

Dated: June 1, 2001.

**James D. Hull,**

*Rear Admiral, U.S. Coast Guard, Commander,  
Ninth Coast Guard District.*

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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 242

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 100

#### **Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Emergency Closures and Adjustments—Kuskokwim and Yukon River Drainages**

**AGENCIES:** Forest Service, USDA; Fish and Wildlife Service, Interior.

**ACTION:** Emergency closures and adjustments.

**SUMMARY:** This provides notice of the Federal Subsistence Board's emergency closures to protect chinook and chum salmon escapement in the Kuskokwim River drainage and chinook and summer-run chum salmon escapement in the Yukon River drainage. The Board included authority for the Federal in-season managers to lift these restrictions if salmon run strengths are higher than predicted and conservation and subsistence needs are likely to be met. This also provides notice of the Board's action to remove an unneeded requirement for the removal of the dorsal fin of chinook taken for subsistence purposes in a portion of the Yukon River. This regulatory adjustment and the closures provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on February 13, 2001. Those regulations established seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2001 regulatory year.

**DATES:** The Kuskokwim River drainage closure and the Yukon River drainage regulatory adjustment and closure are effective June 1, 2001, through July 30, 2001.

**FOR FURTHER INFORMATION CONTACT:** Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786-3888. For questions specific to National Forest

System lands, contact Ken Thompson, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786-3592.

#### **SUPPLEMENTARY INFORMATION:**

#### **Background**

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, Part 100 and Title 36, Part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2001 fishing seasons, harvest limits, and methods and means were published on February 13, 2001, (66 FR 10142).

Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

These emergency closures and adjustments are necessary because of predictions of extremely weak returns of chinook and chum salmon in the Kuskokwim River drainage and of chinook and summer-run chum salmon in the Yukon River drainage. These emergency actions are authorized and in accordance with 50 CFR 100.19(d) and 36 CFR 242.19(d).

#### *Kuskokwim River Drainage*

The Federal Subsistence Board, ADF&G, and subsistence users are concerned that not enough chinook and chum salmon will be returning to the Kuskokwim River and its tributaries in 2001 to meet spawning escapement objectives or subsistence needs. Adequate spawning escapement is necessary to assure sustaining the population. Last year, subsistence salmon harvests in the Kuskokwim River were among the lowest in the past 12 years. Returns of chinook and chum salmon have been extremely poor over the last three years. The expected low runs and poor spawning escapements in 2001 could jeopardize the viability of future returns. Federal and State Biologists anticipate that the 2001 salmon returns will be critically low, and subsistence needs in some areas may not be met.

The BOF met in January, 2001 to review the status of salmon returns on the Kuskokwim River and identified Kuskokwim River chinook and chum salmon as stocks of concern. The BOF then took action to establish a salmon rebuilding plan for the Kuskokwim River. In addition, ADF&G has indicated that no commercial fishing periods are being considered for June and July for the Kuskokwim River, that they intend to limit the sport fishery to one salmon per person per day, and that they may close the sport fishery for salmon in the

entire Kuskokwim River drainage if the runs are as weak as expected. The ADF&G biologists and U.S. Fish & Wildlife Service personnel have been conducting public meetings, producing information posters, and publishing news articles to let the local users know about concerns regarding the expected low salmon returns and advise them regarding the restrictions and closures to protect spawning escapement.

On May 10, 2001, in public forum and after hearing testimony, the Federal Subsistence Board adopted an emergency action closing the chinook and chum salmon fishery on Federal waters in the Kuskokwim River drainage to all users except those Federally-qualified subsistence users. The closure is for 60 days (the maximum amount of time allowed under 50 CFR 100.19(d) and 36 CFR 242.19(d)) from June 1, 2001, to July 30, 2001. This is the period of the greatest chinook and chum salmon run strength in the river. The effect of that action is to close the sport take for chinook and chum salmon in the Kuskokwim River drainage within the boundaries of the Yukon Delta National Wildlife Refuge, within or adjacent to Denali National Park and Preserve, and within or adjacent to Lake Clark National Park and Preserve and to close subsistence harvest on those same waters by any residents living outside the Kuskokwim River drainage. Although commercial fisheries are currently closed and ADF&G has indicated that an opening in June or July is highly unlikely, this action would prevent any such opening from occurring on Federal waters. Additionally, any chinook or chum salmon taken incidentally in another fishery must be released immediately. In other words, if you catch a chinook or chum salmon while fishing for sheefish or pike, you must immediately release it. This regulatory action is necessary to assure the continued viability of the chinook and chum salmon runs and provide a subsistence priority during a period of limited harvest opportunity. Should the runs come in stronger than expected with spawning escapement and subsistence needs being met, the delegated field manager may remove this restriction.

#### *Yukon River Drainage*

Returns of chinook and summer chum salmon to the Yukon River are again expected to be at or below the record lows of 2000. Very low catches of chinook and chum salmon were reported by many subsistence fishermen in 2000. Chinook and summer chum salmon escapement monitoring projects in 2000 showed that the returns of these

species were very weak throughout most of the Yukon River drainage. Federal and State Managers and most subsistence users in the region have strong concerns that not enough chinook or summer chum salmon will reach their spawning grounds in 2001. There are similar concerns that subsistence needs in some areas may not be met.

