



Federal Subsistence Board Public Meeting

Meeting Materials Volume II Book A

January 31 - February 3, 2023

William A. Egan Civic & Convention Center
Anchorage, Alaska



Volume II

Non-Consensus Agenda Fisheries Proposals, Closure Reviews, and other documents

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Non-Consensus Agenda Fisheries Proposals and Closure Reviews

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**FEDERAL SUBSISTENCE BOARD
PUBLIC MEETING AGENDA
January 31 – February 3, 2023**

January 31, 2023: 1:30 p.m. to 5:00 p.m. (or until recessed)
February 1 - 3, 2023: 9:00 a.m. to 5:00 p.m. (or until recessed)
Egan Center, 555 West 5th Avenue
Anchorage, Alaska

To participate by teleconference, dial toll free **(888) 455-7761**, (passcode **2266069**)

On January 31, prior to the start of the Public Meeting, the Federal Subsistence Board will meet at 9:00 a.m. to conduct Tribal Government-to-Government and ANCSA Corporation consultations regarding proposals to change Federal subsistence management regulations for the harvest of fish and shellfish on Federal Public lands and waters in Alaska. **The Public Meeting will begin at 1:30 p.m.**

Updates on the Board's progress through the agenda will be posted on the Federal Subsistence Management Program website at <https://www.doi.gov/subsistence/board/> and on Facebook at www.facebook.com/subsistencealaska.

Updates may also be received by calling (800) 478-1456 or (907) 786-3888.

Public Meeting

* Asterisk denotes Action Item

- 1. Call to Order and Welcome**
- 2. Review and Adopt Agenda***
- 3. Federal Subsistence Board Information Sharing Session**
- 4. Regional Advisory Council Chairs Discuss Topics of Concern with the Board**
- 5. Public Comment Period on Non-Agenda Items**
(This opportunity is available at the beginning of each day)
- 6. Fisheries Delegation Letters & Special Action Authorities**
- 7. 2021–2023 Subparts C&D Proposals and Closure Reviews** *(Fish and Shellfish Regulations)*
 - a. Tribal Government-to-Government and ANCSA Corporation Consultation Summary
 - b. Announcement of Consensus Agenda *(see detailed agenda that follows)*
 - c. Public Comment Period on Consensus Agenda Items *(This opportunity is available at the beginning of each subsequent day prior to the final action)*

- d. Board deliberation and action on Non-Consensus Agenda items*
(see detailed agenda that follows)
- e. Adoption of Consensus Agenda*

8. Old Business

- a. Hunter Ethics Education and Outreach Initiative update*
- b. Secretarial regulations proposing the inclusion of identified submerged lands in the Tongass National Forest *
- c. Deferred Proposal WP22-40*
- d. Deferred Unit 4 Deer Proposals (WP22-07, WP22-08, WP22-10)*

9. RFR22-01, Request for Reconsideration of Fisheries Proposal FP21-10, Threshold Analysis* (Supplemental)

10. NDP25-01, Nonrural Determination Proposal Ketchikan, Threshold Assessment*

11. North Pacific Fishery Management Council

12. Schedule of Upcoming Board Meetings*

- a. 2023 Summer Work Session and Executive Session (*Council Annual Report Replies & Council Appointment Recommendations*)
- b. 2024 January Work Session (*FRMP*)
- c. 2024 April Public Meeting (*Wildlife Regulations*)

13. Adjourn

Audio Access Information:
Toll-Free: 1-888-455-7761
Pass Code: 2266069

FEDERAL SUBSISTENCE BOARD
CONSENSUS AGENDA

The following proposals and closure reviews have been included on the consensus agenda. These are proposals and closure reviews for which there is agreement among Federal Subsistence Regional Advisory Councils, the Federal Interagency Staff Committee, and the Alaska Department of Fish and Game concerning Board action. Anyone may request that the Board remove a proposal or closure review from the consensus agenda and place it on the regular agenda. The Board retains final authority for removal of proposals and closure reviews from the consensus agenda. The Board will take final action on the consensus agenda after deliberation and decisions on all other proposals and closure reviews.

Proposal/Closure Review	Region/Location/Species	Recommendation	Page
FP23-02	Yukon-Northern/Yukon River/Salmon C&T	Support	7
FCR21-08 (deferred)	Aleutian Islands/Unalaska Lake/Salmon	Retain Status Quo	36
FCR21-09 (deferred)	Aleutian Islands/Summers Lake and Morris Lake/Salmon	Retain Status Quo	60
FCR21-11 (deferred)	Aleutian Islands/McLees Lake/Salmon	Retain Status Quo	84
FCR23-11	Aleutian Islands/Unalaska Bay Freshwater/Salmon	Retain Status Quo	107
FP23-05a	Kodiak/Salmon C&T	Oppose	131
FP23-05b	Kodiak/Area Description	Oppose	151
FCR23-19	Kodiak/Selief Bay/Salmon	Rescind	160
FP23-08/09/12	Cook Inlet/Moose Pass/All fish C&T	Support	173
FP23-20	Yakutat & Southeastern Alaska/Shellfish	Support	188

**FEDERAL SUBSISTENCE BOARD
NON-CONSENSUS AGENDA**

Procedure for considering proposals:

- Analysis (*Lead Author*)
- Summary of public comments (*OSM Staff*)
- Open floor to public testimony
- Regional Advisory Council recommendation(s) (*Chair or designee*)
- Tribal/Alaska Native Corporation comments (*Native Liaison*)
- Alaska Department of Fish and Game comments (*State Liaison*)
- Interagency Staff Committee comments (*ISC Chair*)
- Federal Subsistence Board discussion with Council Chairs and State Liaison
- Federal Subsistence Board action

Proposal/Closure Review	Region/Location/Species	Page
FP23-01	Yukon-Northern/Jim River/Non-salmon fish	223
FCR23-02	Yukon-Northern/Kanutu River/All fish	246
FCR23-03	Yukon-Northern/Bonanza Creek/All fish	271
FCR23-05	Yukon-Northern/Delta River/All fish	296
FCR23-12	Aleutian Islands/Adak and Kagalaska/Salmon	314
FCR21-13 (deferred)	Alaska Peninsula/Russel Creek/Salmon	335
FCR23-13	Alaska Peninsula/Trout Creek/Salmon	362
FP23-06a	Kodiak/Womens Bay/Salmon	387
FCR23-15 (addressed by FP23-06a)	Kodiak/Womens Bay/Salmon	402
FP23-06b	Kodiak/Buskin Marine Waters/Salmon	416
FCR21-16 (deferred) (addressed by FP23-06b)	Kodiak/Buskin Marine Waters/Salmon	431
FCR21-18 (deferred)	Kodiak/Afognak Bay/Salmon	445
FCR21-19 (deferred)	Kodiak/Afognak Island/Salmon	459
FCR23-21	Kodiak/Marine Waters/King Crab	472
FCR23-22	Kodiak/Little Kitoi/Salmon	485
FP23-07	Cook Inlet/Kenai River/Chinook Salmon	500
FP23-14	Prince William Sound/Upper Copper River/Salmon C&T	527
FP23-15/16	Prince William Sound/Upper Copper River/Salmon C&T	547
FP23-19	Prince William Sound/Lower Copper River/Salmon	569

Proposal/Closure Review	Region/Location/Species	Page
FP23-21	Southeastern Alaska/Kah Sheets/Sockeye Salmon	635
FCR23-23	Southeastern Alaska/Taku River/Salmon	658
FCR23-24	Southeastern Alaska/Neva Lake Drainage/Sockeye Salmon	674

