

**FOR FURTHER INFORMATION CONTACT:** Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415-6743.

**SUPPLEMENTARY INFORMATION:** The SR 84 Bridge across the South Fork of the New River at Ft. Lauderdale, Broward County, Florida is a single leaf bridge with a vertical clearance of 21.0 feet above mean high water (MHW) measured at the fenders in the closed position with a horizontal clearance of 40 feet. On October 2, 2001, the Florida Department of Transportation, the drawbridge owner, requested a deviation from the current operating regulation in 33 CFR 117.315(b) which requires the draw of the SR 84 Bridge, mile 4.4 at Fort Lauderdale, to open on signal if at least 24 hours notice is given. Public vessels of the United States, regularly scheduled cruise vessels, tugs with tows, and vessels in distress shall be passed through the draw as soon as possible. This temporary deviation was requested to allow necessary repairs to the drawbridge in a critical time sensitive manner.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.315(b) to complete repairs to the drawbridge. Under this deviation, the SR 84 Bridge need not open from October 29, 2001 through November 3, 2001, except in the event of an emergency with 24 hours advance notification.

Dated: October 25, 2001.

**Greg E. Shapley,**

*Chief, Bridge Administration, Seventh Coast Guard District.*

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**BILLING CODE 4910-15-U**

## 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 River Drainage**

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

**ACTION:** Emergency closures and adjustments.

**SUMMARY:** This provides notice of the Federal Subsistence Board's in-season management actions to protect chinook and chum salmon escapement in the Kuskokwim River drainage. These regulatory adjustments 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 fourth Kuskokwim River drainage closure and regulatory adjustment was effective June 17, 2001, through June 19, 2001, for Districts 1 and 2. The fifth Kuskokwim River drainage closure and regulatory adjustment was effective June 24, 2001, through June 26, 2001, for Districts 1 and 2. The sixth Kuskokwim River drainage closure and regulatory adjustment was effective July 1, 2001, through July 10, 2001, for Districts 1 and 2. The seventh Kuskokwim River drainage closure and regulatory adjustment was effective July 11, 2001, through July 31, 2001, for Districts 1 and 2. The eighth Kuskokwim River drainage closure and regulatory adjustment was effective July 27, 2001, through July 31, 2001, for Districts 1 and 2.

**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 (restricted subsistence fishing schedules) and adjustments were necessary because of predictions of extremely weak returns of chinook and chum salmon in the Kuskokwim 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 were very concerned that not enough chinook and chum salmon would be returning to the Kuskokwim River and its tributaries in 2001 to meet both spawning escapement objectives and 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 3 years. The expected low runs and poor spawning escapements in 2001 could jeopardize the viability of future returns. Federal and State biologists anticipated that the 2001 salmon returns would 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 indicated that no commercial fishing periods were being considered for June and July for the Kuskokwim River, that they intended to limit the sport fishery to one salmon per person per day, and that they would close the sport fishery for salmon in the entire Kuskokwim River drainage if the runs were weaker than expected. The ADF&G and U.S. Fish & Wildlife Service personnel conducted public meetings, produced information posters, and published 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 the first emergency action closing the chinook and chum salmon fishery on Federal waters in the Kuskokwim River drainage to all users except Federally-qualified subsistence users. That closure was 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 (66 FR 32750, June 18, 2001). This is the period of the majority of chinook and chum salmon run passage through the river. The effect of that action was 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 Fishery Management Area. Additionally, any chinook or summer chum salmon taken incidentally in another fishery must be released immediately. In other words, if you catch a chinook or chum salmon in Federal waters while fishing for sheefish or pike, you must immediately release it. Although commercial fisheries were closed and ADF&G indicated that an opening in June or July was highly unlikely, this action would prevent any such opening from occurring on Federal waters. Should the runs have come in stronger than expected with spawning escapements and subsistence needs being met, the delegated field manager, as authorized by the Federal Subsistence Board, could have removed this restriction.

On June 1, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers and the Kuskokwim River Salmon Management Working Group (KRSMWG), initiated a second closure on Federal waters for the period from June 3, 2001, through June 5, 2001, in the Kuskokwim Area District 1 for the subsistence gillnet and fishwheel fisheries (66 FR 33642, June 25, 2001). This reduced the subsistence salmon fishing schedule to four days that week. In Kuskokwim Area District 1, fishing for whitefish, suckers and other non-salmon species during closed salmon fishing periods continued to be allowed seven days per week with gillnets of 4 inches or less stretch mesh that are 60 feet or less in length. Salmon caught incidentally in those nets could be kept for subsistence uses.

On June 8, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers and the KRSMWG initiated a third closure on Federal waters for the period from June 10, 2001, through June 12, 2001, in the Kuskokwim Area Districts 1 and 2 for the subsistence gillnet and fishwheel fisheries (66 FR 33642, June 25, 2001). In Kuskokwim Area District 1 and 2, fishing for whitefish, suckers and other non-salmon species during closed salmon fishing periods continued to be allowed seven days per week with gillnets of 4 inches or less stretch mesh that are 60 feet or less in length. Salmon caught incidentally in those nets could be kept for subsistence uses.

