

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; Stikine River**

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

ACTION: Seasonal adjustment.

SUMMARY: This provides notice of the Federal Subsistence Board's action in the Stikine River to provide for a subsistence harvest opportunity. These actions provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on February 3, 2004. Those regulations established seasons, harvest limits, and methods relating to the taking of fish and shellfish for subsistence uses during the 2004 regulatory year.

DATES: The action for the Stikine River sockeye fishery described in this document is effective July 1, 2004, through July 31, 2004.

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 Steve Kessler, Subsistence Program Leader, 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 2003 fishing seasons, harvest limits, and methods and means were published on February 3, 2004 (69 FR 5018). 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.

This action is necessary to provide opportunity for subsistence harvest in the Stikine River. This action is authorized and in accordance with 50 CFR 100.19(d-e) and 36 CFR 242.19(d-e).

Stikine River

In December 2003, the Board adopted regulatory proposals establishing a new Federal subsistence sockeye fishery in the Stikine River. This fishery is open to Federally qualified users having customary and traditional use of salmon. Notification of and implementation of this action were delayed pending coordination with the Pacific Salmon Commission.

The following stipulations will apply to this new fishery:

In the mainstem of the Stikine River:

(A) You may take sockeye salmon under the authority of a Federal subsistence fishing permit issued by the USDA Forest Service for the Stikine River. Each Stikine River permit will be issued to a household and will be valid for 15 days. Permits may be revalidated for additional 15-day periods.

(B) The total annual guideline harvest level for the Stikine River fishery is 600 sockeye salmon.

(C) You may take sockeye salmon from July 1 through July 31. The annual limit is 40 sockeye salmon per household. Only dipnets, spears, gaffs, rod and reel, beach seine, or gillnet not exceeding 15 fathoms in length with mesh size no larger than 5½ inches may be used.

(D) You may retain other salmon taken incidentally by gear operated under terms of this permit. The incidentally taken salmon must be reported on your permit calendar.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these adjustments are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could adversely impact 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 this action and pursuant to 5 U.S.C. 553(d)(3) to make this action 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) was signed April 6, 1992. The

final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940, 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 information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and assigned OMB control number 1018-0075, which expires August 31, 2006. We may not conduct or sponsor, and you are not required to respond to, a collection of information request unless it displays a currently valid OMB control number.

Other Requirements

The action has 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 gear, 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 action will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

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 action has no potential private property takings 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 action 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 action meets 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 action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA

precludes the State from exercising subsistence 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 this action is not expected to significantly affect energy supply, distribution, or use, it is not a significant energy action 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; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, 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: April 30, 2004.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: April 29, 2004.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

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