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FP23-01 Executive Summary	
General Description	<p>Proposal FP23-01 requests the Federal Subsistence Board rescind the closure to the harvest of nonsalmon fish in the Jim River drainage by federally qualified subsistence users and modify regulations to allow rod and reel gear only and an Arctic Grayling harvest and possession limit of 10 per day. <i>Submitted by: Western Interior Alaska Subsistence Regional Advisory Council</i></p>
Proposed Regulation	<p>§ __.27(e)(3) Yukon-Northern Area</p> <p>***</p> <p><i>(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:</i></p> <p style="text-align: center;">***</p> <p style="text-align: center;"><i>(C) Jim River including Prospect and Douglas Creeks.</i></p> <p>***</p> <p><i>(xii) You may take salmon only by gillnet, beach seine, dip net, fish wheel, or rod and reel, subject to the restrictions set forth in this section.</i></p> <p style="text-align: center;">***</p> <p style="text-align: center;"><i>(D) In the Jim River drainage, including Prospect and Douglas Creeks, you may not harvest salmon.</i></p> <p>***</p> <p><i>(xvi) Unless otherwise specified in this section, you may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, subject to the following restrictions, which also apply to subsistence salmon fishing:</i></p> <p style="text-align: center;">***</p> <p style="text-align: center;"><i>(G) In the Jim River drainage, including Prospect and Douglas Creeks, you may harvest fish other than salmon with rod and reel only; the grayling harvest and possession limit is 10 per day.</i></p>

FP23-01 Executive Summary	
OSM Conclusion	Support
Yukon-Kuskokwim Delta Subsistence Regional Advisory Council Recommendation	Support
Western Interior Alaska Subsistence Regional Advisory Council Recommendation	Support
Eastern Interior Alaska Subsistence Regional Advisory Council Recommendation	Support
North Slope Subsistence Regional Advisory Council Recommendation	Support
Interagency Staff Committee Comments	The Interagency Staff Committee found the staff analysis to be a thorough and accurate evaluation of the proposal and that it provides sufficient basis for the Regional Advisory Council recommendation and Federal Subsistence Board action on the proposal.
ADF&G Comments	Oppose
Written Public Comments	None

STAFF ANALYSIS
FP23-01

ISSUES

Proposal FP23-01, submitted by the Western Interior Alaska Subsistence Regional Advisory Council (WIRAC), requests the Federal Subsistence Board (Board) rescind the closure to the harvest of nonsalmon fish in the Jim River drainage by federally qualified subsistence users and modify regulations to allow rod and reel gear only and an Arctic Grayling harvest and possession limit of 10 per day.

DISCUSSION

The proponent states this proposal would continue subsistence uses by allowing harvest of nonsalmon fish by federally qualified subsistence users in an area that is currently closed. The Council believes there is verifiable traditional use of nonsalmon fish in this drainage and a limited harvest by rod and reel should be allowed. If subsistence users are going to travel for Arctic Grayling, the harvest limit should be increased to justify time and expense. Allowing for a reasonable harvest of Arctic Grayling would re-establish a subsistence priority use of fish. Limiting harvest to rod and reel gear only would ensure continued viability of fish in the area. While the Council also believes there is verifiable traditional use of salmon in this drainage, the salmon runs cannot support any harvest at this time and the closure should be rescinded only for nonsalmon fish.

Existing Federal Regulation**§ __.27(e)(3) Yukon-Northern Area**

(i) Unless otherwise restricted in this section, you may take fish in the Yukon-Northern Area at any time... You may subsistence fish for salmon with rod and reel in the Yukon River drainage 24 hours per day, 7 days per week, unless rod and reel are specifically otherwise restricted in this paragraph (e)(3).

(ii) For the Yukon River drainage, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060 [emergency orders]), unless superseded by a Federal special action.

(v) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, you may take fish other than salmon at any time.

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

(C) Jim River including Prospect and Douglas Creeks.

(xii) You may take salmon only by gillnet, beach seine, dip net, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(xvi) Unless otherwise specified in this section, you may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, subject to the following restrictions, which also apply to subsistence salmon fishing:

Proposed Federal Regulation

§ __.27(e)(3) Yukon-Northern Area

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

~~*(C) Jim River including Prospect and Douglas Creeks.*~~

(xii) You may take salmon only by gillnet, beach seine, dip net, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(D) In the Jim River drainage, including Prospect and Douglas Creeks, you may not harvest salmon.

(xvi) Unless otherwise specified in this section, you may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, subject to the following restrictions, which also apply to subsistence salmon fishing:

(G) In the Jim River drainage, including Prospect and Douglas Creeks, you may harvest fish other than salmon with rod and reel only; the grayling harvest and possession limit is 10 per day.

Relevant Federal Regulation

§ __.27 (b) Subsistence Taking of Fish

(16) Unless specified otherwise in this section, you may use a rod and reel to take fish without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(ii) Except as otherwise provided for in this section, if you are not required to obtain a subsistence fishing permit for an area, the harvest and possession limits for taking fish for subsistence uses with a rod and reel are the same as for taking fish under State of Alaska subsistence fishing regulations in those same areas. If the State does not have a specific subsistence season and/or harvest limit for that particular species, the limit shall be the same as for taking fish under State of Alaska sport fishing regulations.

Existing State Regulation

Yukon Area—Subsistence

5 AAC 01.225. Waters closed to subsistence fishing

(b) The following drainages located north of the mainstem Yukon River are closed to subsistence fishing:

(4) Jim River, including Prospect Creek and Douglas Creek;

Yukon River Area—Sport

5 AAC 73.010. Seasons, bag, possession, and size limits, and methods and means for Yukon River Area

(a) Except as otherwise specified in this section or through an emergency order issued under AS 16.05.060, sport fishing is permitted year round in the waters of the Yukon River Area.

(b) Except as otherwise specified in (c) of this section, the following are the general bag, possession, and size limits for finfish and shellfish in the waters of the Yukon River Area:

(1) king salmon 20 inches or greater in length: the bag and possession limit is three fish, of which only two fish may be 28 inches or greater in length;

(2) salmon, other than king salmon: the bag and possession limit is 10 fish, with no size limit;

(3) Arctic char/Dolly Varden and lake trout:

(B) in all flowing waters: the bag and possession limit is 10 fish of all species combined, of which only two fish may be 20 inches or greater in length, and of which only two fish may be lake trout;

(5) Arctic grayling: the bag and possession limit is five fish, with no size limit;

(6) sheefish: the bag and possession limit is 10 fish, with no size limit;

(7) northern pike: the bag and possession limit is 10 fish, with no size limit;

(8) burbot: the bag and possession limit is 15 fish, with no size limit;

(10) finfish and shellfish species that are not specified in this section: there are no bag, possession, or size limits;

(c) The following are the exceptions to the general bag, possession, and size limits, and fishing seasons specified in (a) of this section for the Yukon River Area:

(4) in the Dalton Highway corridor (Trans-Alaska Pipeline corridor) within the Yukon River Area, which is described as a corridor five miles wide on each side of the Dalton Highway north of the Yukon River, excluding the Ray River,

(A) sport fishing for salmon is closed;

(B) lake trout may be taken only by catch-and-release fishing, and may not be possessed or retained; all lake trout caught must be immediately released;

(C) the bag and possession limit for northern pike is five fish, of which only one fish may be 30 inches or greater in length;

Extent of Federal Public Lands/Waters

For purposes of this analysis, the phrase “Federal public waters” is defined as those waters described under 36 CFR §242.3 and 50 CFR §100.3. Approximately three miles of Jim River exist within the Kanuti Refuge boundary, managed by the U.S. Fish and Wildlife Service (**Figure 1**). The remainder of the Jim River drainage is general domain land managed by the Bureau of Land Management (BLM). On general domain lands, Federal subsistence regulations apply only to non-navigable waters.

