

Dated: February 12, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: March 3, 1999.

Donna E. Shalala,

Secretary.

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DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1090-AA69

Rules Applicable in Indian Affairs Hearings and Appeals

AGENCY: Office of Hearings and Appeals (OHA), Interior.

ACTION: Final rule.

SUMMARY: OHA is amending its regulations on the authority of administrative judges to make heirship determinations in accordance with the White Earth Reservation Land Settlement Act of 1985, as amended (WELSA). This action will amend the definitions of the terms "Project Director" and "administrative judge" and correct the address provided for the "Minnesota Agency, Bureau of Indian Affairs" in the existing regulations. The amendment to the definition of "administrative judge" will allow the Director of OHA to redelegate his authority, as designee of the Secretary, for making heirship determinations as otherwise provided for in these regulations, to other appropriate Agency officials in accordance with the WELSA. Amending the definition of the term administrative judge will increase efficiency and allow the Director of OHA to ensure timely and prompt determinations under the WELSA.

The amendment to the definition of "Project Director" and the correction of the address shown for the "Minnesota Agency, Bureau of Indian Affairs," will clarify the existing regulations to accurately reflect the current practice and organization of the BIA.

DATES: Final rule effective on March 18, 1999.

ADDRESSES: Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, 11th Floor, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Charles E. Breece, Deputy Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson

Boulevard, Arlington, VA 22203.

Telephone: (703) 235-3810.

SUPPLEMENTARY INFORMATION:

Background

The Department of the Interior is amending the regulations found at 43 CFR 4.350-4.357, setting forth the rules and procedures applicable to determinations of the heirs of persons who died entitled to compensation under the White Earth Reservation Land Settlement Act of 1985 as amended (WELSA) (Pub. L. 99-264, 100 Stat. 61). The regulations now provide that the heirship determinations shall be made by an administrative judge of the OHA to whom the Director of the OHA has redelegated his authority, as designee of the Secretary. In the interest of promoting administrative efficiency, OHA is amending the regulations to allow the Director greater flexibility to redelegate his authority to any OHA official deemed qualified to perform this function consistent with the WELSA. The definition of the term "administrative judge" is accordingly amended to include administrative judges, administrative law judges, attorney-advisors, and other appropriate officials in OHA deemed qualified by the Director of the OHA.

In addition, the definition of the term "Project Director" is amended to accurately reflect BIA practice. Whereas previously the term was defined as "the officer in charge of the White Earth Land Settlement Branch of the Minneapolis Area Office," it is amended to specifically include the "Superintendent of the Minnesota Agency, Bureau of Indian Affairs, or other Bureau of Indian Affairs official with delegated authority from the Minneapolis Area Director to serve as the federal officer in charge of the White Earth Reservation Land Settlement Project." Finally, the list of sites is amended to show the correct address for the Minnesota Agency.

Determination To Issue as a Final Rule

OHA has determined that this amendment is exempt from prior notice and other public procedures pursuant to 5 U.S.C. 553(b)(A) as this is a matter of internal agency management, concerning rules of agency organization, procedure and practice. By this action, the Department is only clarifying who can make heirship determinations and who can act as the Project Director for the BIA. The public is advised of the manner in which the Department proposes to assign cases for future determinations. This amendment does not make any substantive changes to the rules issued to implement the WELSA

and therefore, will have no substantive impact on heirship determinations. Accordingly, OHA has not published a notice of proposed rulemaking on the discretionary decision of the Director to delegate his authority to make WELSA heirship determinations to other Agency officials.

Determination To Make Rule Effective Immediately

Because these amendments do not impact the substance of these regulations or heirship determinations under the WELSA, and in the interest of avoiding delays in the processing of the cases at issue, OHA has determined it appropriate to waive the requirement of publication thirty days in advance of the effective date found at 5 U.S.C. 553(d). Accordingly, this amendment is issued as a final rule effective on the date of publication in the **Federal Register** for good cause shown under 5 U.S.C. 553(d)(3).

Executive Order 12866

This rule is not a significant rule as defined in Executive Order 12866, and therefore, is not subject to review by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

This rule does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act because the rule relates to agency procedure. 5 U.S.C. 601, *et seq.*

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements subject to approval by the OMB under 44 U.S.C. 3501, *et seq.*

Unfunded Mandates Reform Act of 1995

This rule will not impose an unfunded mandate of \$100 million or more in any given year on local, tribal, and State governments in the aggregate, or on the private sector in accordance with the Unfunded Mandates Reform Act. 2 U.S.C. 1501, *et seq.*

Drafting Information: The primary author of this rule is Charles E. Breece, Deputy Director, Office of Hearings and Appeals, U.S. Department of the Interior.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure.

For the reasons set forth in the preamble, the Department amends subpart D, part 4 of title 43 of the Code of Federal Regulations as follows:

1. The authority citation for part 4 continues to read as follows:

Authority: R.S. 2478, as amended, 43 U.S.C. sec. 1201, unless otherwise noted.

