this section, to dismantle and remove the structure and all personal property from the park area within a reasonable period of time and in a manner consistent with the protection of the park area.

(7) *Access.* (i) A permittee under this section who holds a permit for use and occupancy of a cabin or other structure located on public lands in a park area, not under valid existing lease or permit in effect on December 2, 1980, does not have a "valid property or occupancy interest" for purposes of ANILCA section 1110(b) and its implementing regulations.

(ii) When issuing a permit under this section, the Superintendent shall provide for reasonable access which is appropriate and consistent with the values and purposes for which the park area was established.

(iii) All impacts of the access to a cabin or other structure are deemed to be a part of, and shall be considered in any evaluation of, the effects of a use authorized by a permit issued under this section.

(8) *Abandonment.* (i) An existing cabin or other structure not under valid lease or permit, and its contents, are abandoned:

(A) When no permit application has been received for its use and occupancy before October 20, 1987, one year after the effective date of this section; or

(B) One year after a permit application for its use and occupancy has been denied or a permit for its use and occupancy has been revoked, denied or has expired.

(ii) A claimant or applicant whose application for a permit has been denied or whose permit has expired may remove all or a portion of a cabin or other structure and its contents from a park area, to the extent of his or her possessory interest and under conditions established by the Superintendent, until the date the cabin or structure is considered abandoned.

(iii) The contents of a cabin or other structure are considered abandoned when the cabin or other structure is considered abandoned.

(iv) A person whose permit for the use and occupancy of a cabin or other

structure is revoked may remove his or her personal property from a park area under conditions established by the Superintendent until one year after the date of the permit's revocation.

(v) The Superintendent shall dispose of abandoned property in accordance with §§ 2.22 and 13.22 of this chapter. No property shall be removed from a cabin until such property has been declared abandoned or determined to constitute a direct threat to the safety of park visitors or area resources.

(9) *Emergency use.* During an emergency involving the safety of human life, a person may use any cabin designated by the Superintendent for official government business, general public use or shared subsistence use. The person shall report such use to the Superintendent as soon as is practicable.

(e) *Authorized cabin use and occupancy.* Use or occupancy of a cabin or structure in a park area is prohibited, except pursuant to the terms of a permit issued by the Superintendent under this section or as otherwise authorized by provisions of this chapter.

(1) *Use and/or occupancy pursuant to a valid existing lease or permit.* A person who holds a valid lease or permit in effect on December 2, 1980, for a cabin, homesite or similar structure not subject to the provisions of paragraph (e)(2) of this section, on Federal lands in a park area, may continue the use authorized by that lease or permit, subject to the following conditions:

(i) *Renewal.* The Superintendent shall renew a valid lease or permit upon its expiration in accordance with the provisions of the original lease or permit, subject to any modifications or new conditions that the Superintendent finds necessary for the protection of the values and purposes of the park area.

(ii) *Denial of renewal.* The Superintendent may deny the renewal or continuation of a valid lease or permit only after issuing specific findings, following notice and an opportunity for the leaseholder or permittee to respond, that renewal or continuation constitutes a direct threat to, or a significant impairment of, the purposes for which the park area was established.

(iii) *Transfer.* Subject to any prohibitions or restrictions that apply to transfer in the existing lease or permit, the Superintendent may transfer a valid existing lease or permit to another person at the election or death of the original permittee or leaseholder, only if the Superintendent determines that:

(A) The continued use is appropriate and compatible with the values and purposes of the park area;

(B) The continued use is non-recreational in nature;

(C) There is no demonstrated overriding need for public use; and

(D) The continued use and occupancy will not adversely impact soils, vegetation, water or wildlife resources.

(2) *Use and occupancy of a cabin not under valid existing lease or permit as of December 1, 1978.* (i) A cabin or other residential structure in existence and occupied by a claimant, both prior to December 18, 1973, with the claimant's occupancy continuing for a substantial portion of the time, may continue to be used and occupied by the claimant pursuant to a renewable, nontransferable five-year permit. Upon the request of the claimant or a successor who is an immediate family member and residing in the cabin or structure, the Superintendent shall renew this permit every five years until the death of the last immediate family member of the claimant who was residing with the claimant in the structure under permit at the time of issuance of the original permit.