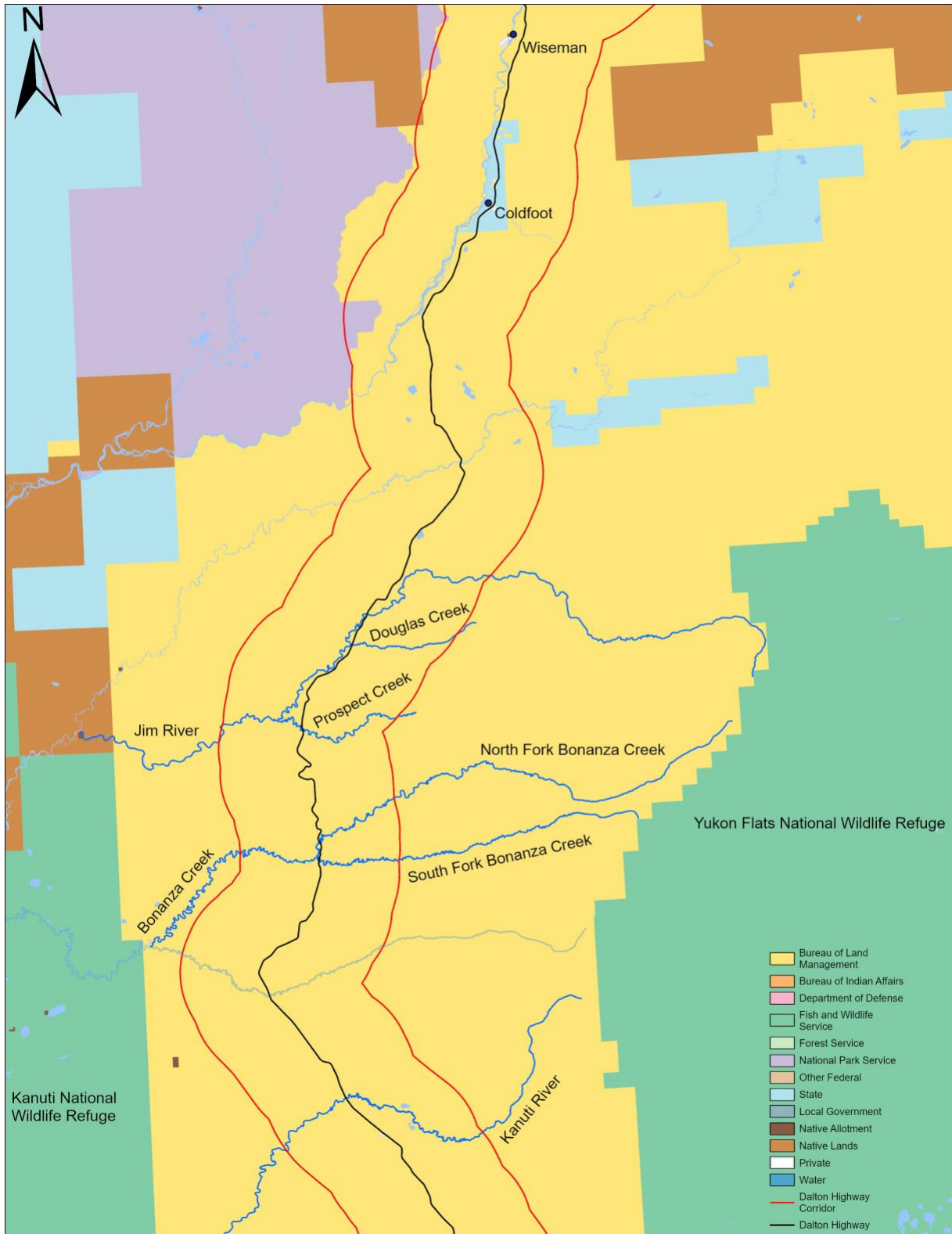


Figure 1. Map of the Dalton Highway Corridor (red lines), the Jim River drainage, and the other closed systems in the area.

Customary and Traditional Use Determination

Residents of the Yukon-Northern Area have a customary and traditional use determination for freshwater species other than salmon in the Yukon River drainage.

Regulatory History

Under State regulations, the portion of the Jim River within the Dalton Highway Corridor (5 miles on either side of the highway) has been closed to subsistence fishing since the late 1970s, beginning with construction of the Dalton Highway (Holen et al. 2012). The opening of the Dalton Highway to public travel in 1994 provided new access to lakes and streams along the route. Increases in recreational fishing effort and harvest have resulted in reductions in sport fishing bag limits for Northern Pike and Arctic Grayling, no retention of Lake Trout, and a salmon fishing closure within the Dalton Highway Corridor (Stuby 2021).

In 1992, the Federal Subsistence Management Program promulgated regulations governing the harvest of fish for subsistence uses in non-navigable waters within and adjacent to Federal public lands (57 Fed. Reg. 22940 [May 29, 1992]). These regulations incorporated many provisions from State subsistence fishing regulations. The Jim River closure was incorporated into Federal regulations in this manner and has not been subsequently modified.

In 1999, the Board also adopted Federal regulations for fish in navigable waters within and adjacent to Federal public lands where there is a Federal reserved water right (64 Fed. Reg. 1276 [January 8, 1999]). These regulations do not apply on navigable waters within and adjacent to BLM general domain lands (see 50 CFR 100.3).

The Federal Subsistence Management Program justification for the original closure in Federal regulations was to minimize disruption to the State's continuing fish and game management, because of the uncertainty over the resumption of State management of subsistence, yet still fulfill the requirements of Title VIII of ANILCA (55 FR 27114, June 29, 1990).

The Jim River closure was reviewed during the 2021–2023 Fisheries Regulatory Cycle. The WIRAC and Seward Peninsula Subsistence Regional Advisory councils recommended eliminating the closure to the harvest of all fish in the Jim River drainage and modifying regulations to allow rod and reel gear only and an Arctic Grayling harvest and possession limit of 10 per day. The Yukon-Kuskokwim Delta, Eastern Interior Alaska, and North Slope Subsistence Regional Advisory councils deferred to WIRAC. The Alaska Department of Fish and Game (ADF&G) was neutral and provided no comment. However, during the Board's 2021 Fisheries regulatory meeting, the Department of Interior Solicitor's Office expressed concern that any action taken by the Board beyond simply eliminating or maintaining the closure would not allow appropriate notice and opportunity for public comment. Therefore, the Board voted to maintain the closure with the expectation that a proposal could be submitted by WIRAC to eliminate the closure.

Biological Background

Salmon

Chinook, Chum, and Coho salmon are known to spawn and rear in the Jim River. Aerial surveys were flown sporadically from 1960 to 2015 to count Chinook and Chum salmon in the Jim River (ADF&G 2022a). The 1960 to 2015 average count of live Chinook Salmon is 120 fish with a range of 0–358 fish. The average number of Chinook Salmon carcasses for these same years is 13 with a range of 0–126. Summer Chum Salmon averaged 278 live fish (range 0–1,484) and 116 carcasses (range 0–1,690). Fall Chum Salmon averaged 103 live fish (range 0–1,057), and 41 carcasses (range 0–672). During 2009–2012, and 2015, a mean of 183 Chinook Salmon and 462 Chum Salmon were counted per year (ADF&G 2022a). There is no escapement goal for any salmon species in this drainage.

Nonsalmon

The nonsalmon fish community in the Jim River drainage is comprised of Arctic Grayling, Burbot, Humpback and Round whitefish, Longnose Sucker, Northern Pike, and Slimy Sculpin (BLM 2005, ADF&G 2022b). While population assessments have been conducted for Arctic Grayling in the Jim River, less is known about the other nonsalmon species in this system. Information related to the habitat use, seasonal movements, and population status of Arctic Grayling, Burbot, whitefish, Longnose Sucker, and Northern Pike was provided by local experts during a Traditional Ecological Knowledge study conducted by ADF&G Division of Subsistence (Andersen et al. 2004). The local knowledge provided in this study applies to the broader Koyukuk River drainage.