On June 14, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers and the KRSMWG initiated a fourth closure on Federal waters for the period from June 17, 2001, through June 19, 2001, in the Kuskokwim Area Districts 1 and 2 for the subsistence gillnet and fishwheel fisheries. In Kuskokwim Area District 1 and 2, fishing for whitefish, suckers and other non-salmon species during closed salmon fishing periods continued to be allowed seven days per week with gillnets of 4 inches or less stretch mesh that are 60 feet or less in length. Salmon caught incidentally in those nets could be kept for subsistence uses.

On June 22, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers and the KRSMWG initiated a fifth closure on Federal waters for the period from June 24, 2001, through June 26, 2001, in the Kuskokwim Area Districts 1 and 2 for the subsistence gillnet and fishwheel fisheries. This action was necessary due to continued low returns. In Kuskokwim Area District 1 and 2, fishing for whitefish, suckers and other non-salmon species during closed salmon fishing periods continued to be allowed seven days per week with gillnets of 4 inches or less stretch mesh that are 60 feet or less in length. Salmon caught incidentally in those nets could be kept for subsistence uses.

On June 28, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers and the KRSMWG initiated a sixth closure (Sunday through Tuesday of each week) on Federal waters for the period from July 1, 2001, through July 10, 2001, in the Kuskokwim Area Districts 1 and 2 for the subsistence gillnet and fishwheel fisheries. This action was necessary due to continued low returns. In Kuskokwim Area District 1 and 2, fishing for whitefish, suckers and other non-salmon species during closed salmon fishing periods continued to be allowed seven days per week with gillnets of 4 inches or less stretch mesh that are 60 feet or less in length. Salmon caught incidentally in those nets could be kept for subsistence uses.

On July 10, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers and the KRSMWG initiated a seventh closure (Friday through Tuesday of each week) on Federal waters for the period from July 11, 2001, through July 10, 2001, in the Kuskokwim Area Districts 1 and 2 for the subsistence gillnet and fishwheel

fisheries. This action was necessary due to continued low returns. In Kuskokwim Area District 1 and 2, fishing for whitefish, suckers and other non-salmon species during closed salmon fishing periods continued to be allowed seven days per week with gillnets of 4 inches or less stretch mesh that are 60 feet or less in length. Salmon caught incidentally in those nets could be kept for subsistence uses.

On July 25, 2001, the Federal Subsistence Board, acting through the delegated field official and in concert with ADF&G managers and the KRSMWG initiated an eighth action (establishing four days of each week) on Federal waters for the period from July 27, 2001, through July 31, 2001, in the Kuskokwim Area Districts 1 and 2 for the subsistence gillnet and fishwheel fisheries. In Kuskokwim Area District 1 and 2, fishing for whitefish, suckers and other non-salmon species during closed salmon fishing periods continued to be allowed seven days per week with gillnets of 4 inches or less stretch mesh that are 60 feet or less in length. Salmon caught incidentally in those nets could be kept for subsistence uses.

These regulatory actions were necessary to assure the continued viability of the chinook and chum salmon runs and provide a long-term subsistence priority during a period of limited harvest opportunity. These closures and adjustments brought the Federal subsistence fishing regulations in line with the similar ADF&G action for unified management and minimized confusion under the dual management system.

The Board finds that additional public notice and comment requirements under the Administrative Procedure 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 as indicated in the **DATES** section.

## **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 guides and 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. 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), Executive Order 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.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply,

distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

#### *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: October 4, 2001.

**Kenneth E. Thompson,**

*Subsistence Program Leader, USDA-Forest Service.*

**Thomas H. Boyd,**

*Acting Chair, Federal Subsistence Board.*

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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—Redoubt and Salmon Lakes Drainages**

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

**ACTION:** Emergency closures.

**SUMMARY:** This provides notice of the Federal Subsistence Board's in-season management actions to protect sockeye salmon escapement in the Redoubt and Salmon Lakes drainages. These regulatory adjustments 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:** This closure was effective July 13, 2001, through August 31, 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 were necessary because of predictions of extremely weak returns of sockeye salmon in the Redoubt and Salmon Lakes drainages. These emergency actions are authorized and in accordance with 50 CFR 100.19(d) and 36 CFR 242.19(d).

#### *Redoubt Lake Drainage*

Since the projected escapement was well below desirable levels for Redoubt Lake, the system was closed to provide for spawning escapement needs. The total return to July 11, 2001, was 1,089 sockeye. Usually 16% of the run returned to the lake by that time. The projected escapement is 7,571 fish for the 2001 season. This projection represents 21% of the average escapement of 36,000 sockeye during the period 1989–1999.

#### *Salmon Lake Drainage*

Salmon Lake was closed since returns were low, and to avoid excessive harvest effort for this relatively small sockeye population. Closure of the nearby Redoubt Lake system could displace harvest effort in the Sitka Sound area to Salmon Lake. The total escapement to July 11, 2001, was 320 at Salmon Lake. Past subsistence harvest for Salmon Lake has ranged from zero