(ii) A cabin or other residential structure in existence prior to December 1, 1978, with occupancy commenced by a claimant between December 18, 1973 and December 1, 1978, which a claimant has continued to occupy or use for a substantial portion of the time, may continue to be used and occupied by the claimant pursuant to a non-transferable permit. The Superintendent may issue and extend such permit for a term not to exceed December 1, 1999 for such reasons as are deemed by the Superintendent to be equitable and just. The Superintendent shall review the permit at least every two years and modify the permit as necessary to protect park resources and values.

(iii) *Permit application.* In order to obtain, renew or extend a permit, a claimant shall submit a written application. In the case of an application to renew or extend a permit issued pursuant to this paragraph, if no circumstance relating to the permittee's occupancy and use of the cabin or structure has changed in the interim, applicable material submitted by the permittee to satisfy the original application requirements is considered sufficient and need not be resubmitted. The following information is required to be included in a permit application:

(A) Reasonable proof of possessory interest or right of occupancy in the cabin or structure, demonstrated by affidavit, bill of sale, or other documentation. In order for a claimant to qualify for a permit described in paragraph (e)(2)(i) of this section, the claimant's possessory interest or right of occupancy must have been acquired prior to December 18, 1973. In order for a claimant to qualify for a permit described in paragraph (e)(2)(ii) of this section, the claimant's possessory interest or right of occupancy must have been acquired prior to December 1, 1978;

(B) A sketch or photograph that accurately depicts the cabin or structure;

(C) A map that shows the geographic location of the cabin or structure;

(D) The claimant's agreement to vacate and remove all personal property from the cabin or structure upon expiration of the permit;

(E) The claimant's acknowledgement that he or she has no legal interest in the real property on which the cabin or structure is located;

(F) Reasonable proof that the claimant has lived in the cabin or structure during a substantial portion of the time and continues to use the cabin or other structure as a primary, permanent residence; and

(G) A list of all immediate family members residing with the claimant within the cabin or structure for which the application is being submitted. Such list need only include those immediate family members who will be eligible to continue to use and occupy the cabin or other structure upon the death or departure of the original claimant.

(iv) *Permit application deadline.* The deadline for receipt of a permit application for the occupancy and use of an existing cabin or other structure described in paragraph (e)(2)(i) or (ii) of this section is October 20, 1987, one year after the effective date of this section. The Superintendent may extend this deadline for a reasonable period of time only when a permit applicant demonstrates that extraordinary circumstances prevented timely application.

(3) *Use for authorized commercial fishing activities.* The use of a campsite, cabin or other structure in conjunction with commercial fishing activities authorized by section 205 of ANILCA in Cape Krusenstern National Monument, the Malaspina Glacier Forelands area of Wrangell-Saint Elias National Preserve, and the Dry Bay area of Glacier Bay National Preserve is authorized pursuant to the provisions of §13.21(c) of this chapter and the terms of a permit issued by the Superintendent.

(4) *Use of cabins for subsistence purposes.* (i) A local rural resident who is an eligible subsistence user may use an existing cabin or other structure or temporary facility or construct a new cabin or other structure, including temporary facilities, in a portion of a park area where subsistence use is allowed, pursuant to the applicable provisions of subparts B and C of this part and the terms of a permit issued by the Superintendent. However, the Superintendent may designate existing cabins or other structures that may be shared by local rural residents for authorized subsistence uses without a permit.

(ii) For purposes of paragraph (e)(4) of this section, the term "local rural resident", with respect to national parks, monuments, and preserves is defined in §13.42 of this chapter.