Arctic Grayling

Arctic Grayling are found throughout the Koyukuk and Jim River drainages. Local knowledge indicates Arctic Grayling spend most of their time in clear, quickly moving water in tributary streams and headwater areas whenever this habitat is clear of ice. They are reported to move into this habitat after breakup in April or May, spawning shortly afterwards and feeding on insects. Later, larger Arctic Grayling occupy higher quality feeding areas farthest upstream, and smaller fish occupy poorer feeding areas downstream (Hughes 1992, Andersen et al. 2004). Arctic Grayling move from tributary streams to overwintering areas in deeper water downstream during September and October. Arctic Grayling overwinter in the Koyukuk River mainstem and large tributaries, as well as lakes in the far upper portions of the Koyukuk drainage (Andersen et al. 2004).

Stock assessments of Arctic Grayling within the Jim River and its tributaries adjacent to the Dalton Highway were conducted during 1995–1997 (Fish 1997). The abundance of Arctic Grayling was estimated in a 4 mile section of Prospect Creek in 1996. The estimated abundance was 770 Arctic Grayling (SE = 231) with a density of 193 fish/mile. The Jim River population abundance and age structure was estimated in 1995 and 1997 for a 13.2 mile stretch near the Dalton Highway. In 1995, the Arctic Grayling abundance estimate was 5,105 fish (SE = 1,103) which resulted in a density of approximately 387 fish/mile. The age of Arctic Grayling ranged from 2 to 15 years. Approximately 32% of the population was 5 years old, the most common age reported from this study year. In 1997, the

estimated abundance and density of Arctic Grayling was 12,059 fish (SE = 2,650) and 914 fish/mile, respectively. The sampled fish ranged from 2 to 16 years old, with 25% of the samples being 3 years old, the most common age during this study year (Fish 1997).

Burbot

According to local experts, Burbot are found in major tributaries of the Koyukuk drainage, but not the smallest tributaries. Burbot may occupy headwater lakes or the mainstem of the Koyukuk River year-round. Most non lake-adapted Burbot follow a different seasonal movement pattern from other fish, moving upstream along shallow water areas beginning around October through January or February. Spawning takes place under the ice in winter (Andersen et al. 2004).

Whitefish

Local experts indicate whitefish move upstream in the Koyukuk River just before and during spring break up. As the water becomes fast and high due to spring run-off, the fish move into calmer side waters, returning when water levels drop. They repeat this movement whenever water levels rise. Some whitefish spend summers feeding in lakes, while others stay in the Koyukuk River and major sloughs. In fall, whitefish move towards spawning areas upstream, then descend downstream after spawning around September and October. Whitefish are said to overwinter in an inactive state in deep lakes from December to March (Andersen et al. 2004). Round Whitefish is a “clear water fish” that prefers to spend time in smaller streams and headwaters, “similar to grayling” (Andersen et al. 2004: 93).

According to local knowledge, the abundance and quality of whitefish in the Koyukuk drainage has declined over the previous 60 years. These declines were attributed to changes in habitat and die-offs resulting from being stranded in shallow lakes during high water periods (Andersen et al. 2004).

Longnose Sucker

Local knowledge indicates that Longnose Sucker are present in small numbers in the Koyukuk River drainage but occur at relatively high numbers in the Jim River. Longnose Sucker spend the open water period river in mainstems, sloughs, large and small tributaries, and lakes, and move into deep portions of the main lower Koyukuk River during winter. Spawning occurs in small streams after breakup (Andersen et al. 2004).

Northern Pike

According to local experts, Northern Pike in the Koyukuk drainage overwinter in deep lakes and move into shallow lakes and sloughs in spring. Spawning takes place in early summer. After mid-September, Northern Pike move back towards the main river and deep lakes (Andersen et al. 2004).

Cultural Knowledge and Traditional Practices

Of those communities with a customary and traditional use determination for fish in the Yukon River drainage, those located in reasonable proximity to Jim River as it crosses the Dalton Highway are most

likely to subsistence fish in the area, were the closure rescinded. This includes Wiseman and Coldfoot. In addition to these communities, which are located on the road system, the communities of Evansville and Bettles are connected to the Dalton Highway via a winter road to Evansville from January through March (Holen et al. 2012). However, there is a mismatch between the timing of this road opening and that of nonsalmon fishing by these communities (Andersen et al. 2004). Furthermore, an ADF&G Division of subsistence survey indicated that residents of Bettles and Evansville focus their subsistence use in areas closer to these communities (Holen et al. 2012).

The community of Stevens Village also has access to the Dalton Highway as it crosses the Yukon River, via boat and snow machine (Trainor 2022, pers. comm.). However, a subsistence survey of Stevens Village conducted from 1984 to 1985 showed that residents focus most of their subsistence fishing activity closer to their community on the Yukon River (Sumida 1988); a more recent ADF&G Division of Subsistence survey did not map subsistence use areas (Brown et al. 2016).

Wiseman and Coldfoot

Wiseman and Coldfoot are very small communities located on the Dalton Highway. Both communities fall within the traditional boundaries of the Koyukon Athabaskan people, an area which has also been influenced by historical interaction with Iñupiat. Both Wiseman and Coldfoot were established as the result of the gold mining industry in the late 1800s and early 1900s. Coldfoot was abandoned by 1930, before being re-settled in the 1970s in connection with construction of the Dalton Highway and the Trans-Alaska Pipeline. As of 2018 there were an estimated eight full-time residents in Coldfoot and 11 in Wiseman (ADLWD 2019). The area also includes a small number of residents along the Dalton Highway Corridor in camps and other isolated households. ADF&G Division of Subsistence conducted its only subsistence survey of Wiseman and Coldfoot in 2012, for the 2011 calendar year.

At the time of ADF&G's survey, there were five year-round households in Wiseman, and all were surveyed. Four of these households attempted to fish, and all households used fish, although in small quantities (Holen et al. 2012). Residents of Wiseman and Coldfoot can fish within the Jim River closure area with rod and reel under State sport fishing regulations.

Salmon

Wiseman residents traditionally harvested and used small amounts of Chum and Chinook salmon locally. However, in part because of local closures to both subsistence and sport fishing for salmon in place since 1978 (sport fishing for salmon is closed within a 5-mile radius of the Dalton Highway), Wiseman residents primarily harvest salmon at locations far afield, such as in the Copper and Yukon rivers.

During the 2011 study year, only one of the five Wiseman households fished for salmon (at locations distant from the community), resulting in an estimated 12 pounds of Sockeye Salmon per person, or 4% of Wiseman's total wild food harvest in weight. In addition, Wiseman households received and shared Chinook Salmon, although they did not directly harvest any. All households used salmon (Holen et al. 2012).

Nonsalmon fish

According to Holen et al., “Since the salmon fishing closure was initiated, non-salmon fish have become even more important to Wiseman residents” (2012: 369). Nonsalmon fishing can take place under subsistence regulations in areas that are not closed (in addition to the Jim River closure, subsistence fishing is also closed in Bonanza Creek and a portion of the Kanuti River). In addition, nonsalmon fish can be taken by rod and reel under State sport fishing regulations throughout the area. Within these regulatory restrictions, during the study period, nonsalmon fishing was reported as occurring close to Wiseman and Coldfoot adjacent to the Dalton Highway, as well as on the South Fork Koyukuk River and as far south as the Jim River (Holen et al. 2012, **Figure 2**).