2. Section 4.350 is amended by revising paragraphs (b), (c)(3) and (c)(6) to read as follows:

§ 4.350 Authority and scope.

* * * * *

(b) Whenever requested to do so by the Project Director, an administrative judge shall determine such heirs by applying inheritance laws in accordance with the White Earth Reservation Settlement Act of 1985 as amended, notwithstanding the decedent may have died testate.

(c) * * *

The term *Project Director* means the Superintendent of the Minnesota Agency, Bureau of Indian Affairs, or other Bureau of Indian Affairs official with delegated authority from the Minneapolis Area Director to serve as the federal officer in charge of the White Earth Reservation Land Settlement Project.

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(6) The term *administrative judge* means an administrative judge or an administrative law judge, attorney-advisor, or other appropriate official of the Office of Hearings and Appeals to whom the Director of the Office of Hearings and Appeals has redelegated his authority, as designee of the Secretary, for making heirship determinations as provided for in these regulations.

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3. Section 4.352 is amended by revising the address provided for the "Minnesota Agency, Bureau of Indian Affairs" in paragraph (b)(2) to read as follows:

§ 4.352 Determination of administrative judge and notice thereof.

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(b) * * *

(2) * * * Minnesota Agency, Bureau of Indian Affairs, Room 418, Federal Building, 522 Minnesota Avenue, NW, Bemidji, Minnesota 56601-3062.

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Dated: February 19, 1999.

John Berry,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 99-6545 Filed 3-17-99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 103098C]

Fisheries of the Gulf of Mexico; Generic Essential Fish Habitat Amendment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of agency decision.

SUMMARY: NMFS announces the partial approval of the Generic Essential Fish Habitat (EFH) Amendment (Gulf EFH Amendment) to the Fishery Management Plans (FMPs) of the Gulf of Mexico. The Gulf EFH Amendment was submitted by the Gulf of Mexico Fishery Management Council (Council).

DATES: This agency decision is effective February 8, 1999.

FOR FURTHER INFORMATION CONTACT: Michael C. Barnette, 727-570-5305.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish a document in the **Federal Register** stating that the amendment is available for public review and comment. On November 9, 1998, NMFS published a notice of availability (NOA) of the Gulf EFH Amendment to the Gulf of Mexico FMPs and requested public comments through January 8, 1999 (63 FR 60287).

On February 8, 1999, after considering comments received, NMFS partially approved the Gulf EFH Amendment. NMFS determined that approval was warranted for the amendment, except for sections on the identification of EFH for managed species and the assessment of fishing impacts on EFH. NMFS approved the identification of EFH for 26 selected species and the coral complex, but did not approve the identification of EFH for the remaining species under management. In addition, NMFS approved the assessment of impacts on EFH from the use of three types of fishing gear (trawls, recreational fishing gear, and traps/pots), but determined that an assessment of the impact on EFH by the other gears used

in the Gulf of Mexico should be considered in subsequent amendments as more information becomes available.

Comments and Responses

Twelve commenters responded during the comment period for the Gulf EFH Amendment.

Comment 1: Several commenters requested an extension of the comment period past January 8, 1999, based on their belief that they could not finish their comments on this lengthy amendment within the 60-day period.

Response: Section 304(a) of the Magnuson-Stevens Act limits the comment period to 60 days and provides no authority to extend it. Furthermore, due to a statutory deadline of 30 days after the end of the NOA comment period for action on the Gulf EFH Amendment, NMFS was unable to grant an extension to the comment period.

Comment 2: Four commenters commented on issues regarding the scope of review within the EFH document. All four groups found fault, to varying degrees, with portions of the recommendations to minimize impacts of identified threats from non-fishing activities. The commenters stated that many of the recommendations were inappropriate, based on current EFH designation, and did not take into account current permitting regulations or restrictions from other agencies. One commenter cited, for example, that the Council's recommendation for a prescribed cut-off depth for oil rig structure removal does not take into consideration the Rigs-to-Reefs program (allocation of disposed oil rigs for an artificial reef program). Additionally, three commenters disagreed with the broad EFH description, claiming that the description detracts from the benefits of the EFH designation process; they claimed that by designating as EFH, collectively, all Gulf of Mexico waters from the shoreline to the EEZ, EFH is not unique. They stated that by broadly encompassing all waters, this description seriously threatens future activities currently in compliance with the law within the region.

Response: NMFS believes the Council's recommendations in the Gulf EFH Amendment to minimize adverse effects from non-fishing related activities have been misinterpreted. The recommendations referenced in the comments were intended by the Council as general guidance only. Due to time and resource constraints, the Council opted for a broad range of recommendations to serve as general guidance for any future actions. NMFS supports this decision by the Council.