(iii) *Permit application.* In order to obtain or renew a permit, a person shall submit an application. In the case of an application to renew a permit issued pursuant to this paragraph, if no circumstance relating to the permittee's occupancy and use of the cabin or structure has changed in the interim, applicable material submitted by the

permittee to satisfy the original application requirements is considered sufficient and need not be resubmitted. The following information is required to be included in a permit application:

(A) An explanation of the applicant's need for the cabin or structure;

(B) A description of an applicant's past, present and anticipated future subsistence uses relevant to his or her need for the cabin or structure;

(C) A blueprint, sketch or photograph of the cabin or structure;

(D) A map that shows the geographic location of the cabin or structure; and

(E) A description of the types of occupancy and schedule for use of the cabin or structure.

All information may be provided orally except the cabin blueprint, sketch or photograph and the map.

(iv) *Permit issuance.* (A) In making a decision on a permit application, the Superintendent shall consider whether the use by local rural residents of a cabin or other structure for subsistence purposes is customary and traditional in that park area and shall determine whether the use and occupancy of a new or existing cabin or structure is "necessary to reasonably accommodate" the applicant's subsistence uses. In making this determination, the Superintendent shall examine the applicant's particular circumstances, including but not limited to his or her past patterns of subsistence uses and his or her future subsistence use plans, reasonable subsistence use alternatives, the specific nature of the subsistence uses to be accommodated by the cabin or structure, the impacts of the cabin or structure on other local rural residents who depend on subsistence uses and the impacts of the proposed structure and activities on the values and purposes for which the park area was established.

(B) The Superintendent may permit the construction of a new cabin or other new structure for subsistence purposes only if a tent or other temporary facility would not adequately and reasonably accommodate the applicant's subsistence uses without significant hardship and the use of no other type of cabin or other structure provided for in this section can adequately and reasonably accommodate

the applicant's subsistence uses with a lesser impact on the values and purposes for which the park area was established.

(v) *Permit terms.* The Superintendent shall, among other conditions, establish terms of a permit that:

(A) Allow for use and occupancy during the harvest or gathering of subsistence resources, at such times as may be reasonably necessary to prepare for a harvest season (e.g., opening or closing a cabin or structure at the beginning or end of a period of use), and at other times reasonably necessary to accommodate the permittee's specified subsistence uses;

(B) Prohibit residential use in conjunction with subsistence activities; and

(C) Limit the term of a permit to a period of five years or less.

(vi) *Temporary facilities.* A temporary facility or structure directly and necessarily related to the taking of subsistence resources may be constructed and used by a qualified subsistence user without a permit so long as such use is for less than thirty days and the site is returned to a natural condition. The Superintendent may establish conditions and standards governing the use or construction of these temporary structures and facilities which shall be published annually in accordance with §1.7 of this chapter.

(vii) *Shared use.* In any permit authorizing the construction of a cabin or other structure necessary to reasonably accommodate authorized subsistence uses, the Superintendent shall provide for shared use of the facility by the permittee and other local rural residents rather than for exclusive use by the permittee.

(5) *General public use cabins.* (i) The Superintendent may designate a cabin or other structure located outside of designated wilderness areas and not otherwise under permit under this section (or under permit for only a portion of the year) as a public use cabin. Such designated public use cabins are intended for short term recreational use and occupancy only.

(ii) The Superintendent may establish conditions and develop an allocation system in order to manage the use of designated public use cabins.

(iii) The Superintendent shall mark all public use cabins with a sign and shall maintain a map showing their locations.

(6) *Cabins in wilderness areas.* The use and occupancy of a cabin or other structure located in a designated wilderness area are subject to the other applicable provisions of this section, and the following conditions:

(i) A previously existing public use cabin located within wilderness designated by ANILCA may be allowed to remain and may be maintained or replaced subject to such restrictions as the Superintendent finds necessary to preserve the wilderness character of the area. As used in this paragraph, the term “previously existing public use cabin” means a cabin or other structure which, on November 30, 1978, was recognized and managed by a Federal land managing agency as a structure available for general public use.

(ii) Within a wilderness area designated by ANILCA, a new public use cabin or shelter may be constructed, maintained and used only if necessary for the protection of the public health and safety.

(iii) A cabin or other structure located in a designated wilderness area may not be designated, assigned or used for commercial purposes, except that designated public use cabins may be used in conjunction with commercial guided visitor services, but not to the exclusion of the general public.