During the study period, four of the five Wiseman households fished for nonsalmon species, resulting in an estimated 13 pounds of nonsalmon fish per person, or 5% of Wiseman’s total wild food harvest in weight. The three most significant nonsalmon harvests in terms of weight were Arctic Grayling, Longnose Sucker, and Burbot (Holen et al. 2012, ADF&G 2020, **Table 1**).

In 2011, about 52% of Wiseman’s nonsalmon fish harvest (measured in edible weight) was taken with gillnet or seine, about 28% was taken with “other subsistence methods,” which includes set lines, and the remainder was taken by rod and reel. However, the only nonsalmon species that participants reported taking by rod and reel was Lake Trout; a little less than half of the Lake Trout harvest was taken with this gear. The fish most significant in terms of subsistence harvest were taken entirely with subsistence gear during the study period, described in more detail below, although Wiseman’s harvest methods for Longnose Sucker and whitefish species were not quantified in the relevant subsistence survey report (Holen et al. 2012).

Arctic Grayling

In this description of harvest practices for Arctic Grayling, and for other species, below, ethnographic data are drawn both from ADF&G’s subsistence survey in Wiseman for the 2011 calendar year (Holen et al. 2012) and from a Traditional Ecological Knowledge Study conducted by ADF&G Division of Subsistence from 2001 to 2003 (Andersen et al. 2004). The latter study incorporated interviews with 29 key respondents who were life-long residents of the wider Koyukuk River drainage communities of Alatna, Allakaket, Bettles/Evansville, Hughes, Huslia, Koyukuk, and Wiseman. Where available, information specific to practices by residents of Wiseman is emphasized.

In the Koyukon language Arctic Grayling are called *tleghelbaaye*, which likely refers to their gray coloring (Andersen et al. 2004). Fall and early winter are the preferred times for harvesting Arctic Grayling by Koyukuk River communities (Andersen et al. 2004). In the 2011 study year, Wiseman residents harvested Arctic Grayling with gillnet or seine (25%) and “other subsistence methods” (75%) (Holen et al. 2012). Residents of the wider region fish for Arctic Grayling with hook and line beginning when rivers begin to freeze, usually in October. They use rod and reel in open eddies until freeze-up is complete, after which they fish through holes in the ice. Arctic Grayling are also sometimes caught during fall seining for whitefish. Arctic Grayling are easily preserved by freezing, and people prefer to eat them

raw and frozen. As winter progresses, Arctic Grayling are further downstream in deep water, and are less accessible (Andersen et al. 2004).

Burbot

Burbot are known as *tl'eghes*, in the Koyukon dialect of the lower Koyukuk River, and *tsoneye* in the upper river dialect. Burbot can be an important subsistence resource for Koyukuk River communities in winter when other fish are not available. They are harvested beginning in the fall. In the middle Koyukuk River conditions are ideal for Burbot traps in winter, but in areas closer to the headwaters Burbot are most commonly taken with set hooks through the ice beginning around October. According to a key informant from Wiseman, Burbot have also traditionally been taken from lakes in the summer with spears (Andersen et al. 2004). During the 2011 study year, Wiseman residents took Burbot entirely with subsistence gear “other than gillnet or seine” (Holen et al. 2012).

In the fall and winter Burbot can be preserved by natural freezing, but do not preserve well, and people prefer to eat them soon after they are harvested. The fatty liver is the most prized part of the fish. For subsistence purposes, people prefer to catch them before they spawn, when they are a better source of fat. Burbot return downstream beginning in February (Andersen et al. 2004).

Whitefish

The generic term for whitefish in the Koyukon language is *ts'ol*. There are two species of large whitefish in the Koyukuk drainage, Broad Whitefish (*taaseze*, or “water bear”) and Humpback Whitefish (*holehge*, “it swims upwards”). There are also two species of small whitefish, Least Cisco (*tsaabaaya*) and the Round Whitefish (*hulten*). According to local experts, the latter is only thinly distributed in the Koyukuk drainage (Andersen et al. 2004).

One key informant said that he had observed a decline in whitefish populations over the previous sixty years, and that the fish had also become less fatty. He attributed this decline to habitat change, and especially to decreased weeds and insects, as well as increased silt and water temperatures. Whitefish are susceptible to die-offs after being trapped in shallow lakes during high water periods (Andersen et al. 2004).

Gillnets are used to catch whitefish in the spring after breakup and in the fall as fish move between seasonal habitats. Whitefish are considered to be in prime condition in fall. After freeze-up they can be caught with set nets. Least Cisco may be caught with seining nets, although river conditions prevent the use of these in the upper portion of the river. In the summer, whitefish are sometimes incidentally caught in nets used for salmon. Round Whitefish are very thinly distributed and are not commonly caught. Wiseman’s harvest methods for whitefish were not specifically described in Holen et al. (2012).

Longnose Sucker

The Koyukon term for Longnose Sucker is *toonts'ode*, “something bad went into the water” (Andersen et al. 2004). Longnose Sucker are mostly caught in the Koyukuk River drainage as by-catch in nets set out for whitefish in the spring. In areas suitable to the harvest method, they are sometimes taken during fall

whitefish seining. Finally, they are sometimes taken in the winter with under-ice Burbot traps. In the past, spring-harvested Longnose Sucker were important for feeding both humans and dogs, but today they are primarily used as dog food. The many small bones in the fish make the end portion of Longnose Sucker inedible for humans (Andersen et al. 2004). Wiseman’s harvest methods for Longnose Sucker were not specifically described in Holen et al. (2012).

Northern Pike

Northern Pike are known as *k’oolkkoye* in the Koyukon language, and are an important food resource that is available year-round. Northern Pike are present but not common in the Koyukuk River near Bettles, and are not present in the Middle Fork of the Koyukuk near Wiseman.

On the Koyukuk River, Northern Pike are caught with gillnets in spring and fall. “Pike are sometimes caught during the summer using artificial lures and rod and reel gear in area lakes or specific river or slough locations known for being good pike fishing. Pike are also frequently taken as by-catch in summer nets and fishwheels targeting salmon” where conditions permit use of this gear (Andersen et al. 2004: 74). In winter they can be harvested with a hook through the ice where streams leave or enter lakes.

Key informants from the wider region reported harvesting Northern Pike with gillnets, fish traps, and hook and line gear. According to Andersen et al., “The ability to take pike using unusual methods contributed to the utility of pike as a subsistence resource” (2004:75). During the subsistence survey study year, Wisemen residents harvested Northern Pike entirely with gillnet or seine (Holen et al. 2012).

Table 1: Estimated number of nonsalmon fish and corresponding pounds per person harvested by Wiseman households in the 2011 calendar year (ADF&G 2020).

