

**DATES:** This deviation is effective from July 22, 2006 through September 18, 2006.

**ADDRESSES:** Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York, 10004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668-7165. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** Joe Arca, Project Officer, First Coast Guard District, at (212) 668-7165.

**SUPPLEMENTARY INFORMATION:** The Path Bridge, across the Hackensack River, mile 3.0, at Jersey City, New Jersey, has a vertical clearance in the closed position of 40 feet at mean high water and 45 feet at mean low water. The existing regulation is listed at 33 CFR 117.723(a)(5).

The owner of the bridge, Port Authority of New York and New Jersey, requested a temporary deviation to facilitate scheduled structural bridge repairs, miter rail replacement. In order to perform the above repairs the bridge must remain in the closed position and the work performed on Saturdays and Sundays when the rail traffic is less frequent.

Under this temporary deviation the Path Bridge across the Hackensack River, mile 3.0, at Jersey City, New Jersey, shall remain in the closed position on every Saturday and Sunday from July 22, 2006 through September 18, 2006.

Vessels that can pass under the draw without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 20, 2006.

**Gary Kassof,**

*Bridge Program Manager, First 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; Seasonal Adjustments—Copper, Unalakleet, and Yukon Rivers

**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 Chinook salmon escapement in the Unalakleet River, and to provide additional subsistence harvest opportunities for Chinook salmon in the Yukon River and for sockeye salmon in the Copper River. The revised fishing schedule for the Chitina Subdistrict of the Copper River, the additional fishing time on the Yukon River, and the closure of the Unalakleet River provide exceptions to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on March 29, 2006. Those regulations established seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2006 regulatory year.

**DATES:** The latest fishing schedule for the Chitina Subdistrict of the Upper Copper River District is effective July 11, 2006, through September 1, 2006. The closure of the Unalakleet River is effective July 10, 2006, through August 1, 2006. Drift gillnet fishing in Subdistricts 4B and 4C of the Yukon River is effective from noon, July 13, 2006, to midnight, July 14, 2006.

**FOR FURTHER INFORMATION CONTACT:** Peter J. Probasco, 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 2006 fishing seasons, harvest limits, and methods and means were published on March 29, 2006 (71 FR 15569). 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.

#### *Current Management Actions*

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 on a schedule similar to the pre-season schedule, with some adjustments made to fishing time based on in-season data. Adjustments to the pre-season 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 pre-season schedule of allowable fishing periods based on daily projected sonar estimates. The pre-season schedule was intended to distribute the harvest throughout the salmon run and provide salmon for upriver subsistence fisheries and the spawning escapement.

This action extends the open periods for the taking of salmon in the Chitina Subdistrict of the Copper River. During June 26–July 9, there were 131,592 salmon counted past the Miles Lake sonar. The pre-season projection for this period was 104,277 salmon, which results in 27,315 more salmon than projected. Copper River sockeye salmon migratory timing and the previous 5-year average harvest and participation

rates indicate sufficient numbers of salmon available to allow additional fishing time. Shown below are the fishing schedule openings for the Chitina Subdistrict of the Copper River:

Monday, July 3, 12:01 a.m.–Sunday, July 9, 11:59 p.m.

Monday, July 10, 12:01 a.m.–Sunday, July 16, 11:59 p.m.

Monday, July 17, 12:01 p.m.–Sunday, July 23, 11:59 p.m.

Monday, July 24, 12:01 a.m.–Saturday, September 30, 11:59 p.m.

Depending on actual numbers of salmon passing the Miles Lake sonar, future openings may be increased or decreased, accordingly. State personal use and Federal subsistence fisheries in this Subdistrict close simultaneously by regulation on September 30, 2006. No deviation from this date is currently anticipated.

#### *Unalakleet River*

This seasonal adjustment closes the Federal waters of the Unalakleet River to the taking of Chinook salmon for a specified time period as identified below, and prohibits the use of all subsistence fishing methods except for beach seining. The total returns of Chinook salmon in eastern Norton Sound are very low, and returns have dropped off markedly rather than building. The escapement goal for Chinook salmon passing the North River tower project is 1,200–2,600 Chinook salmon with the midpoint of the run coming about July 10. As of July 10, 2006, only 350 Chinook salmon have been counted at the North River tower. The escapement goal for Chinook salmon has not been met at North River for the last 2 years, and there were at least 200 more Chinook salmon past the tower by July 7 in those previous years.

The Board, acting through the in-season manager, has therefore closed all waters of the Unalakleet River to the taking of Chinook salmon from 8 p.m., Monday, July 10, 2006 through 12:01 a.m., August 1, 2006, and prohibited the use of all subsistence fishing methods except for beach seining. Concurrent action was being taken by ADF&G to prohibit harvest of Chinook salmon by all other all users. Very strong runs of pink and chum salmon will greatly help to offset the subsistence restriction that prohibits the retention of Chinook salmon. This action will still allow beach seining, which is a favored method of harvesting pink salmon, while closing subsistence harvest methods most likely to cause Chinook salmon mortality. The action will be lifted when coho salmon reach Federal waters and the Chinook salmon harvest is no longer a concern.

#### *Yukon River*

The 2006 Yukon River Chinook salmon return appears to be less than average but somewhat better than the 2005 return. All indexes project that the Chinook salmon escapement into the Alaska portion of the Yukon River drainage should be met and that sufficient fish should be available for subsistence fishing opportunities. It is also projected that the passage across the border into Canada will provide for a normal Canadian aboriginal harvest as well as the interim escapement goal of 28,000 salmon.

During the Yukon River Drainage Fisheries Association weekly teleconference on July 4, 2006, State and Federal management staff heard from users that poor weather (rain and wind), high water, and high gas prices were limiting fishing opportunities. These conditions combined with the late run timing (approximately 5 days), compressed entry pattern, and only three pulse groups of fish are heightening upriver fishers' concern for their ability to meet their harvest goals this year. In response to these concerns, both ADF&G and FWS managers agreed jointly to liberalize the District 4 subsistence fishing schedule.

The Federal Subsistence Board adopted the expansion of the subsistence drift gillnet Chinook salmon fishery in the middle Yukon River to help reduce overcrowding in the river and help rural residents meet their subsistence goals in a more efficient manner. Extending the normal weekly 18-hour period to 36 hours, preceding the normal calendar date closing of July 14, is warranted due to the fishing conditions this year and is consistent with the initial regulatory intent of the Board. This action was discussed with the State managers prior to implementation.

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

##### *Administrative Procedure Act*

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, could 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.

#### *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.)

#### *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 (44 U.S.C. 3501 *et seq.*). Federal Agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### *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 under 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 Peter J. Probasco, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Chuck Ardizzone, Alaska State Office, Bureau of Land Management; Jerry Berg, 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: July 17, 2006.

**Peter J. Probasco,**

*Acting Chair, Federal Subsistence Board.*

Dated: July 20, 2006.

**Steve Kessler,**

*Subsistence Program Leader, USDA—Forest Service.*

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