(7) *Use of temporary facilities related to the taking of fish and wildlife.* (i) In a national preserve where the taking of fish and wildlife is permitted, the construction, maintenance or use of a temporary campsite, tent platform, shelter or other temporary facility or equipment directly and necessarily related to such activities is prohibited except pursuant to the terms of a permit issued by the Superintendent. This requirement applies only to a temporary facility that will remain in place for a period longer than 14 days.

(ii) *Permit application.* In order to obtain or renew a permit, a person shall submit an application. In the case of an application to renew a permit issued pursuant to this paragraph, if no circumstance relating to the permittee’s occupancy and use of the structure has

changed in the interim, applicable material submitted by the permittee to satisfy the original application requirements is considered sufficient and need not be resubmitted. The following information is required to be included in a permit application:

(A) An explanation of the applicant’s need for the temporary facility, including a description of the applicant’s hunting and fishing activities relevant to his or her need for the facility;

(B) A diagram, sketch or photograph of the temporary facility;

(C) A map that shows the geographic location of the temporary facility; and

(D) A description of both the past use (if any) and the desired use of the temporary facility, including a schedule for its projected use and removal. All information may be provided orally except the diagram, sketch or photograph of the facility and the map.

(iii) *Permit issuance.* (A) In making a decision on a permit application, the Superintendent shall determine whether a temporary facility is “directly and necessarily related to” the applicant’s legitimate hunting and fishing activities by examining the applicant’s particular circumstances, including, but not limited to his or her reasonable need for a temporary facility and any reasonable alternatives available that are consistent with the applicant’s needs. The Superintendent shall also consider whether the proposed use would constitute an expansion of existing facilities or use and would be detrimental to the purposes for which the national preserve was established. If the Superintendent finds that the proposed use would either constitute an expansion above existing levels or be detrimental to the purposes of the preserve, he/she shall deny the permit. The Superintendent may authorize the replacement or relocation within the national preserve of an existing temporary facility or structure.

(B) The Superintendent shall deny an application for a proposed use that would exceed a ceiling or allocation established pursuant to the national preserve’s General Management Plan.

(iv) *Permit terms.* The Superintendent shall allow for use and occupancy of a temporary facility only to the extent

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that such facility is directly and necessarily related to the permittee's hunting and fishing activities, and shall provide that the temporary facility be used and maintained in a manner consistent with the protection of the values and purposes of the park area in which it is located. The Superintendent may also establish permit terms that:

(A) Limit use to a specified period, not to exceed the applicable hunting or fishing season and such additional brief periods necessary to maintain the facility before and after the season;

(B) Require the permittee to remove a temporary facility and all associated personal property from the park area upon termination of the permittee's hunting and fishing activities and related use of the facility or on a specific date;

(C) Require reasonable seasonal relocation of a temporary facility in order to protect the values and purposes for which the park area was established;

(D) Require that a temporary facility be used on a shared basis and not exclusively by the permittee; and

(E) Limit the overall term of a permit to a reasonable period of time, not to exceed one year.

(8) *New cabins and other structures otherwise authorized by law.* The Superintendent may issue a permit for the construction, temporary use, occupancy, and maintenance of a cabin or other structure which is authorized by law but not governed by any other paragraph in this section.

[51 FR 33484, Sept. 19, 1986]

§ 13.18 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, or as set forth for specific park areas in subpart C of this part.

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

§ 13.19 Weapons, traps and nets.

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

National Historical Park and the former Mt. McKinley National Park, Glacier Bay National Monument and Katmai National Monument.

(b) Firearms may be carried within park areas in accordance with applicable Federal and State laws, 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, may use, possess, or carry traps, nets and other weapons in accordance with applicable State and Federal laws.

§ 13.20 Preservation of natural features.

(a) This section applies to all park areas in Alaska except Klondike Gold Rush National Historical Park, Sitka National Historical Park, the former Mt. McKinley National Park, Glacier Bay National Monument, and Katmai National Monument.

(b) *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