Fish species	Estimated number of fish	Estimated pounds per person
Arctic Grayling	111	5.97
Longnose Sucker	40	2.15
Burbot	9	1.66
Northern Pike	4	1.38
Char	11	1.11
Lake Trout	9	0.97
Whitefish	25	0.96
Dolly Varden	2	0.13

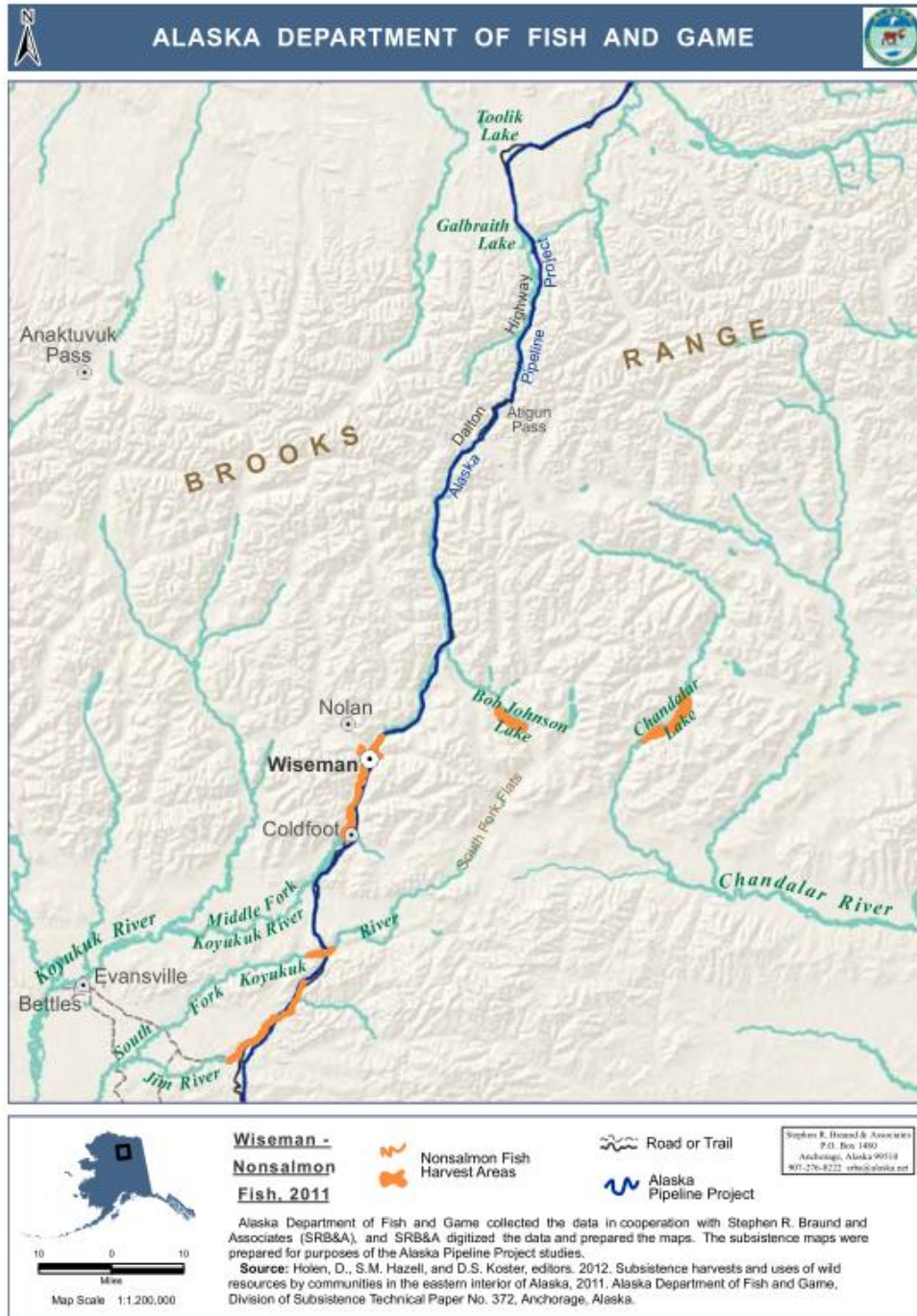


Figure 2. Wiseman's nonsalmon fish search and harvest areas, 2011. Source: Holen et al. 2012.

Coldfoot was also surveyed by ADF&G Division of Subsistence for the 2011 calendar year. At that time, there were five year-round households in Coldfoot, four of which were surveyed, representing 10 individuals. During the survey year, no residents of the community fished for either salmon or nonsalmon

fish, but one household received and used Coho and Sockeye salmon. No use of nonsalmon fish was documented in Coldfoot during the study period (Holen et al. 2012).

Harvest History

Subsistence fishing is prohibited in the Jim River under State and Federal regulations so there is no legal subsistence harvest in this system. Harvest is allowed under State sport fishing regulations and is not limited to federally qualified subsistence users.

During years when sport fishing for Chinook Salmon isn't closed or restricted by emergency order, Chinook Salmon throughout the Yukon River Management Area (excludes the Tanana River) can be harvested with a limit of three per day, three in possession over 20 inches (only two can be over 28 inches), and ten per day, ten in possession for under 20 inches. Other salmon have a ten per day, ten in possession limit. However, salmon fishing is closed within a 5-mile radius on either side of the Dalton Highway.

Per the general sport fish regulations that apply to the entire Yukon River Management Area that extends from the Yukon River Delta to the border with Canada and includes the entire Yukon River drainage (excluding the Tanana River), Dolly Varden can be harvested with a limit of ten per day, ten in possession (only two can be 20 inches or longer). Allowable Lake Trout harvest is two per day, two in possession, only two of which may be 20 inches or longer. Arctic Grayling have no size limit and have a limit of five per day, five in possession. Sheefish and Northern Pike have a limit of ten per day, ten in possession and Burbot have a harvest limit of 15 per day, 15 in possession.

Special regulations apply to all streams within the Trans-Alaska Pipeline corridor, which is defined as the length of the Pipeline north of the Yukon River extending 5 miles on either side of the Dalton Highway, excluding the Ray River where General Regulations apply. The Jim River crosses the Dalton Highway Corridor. In this area, sport fishing for salmon is closed. In addition, retention of Lake Trout is prohibited and the limit of Northern Pike is 5 per day, 5 in possession (only one of which may be 30 inches or longer).

The majority of sport fish harvest along the Dalton Highway corridor for the Yukon River Management Area is for Arctic Grayling (Stuby 2021). Sport fish harvest estimates for Arctic Grayling in streams along the Dalton Highway south of Atigun Pass reported an average of 324 fish annually during 2009–2018. Of these, an average of 122 Arctic Grayling were harvested from the Jim River. Fishing effort for this entire area for all species during 2009–2018 was approximately 928 angler days (Stuby 2021). Sport fishing effort and harvest in Alaska have been estimated and reported annually since 1977 using a mail survey. Estimates based on fewer than 12 responses indicate that the sport fishing occurred and are subject to high variance. The majority of estimates for the Dalton Highway during 2009–2018 were based on fewer than 12 respondents (Stuby 2021). These data suggest that sport fish harvest and effort may not be large enough to cause conservation concerns for Arctic Grayling in the Jim River.

Other Alternatives Considered

An alternative is to rescind the closure to the harvest of all fish in the Jim River drainage by federally qualified subsistence users. Rescinding the closure would provide a Federal subsistence priority not currently in regulation. If the closure is rescinded, Federal subsistence regulations for the Yukon-Northern Area would apply. Harvest of salmon would be allowed, and Federal subsistence fishing schedules, openings, closings, and fishing methods would be the same as those issued by State emergency order for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal special action. For nonsalmon species, harvest would be unrestricted for all gear types other than rod and reel. Harvest and possession limits for rod and reel would match State sport fishing regulations. This alternative was rejected because the Jim River is road accessible, allowing easy access and harvest of fish. Allowing unrestricted harvest for gear types other than rod and reel in an easily accessible system may lead to overharvest and local depletion of stocks.

Effects of the Proposal

If Proposal FP23-01 is adopted, subsistence fishing for salmon would remain closed under Federal regulations in the Jim River drainage. Nonsalmon fish could be taken by rod and reel only. Subsistence rod and reel harvests would match State sport fishing harvest and possession limits except for Arctic Grayling, which would have a harvest and possession limit of 10 per day (the current sport fish harvest and possession limit is five per day). This proposal would increase harvest opportunity for federally qualified subsistence users and provide a subsistence priority as mandated by ANILCA. No conservation concerns exist for this proposal as salmon fishing would remain closed and nonsalmon fishing would be restricted to rod and reel only.

