

**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; Seasonal Adjustments—Copper River**

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

**ACTION:** Seasonal adjustments.

**SUMMARY:** This provides notice of the Federal Subsistence Board's in-season management actions to protect sockeye salmon escapement in the Copper River, while still providing for a subsistence harvest opportunity. The fishing schedules and closures will provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on March 21, 2005. Those regulations established seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2005 regulatory year.

**DATES:** The fishing schedule with a delayed opening for the Chitina Subdistrict of the Upper Copper River District is effective May 16, 2005, through July 13, 2005. The Glennallen Subdistrict of the Upper Copper River District is closed effective May 15, 2005, through May 30, 2005.

**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 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 2005 fishing seasons, harvest limits, and methods and means were published on March 21, 2005 (70 FR 13377).

Because this action 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 adjustments are necessary because of the need to maintain the viability of salmon stocks in the Copper River based on in-season run assessments. These actions are authorized and in accordance with 50 CFR 100.19(d-e) and 36 CFR 242.19(d-e).

*Copper River—Chitina Subdistrict*

In December 2001, the Board adopted regulatory proposals establishing a new Federal subsistence fishery in the Chitina Subdistrict of the Copper River. This fishery is open to Federally qualified users having customary and traditional use of salmon in this Subdistrict. The State conducts a personal use fishery in this Subdistrict that is open to all Alaska residents.

Management of the fishery is based on the numbers of salmon returning to the Copper River. A larger than predicted salmon run will allow additional fishing time. A smaller than predicted run will require restrictions to achieve upriver passage and spawning escapement goals. A run that approximates the pre-season forecast will allow fishing to proceed similar to the pre-season schedule with some adjustments made to fishing time based on in-season data. Adjustments to the preseason schedule are expected as a normal function of an abundance-based management strategy. State and Federal managers, reviewing and discussing all available in-season information, will make these adjustments.

While Federal and State regulations currently differ for this Subdistrict, the Board indicated that Federal in-season management actions regarding fishing periods were expected to mirror State actions. The State established a preseason schedule of allowable fishing periods based on daily projected sonar estimates. This preseason schedule is intended to distribute the harvest throughout the salmon run and provide salmon for upriver subsistence fisheries and the spawning escapement. The salmon season is closed until the first open period scheduled for June 4, 2005, at 12:01 pm. Shown below are the fishing schedule openings for the Chitina Subdistrict of the Copper River:

Saturday, June 4, 12:01 p.m.—Sunday, June 5, 12:01 p.m.  
 Wednesday, June 8, 12:01 a.m.—Sunday, June 12, 11:59 p.m.  
 Monday, June 13, 12:01 a.m.—Sunday, June 19, 11:59 p.m.  
 Monday, June 20, 12:01 a.m.—Sunday, June 26, 11:59 p.m.  
 Monday, June 27, 12:01 a.m.—Sunday, July 3, 11:59 p.m.  
 Tuesday, July 5, 12:01 a.m.—Sunday, July 10, 11:59 p.m.

Wednesday, July 13, 8:00 a.m.–Sunday, July 17, 11:59 p.m.  
 Tuesday, July 19, 12:01 a.m.–Sunday, July 24, 11:59 p.m.  
 Monday, July 25, 12:01 a.m.–Friday, September 30, 11:59 p.m.

State personal use and Federal subsistence fisheries in this Subdistrict close simultaneously by regulation on September 30, 2005. No deviation from this date is anticipated.

#### *Copper River—Glennallen Subdistrict*

In December 2000, the Board adopted a regulatory proposal opening the Glennallen Subdistrict of the Copper River to Federally qualified users May 15. This allowed Federally qualified users to harvest salmon prior to the State subsistence fishing season that opens June 1. This fishery is open to Federally qualified users having customary and traditional use of salmon in this Subdistrict. The State conducts a personal use fishery in this Subdistrict that is open to all Alaska residents. Salmon migrating through the Glennallen Subdistrict during this period are likely to spawn in upper river tributaries based on prior studies conducted by the Alaska Department of Fish and Game. In 2003, Federally-qualified users harvested approximately 750 salmon in the Glennallen Subdistrict during May. None of this harvest appears to have occurred upstream of the Gakona River.

The State has briefly delayed the opening of the commercial fishery near the mouth of the Copper River predicated on the pre-season forecast. Production from the early portion of the natural run may be weak because of low inriver escapements prior to mid June in brood years 1999 and 2000. If Miles Lake sonar estimates are substantially below the forecasted levels, both the State and the Board will reduce the open periods in the Chitina Subdistrict as described in the Copper River Salmon Management Plan (5 AAC 24.360). Management of the fishery is based on the numbers of salmon returning to the Copper River. A larger than predicted salmon run will allow additional fishing time. A smaller than predicted run will require restrictions to achieve upriver passage and spawning escapement goals.

In May of 2004, Federally qualified users that harvest salmon upstream of the Gakona River strongly expressed concerns that their harvest is declining and that one of the causes of this decline is harvest of salmon downstream. Harvest data from 1996 through 2003 suggest that this may be a valid concern. No data regarding early run escapement is available until the

Miles Lake sonar is operational and salmon passing the sonar site have arrived within the Glennallen Subdistrict (approximately 3 weeks' travel time). Therefore, this action utilizes a conservative approach and restricts the fishery until data from the Miles Lake sonar are available.

The Glennallen Subdistrict of the Copper River will be closed to the harvest of salmon until June 1, 2005.

Federally qualified users downstream of the Gakona River are not expected to be significantly impacted by this action because they have ample opportunity to harvest additional salmon stocks that enter the Subdistrict later to spawn in tributaries downstream of the Gakona River.

State and Federal subsistence fisheries in this Subdistrict close simultaneously by regulation on September 30, 2005. No deviation from this date is anticipated.

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 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)(3) 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) 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 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 adjustments 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 gear, and gasoline dealers. The number of small entities affected is unknown; however, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the adjustments 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 adjustments 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 adjustments 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 adjustments 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 adjustments do 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 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

Bill 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; Nancy Swanton, 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: June 1, 2005.

**Thomas H. Boyd,**

*Acting Chair, Federal Subsistence Board.*

Dated: June 1, 2005.

**Steve Kessler,**

*Subsistence Program Leader, USDA-Forest Service.*

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 65

[Docket No. FEMA–D–7573]

#### Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule lists communities where modification of the Base (1% annual chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

**DATES:** These modified BFEs are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Director reconsider the changes. The modified elevations may be changed during the 90-day period.

**ADDRESSES:** The modified BFEs for each community are available for inspection

at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

#### FOR FURTHER INFORMATION CONTACT:

Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

#### SUPPLEMENTARY INFORMATION:

The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

**National Environmental Policy Act.** This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act.** The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42