At their January 2001 meeting, the BOF identified the Yukon River chinook and chum salmon as stocks of concern and for the first time implemented a reduced subsistence fishing schedule due to conservation concerns. In addition, ADF&G has indicated that any commercial fishing periods are highly unlikely for the Yukon River and that they may close the sport fishery for chinook salmon if the runs are weak. The ADF&G biologists and U.S. Fish & Wildlife Service personnel have been conducting public meetings, producing information posters, and publishing news articles to let the local users know about concerns regarding the expected low salmon returns and advise them regarding the restrictions and closures to protect spawning escapement.

On May 10, 2001, in public forum and after hearing testimony, the Federal Subsistence Board adopted an emergency action closing the chinook and summer chum salmon fishery on all Federal waters in the Yukon River drainage for 60 days (the maximum amount of time allowed under 50 CFR 100.19(d) and 36 CFR 242.19(d)) from June 1, 2001, to July 30, 2001, to all users except those Federally-qualified. The effect of that action is to close the sport take for chinook and summer chum salmon on Federal waters in the Yukon River drainage and to close subsistence harvest on those same waters by any residents living outside the Yukon River drainage or the community of Stebbins. Although Yukon River commercial salmon fisheries are currently closed and ADF&G has indicated that an opening is highly unlikely, this action would prevent any such opening from occurring on Federal waters. Additionally, any chinook or summer chum salmon taken incidentally to another fishery must be released immediately. In other words, if you catch a chinook or chum salmon while fishing for sheefish or pike, you must immediately release it.

This action is necessary to assure the continued viability of the chinook and summer chum salmon runs and to provide a subsistence priority during a period of limited harvest opportunity. Should the runs come in stronger than expected with spawning escapement

and subsistence needs being met, the delegated field manager may remove this restriction. Additionally, with no commercial harvest scheduled or expected for the 2001 season, the requirement found at 50 CFR 100.27(i)(3)(xxi) and 36 CFR 242.27(i)(3)(xxi) to remove the dorsal fin of subsistence-caught chinook salmon becomes an unnecessary burden upon the subsistence user. The Board therefore temporarily suspended this requirement during the same period as the closure.

The Board finds that additional public notice and comment requirements under the Administrative Procedures Act (APA) for these emergency closures are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of fish populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d) to make this rule effective June 1, 2001.

#### **Conformance With Statutory and Regulatory Authorities**

##### *National Environmental Policy Act Compliance*

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276.)

##### *Compliance With Section 810 of ANILCA*

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife

populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

#### *Paperwork Reduction Act*

The adjustment and emergency closures do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

#### *Other Requirements*

The adjustment and emergency closures have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as boat, fishing tackle, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant under the definition in this Act. The Departments certify that the adjustment and emergency closures will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustment and emergency closures have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustment and emergency closures will not impose a cost of \$100 million or more in any given year on local or State governments or private

entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustment and emergency closures meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustment and emergency closures do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

#### **Drafting Information**

William Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

**Authority:** 16 U.S.C. 3, 472, 551, 668dd, 3101-3126; 18 U.S.C. 3551-3586; 43 U.S.C. 1733.

Dated: May 30, 2001.

**Kenneth E. Thompson,**

*Subsistence Program Leader, USDA-Forest Service.*

**Thomas H. Boyd,**

*Acting Chair, Federal Subsistence Board.*

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[UT-001-0033; FRL-6996-9]

### **Clean Air Act Promulgation of Extension of Attainment Dates for PM<sub>10</sub> Nonattainment Areas; Utah**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is granting a one-year extension of the attainment date for the Salt Lake County, Utah nonattainment area for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>). EPA is also granting two one-year extensions of the attainment date for the Utah County, Utah PM<sub>10</sub> nonattainment area. Salt Lake and Utah Counties failed to attain the National Ambient Air Quality Standards (NAAQS) for PM<sub>10</sub> by the applicable attainment date of December 31, 1994. The action is based on EPA's evaluation of air quality monitoring data and extension requests submitted by the State of Utah. EPA is also making the determination that Salt Lake County, Utah attained the PM<sub>10</sub> NAAQS as of December 31, 1995 and Utah County, Utah attained the PM<sub>10</sub> NAAQS as of December 31, 1996. The intended effect of this action is to approve requests from the Governor of Utah in accordance with section 188(d) of the Clean Air Act (CAA).

**EFFECTIVE DATE:** This final rule is effective July 18, 2001.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. Copies of the State documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114.

**FOR FURTHER INFORMATION CONTACT:** Cindy Rosenberg, EPA, Region VIII, (303) 312-6436.

**SUPPLEMENTARY INFORMATION:** On September 21, 2000 (65 FR 57127), EPA published a notice of proposed rulemaking (NPR) for Utah. The NPR proposed approval of a one-year extension of the attainment date for the Salt Lake County, Utah PM<sub>10</sub> nonattainment area and two one-year extensions of the attainment date for the