If Proposal FP23-01 is not adopted, subsistence fishing will remain closed under both Federal and State regulations in the Jim River drainage. Sport fishing would be allowed and federally qualified subsistence users could continue to harvest salmon and nonsalmon fish under State sport fishing regulations. Federal regulations would remain more restrictive than State sport fishing regulations, which does not support the subsistence priority mandated by ANILCA.

OSM CONCLUSION

Support Proposal FP23-01

Justification

This drainage is currently closed to subsistence fishing by federally qualified subsistence users but open to other uses. There is likely a small amount of harvest under State sport fishing regulations, predominantly near the Dalton Highway. Allowing a limited subsistence harvest using rod and reel only would provide subsistence opportunity in an area that is currently closed and protect populations from overharvest. If this system is opened to rod and reel only, State sport fish harvest and possession limits would apply. Increasing harvest and possession limits of Arctic Grayling would provide a subsistence

priority for federally qualified subsistence users and justify the time and expense of traveling to harvest this species. Maintaining the closure to salmon will protect small populations within the drainage.

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SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS

Yukon-Kuskokwim Delta Subsistence Regional Advisory Council

Support FP23-01. The Council stated this proposal would support subsistence uses in the area and sport fishing should not be allowed when subsistence uses are prohibited. There is no conservation concern with the proposal.

Western Interior Alaska Subsistence Regional Advisory Council

Support FP23-01. The Council considered OSM's analysis thorough and agreed freshwater stocks can support the proposed level of harvest.

Eastern Interior Alaska Subsistence Regional Advisory Council

Support FP23-01. The Council noted there is no conservation concern related to the proposal and adopting it into regulation will benefit subsistence needs of people in the area by creating additional harvest opportunity for nonsalmon species.

North Slope Subsistence Regional Advisory Council

Support FP23-01. North Slope communities have a long history of customary and traditional use at these fisheries, particularly residents of Nuiqsut. Rescinding this closure would benefit subsistence users, especially those of Nuiqsut who are close to the fisheries.

INTERAGENCY STAFF COMMITTEE COMMENTS

The Interagency Staff Committee found the staff analysis to be a thorough and accurate evaluation of the proposal and that it provides sufficient basis for the Regional Advisory Council recommendation and Federal Subsistence Board action on the proposal.

ALASKA DEPARTMENT OF FISH AND GAME COMMENTS

Fisheries Proposal FP23-01

This proposal would rescind the current closure to the harvest of non-salmon fish in the Jim River drainage by federally qualified users (FQU) and modify regulations to allow rod and reel gear only and an Arctic grayling harvest and possession limit of 10 fish per day.

Position

The Alaska Department of Fish and Game (ADF&G) is **OPPOSES** rescinding the closure and what is effectively opening a federal fishery on the Jim River. Congress authorized the FSB to close, but not to open, a fish or wildlife harvest season as set forth in sections 815 and 816 of the Alaska National Interest Lands Conservation Act (ANILCA). Without statutory authorization, the Federal Subsistence Board (FSB) adopted a regulation improperly granting itself authority to open public lands to the taking of fish and wildlife (50 CFR § 100.19). Currently, FQUs have the ability to harvest non-salmon fish in the Jim

River drainage under state regulations. If the FSB still chooses to rescind this closure, then ADF&G recommends the proposal be amended at the very least to mirror state regulations to minimize confusion among user groups.

Background

During the February 16-17, 2022 Western Interior Regional Advisory Council (WIRAC) meeting they voted to submit a proposal to the FSB to rescind the closure to FQUs on the Jim River. Current federal regulations close the Jim River drainage, including the tributaries of Prospect and Douglas Creeks, to subsistence harvest of all fish species in order to be consistent with state fishing regulations.

The Prospect Creek tributary crosses the Dalton Highway at mile 135, and the mainstem Jim River parallels the Dalton Highway for 10 miles and can be accessed from three bridges at miles 140, 141, and 144. Sport fishing is allowed and general regulations for the Yukon Management Area apply, but special regulations apply where the Jim River and its tributaries are located within a 5-mile radius of either side the Trans-Alaska Pipeline Corridor (details below). The predominant species targeted in the sport fishery are Arctic grayling with a daily bag and possession limit of 5 per day, no size limit. The WIRAC voted to allow for a limited harvest of 10 Arctic grayling by FQUs.

Impact on Subsistence Users

If this proposal is adopted there would be no impact to FQUs. They can currently fish and harvest non-salmon fishes under state regulations.

Impact on Other Users

If this proposal passes, then there will be no regulatory impact to the sport fisheries because exploitation rates will presumably remain sustainable and additional restrictions to the sport fishery should be unnecessary.

Opportunity Provided by State

State customary and traditional use findings: The Alaska Board of Fisheries (BOF) has closed the Jim River drainage to subsistence fishing.

5 AAC 01.225. Waters closed to subsistence fishing.

(b) The following drainages located north of the mainstem Yukon River are closed to subsistence fishing:

(4) Jim River, including Prospect Creek and Douglas Creek;

Amounts Reasonably Necessary for Subsistence: Alaska state law requires the BOF to determine the amount of the harvestable portion of a fish population that is reasonably necessary for customary and traditional uses (amounts necessary for subsistence [ANS]). The BOF does this by reviewing extensive harvest data from all Alaskans, collected either by ADF&G or from other sources.

The ANS provides the BOF with guidelines on typical numbers of fish harvested for customary and traditional uses under normal conditions. Fishing regulations can be re-examined if harvests for customary and traditional uses consistently fall below ANS. This may be for many reasons: fishing regulations, changes in abundance or distribution, or changes in human use patterns, just to name a few.

5 AAC 01.236. Customary and traditional subsistence uses of fish stocks and amounts necessary for subsistence uses.

(a) *The Alaska Board of Fisheries (board) finds that the following fish stocks are customarily and traditionally taken or used for subsistence:*

- (1) *king, summer chum, fall chum, coho, and pink salmon in the Yukon Area;*
- (2) *freshwater fish species, including sheefish, whitefish, lamprey, burbot, sucker, grayling, pike, and char;*

General Regulations for the Yukon Management Area

5 AAC 73.010. Seasons, bag, possession, and size limits, and methods and means for Yukon River Area

(a) *Except as otherwise specified in this section or through an emergency order issued under AS 16.05.060, sport fishing is permitted year-round in the waters of the Yukon River Area.*

(b) *Except as otherwise specified in (c) of this section, the following are the general bag, possession, and size limits for finfish and shellfish in the waters of the Yukon River Area:*

- (1) *king salmon 20 inches or greater in length: the bag and possession limit is three fish, of which only two fish may be 28 inches or greater in length;*
- (2) *salmon, other than king salmon: the bag and possession limit is 10 fish, with no size limit;*
- (3) *Arctic char/Dolly Varden and lake trout:*
 - (B) *in all flowing waters: the bag and possession limit is 10 fish of all species combined, of which only two fish may be 20 inches or greater in length, and of which only two fish may be lake trout;*
- (5) *Arctic grayling: the bag and possession limit is five fish, with no size limit;*
- (6) *sheefish: the bag and possession limit is 10 fish, with no size limit;*
- (7) *northern pike: the bag and possession limit is 10 fish, with no size limit;*
- (8) *burbot: the bag and possession limit is 15 fish, with no size limit;*

Special Regulations for the Yukon Management Area

(c) *The following are the exceptions to the general bag, possession, and size limits, and fishing seasons specified in (a) of this section for the Yukon River Area:*

- (4) *in the Dalton Highway corridor (Trans-Alaska Pipeline corridor) within the Yukon River Area, which is described as a corridor five miles wide on each side of the Dalton Highway north of the Yukon River, excluding the Ray River,*
 - (A) *sport fishing for salmon is closed;*
 - (B) *lake trout may be taken only by catch-and-release fishing, and may not be possessed or retained; all lake trout caught must be immediately released;*
 - (C) *the bag and possession limit for northern pike is five fish, of which only one fish may be 30 inches or greater in length;*

Conservation Issues

There are no conservation issues for the Jim River drainage. Harvest has been historically small and is anticipated to remain that way. The FQUs will be primarily from Wiseman and Coldfoot, which according to the 2010 census have small resident populations of 14 and 13, respectively.

Enforcement Issues

If passed as proposed, this proposal will result in conflicting state and federal regulations for the Jim River that would complicate enforcement.

FCR23-02 Executive Summary	
General Description	FCR23-02 reviews the closure to the harvest of all fish in the Kanuti River drainage by federally qualified subsistence users.
Current Regulation	<p>§___.27(e)(3) Yukon-Northern Area</p> <p>***</p> <p><i>(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:</i></p> <p style="padding-left: 40px;"><i>(A) Kanuti River upstream from a point 5 miles downstream of the State highway crossing;</i></p> <p style="text-align: center;">***</p>
OSM Conclusion	Rescind
Yukon-Kuskokwim Delta Subsistence Regional Advisory Council Recommendation	Modify the closure by rescinding to nonsalmon species only
Western Interior Alaska Subsistence Regional Advisory Council Recommendation	Modify the closure by rescinding to nonsalmon species only
Seward Peninsula Subsistence Regional Advisory Council Recommendation	Take no action
Eastern Interior Alaska Subsistence Regional Advisory Council Recommendation	Modify the closure by rescinding to nonsalmon species only
North Slope Subsistence Regional Advisory Council Recommendation	Rescind
Interagency Staff Committee Comments	The Interagency Staff Committee (ISC) acknowledges that this closure is out of compliance with Title VIII of ANILCA by being closed to fishing by federally qualified subsistence users while allowing for sport fishing under State regulations. The Federal Subsistence Board (Board) would need to take action to bring this situation back into compliance with ANILCA. The Board could modify the closure by closing to all uses. The Board could also

FCR23-02 Executive Summary	
	<p>rescind the closure and provide a priority consumptive use to federally qualified subsistence users.</p> <p>Three Subsistence Regional Advisory Councils have recommended the closure be rescinded, bringing this fishery back into compliance with ANILCA, and one Council has recommended to rescind the closure. In the absence of this closure standard, area Federal subsistence regulations would apply which could present conservation concerns. Permanent regulations would be the preferable solution to address possible conservation concerns while still providing a meaningful priority to federally qualified subsistence users.</p> <p>Until the Board receives and takes action on regulatory proposals, Federal managers can use their delegated authority if conservation concerns arise. The ISC recognizes that unless modified by the Board, current Fisheries delegation of authority letters limit Federal managers to emergency special actions (actions lasting no longer than 60 days).</p>
ADF&G Comments	Retain Status Quo
Written Public Comments	None

FEDERAL FISHERIES CLOSURE REVIEW
FCR23-02

Issue

FCR23-02 is a standard review of a Federal subsistence fishery closure to the harvest of all fish in the Kanuti River drainage. It is the Federal Subsistence Board's (Board) policy that Federal public lands and waters should be reopened as soon as practicable once the conditions that originally justified the closure have changed to such an extent that the closure is no longer necessary. The purpose of this closure review is to determine if the closure is still warranted and to ensure the closure does not remain in place longer than necessary.

Closure Location: Yukon River Drainage, Kanuti River—all fish

Current Federal Regulation

§___.27(e)(3) Yukon-Northern Area

(i) Unless otherwise restricted in this section, you may take fish in the Yukon-Northern Area at any time... You may subsistence fish for salmon with rod and reel in the Yukon River drainage 24 hours per day, 7 days per week, unless rod and reel are specifically otherwise restricted in this paragraph (e)(3).

(ii) For the Yukon River drainage, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060 [emergency orders]), unless superseded by a Federal special action.

(v) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, you may take fish other than salmon at any time.

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

(A) Kanuti River upstream from a point 5 miles downstream of the State highway crossing;

(xii) You may take salmon only by gillnet, beach seine, dip net, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(xvi) Unless otherwise specified in this section, you may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, subject to the following restrictions, which also apply to subsistence salmon fishing:

(B) You may not use an aggregate length of set gillnet in excess of 150 fathoms, and each drift gillnet may not exceed 50 fathoms in length.

(C) In Districts 4, 5, and 6, you may not set subsistence fishing gear within 200 feet of other fishing gear operating for commercial, personal, or subsistence use . . .

(xvii) In District 4, from September 21 through May 15, you may use jigging gear from shore ice.

Relevant Federal Regulation

§ __.27 (b) Subsistence Taking of Fish

(16) Unless specified otherwise in this section, you may use a rod and reel to take fish without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(ii) Except as otherwise provided for in this section, if you are not required to obtain a subsistence fishing permit for an area, the harvest and possession limits for taking fish for subsistence uses with a rod and reel are the same as for taking fish under State of Alaska subsistence fishing regulations in those same areas. If the State does not have a specific subsistence season and/or harvest limit for that particular species, the limit shall be the same as for taking fish under State of Alaska sport fishing regulations.

Closure Dates: Year-round

Current State Regulation

Yukon Area—Subsistence

5 AAC 01.225. Waters closed to subsistence fishing

(b) The following drainages located north of the mainstem Yukon River are closed to subsistence fishing:

(1) Kanuti River upstream from a point five miles downstream of the state highway crossing;

Yukon River Area—Sport

5 AAC 73.010. Seasons, bag, possession, and size limits, and methods and means for Yukon River Area

(a) Except as otherwise specified in this section or through an emergency order issued under AS 16.05.060, sport fishing is permitted year round in the waters of the Yukon River Area.

(b) Except as otherwise specified in (c) of this section, the following are the general bag, possession, and size limits for finfish and shellfish in the waters of the Yukon River Area:

(1) king salmon 20 inches or greater in length: the bag and possession limit is three fish, of which only two fish may be 28 inches or greater in length;

(2) salmon, other than king salmon: the bag and possession limit is 10 fish, with no size limit;

(3) Arctic char/Dolly Varden and lake trout:

(B) in all flowing waters: the bag and possession limit is 10 fish of all species combined, of which only two fish may be 20 inches or greater in length, and of which only two fish may be lake trout;

(5) Arctic grayling: the bag and possession limit is five fish, with no size limit;

(6) sheefish: the bag and possession limit is 10 fish, with no size limit;

(7) northern pike: the bag and possession limit is 10 fish, with no size limit;

(8) burbot: the bag and possession limit is 15 fish, with no size limit;

(10) finfish and shellfish species that are not specified in this section: there are no bag, possession, or size limits;

(c) The following are the exceptions to the general bag, possession, and size limits, and fishing seasons specified in (a) of this section for the Yukon River Area:

(4) in the Dalton Highway corridor (Trans-Alaska Pipeline corridor) within the Yukon River Area, which is described as a corridor five miles wide on each side of the Dalton Highway north of the Yukon River, excluding the Ray River,

(A) sport fishing for salmon is closed;

(B) lake trout may be taken only by catch-and-release fishing, and may not be possessed or retained; all lake trout caught must be immediately released;

(C) the bag and possession limit for northern pike is five fish, of which only one fish may be 30 inches or greater in length;

Regulatory Year Initiated: 1992

Extent of Federal Public Lands/Waters

For purposes of this analysis, the phrase “Federal public waters” is defined as those waters described under 36 CFR §242.3 and 50 CFR §100.3. The closure area is located on general domain land managed by the Bureau of Land Management (BLM; **Figure 1**). On general domain lands, Federal subsistence regulations apply only to non-navigable waters.

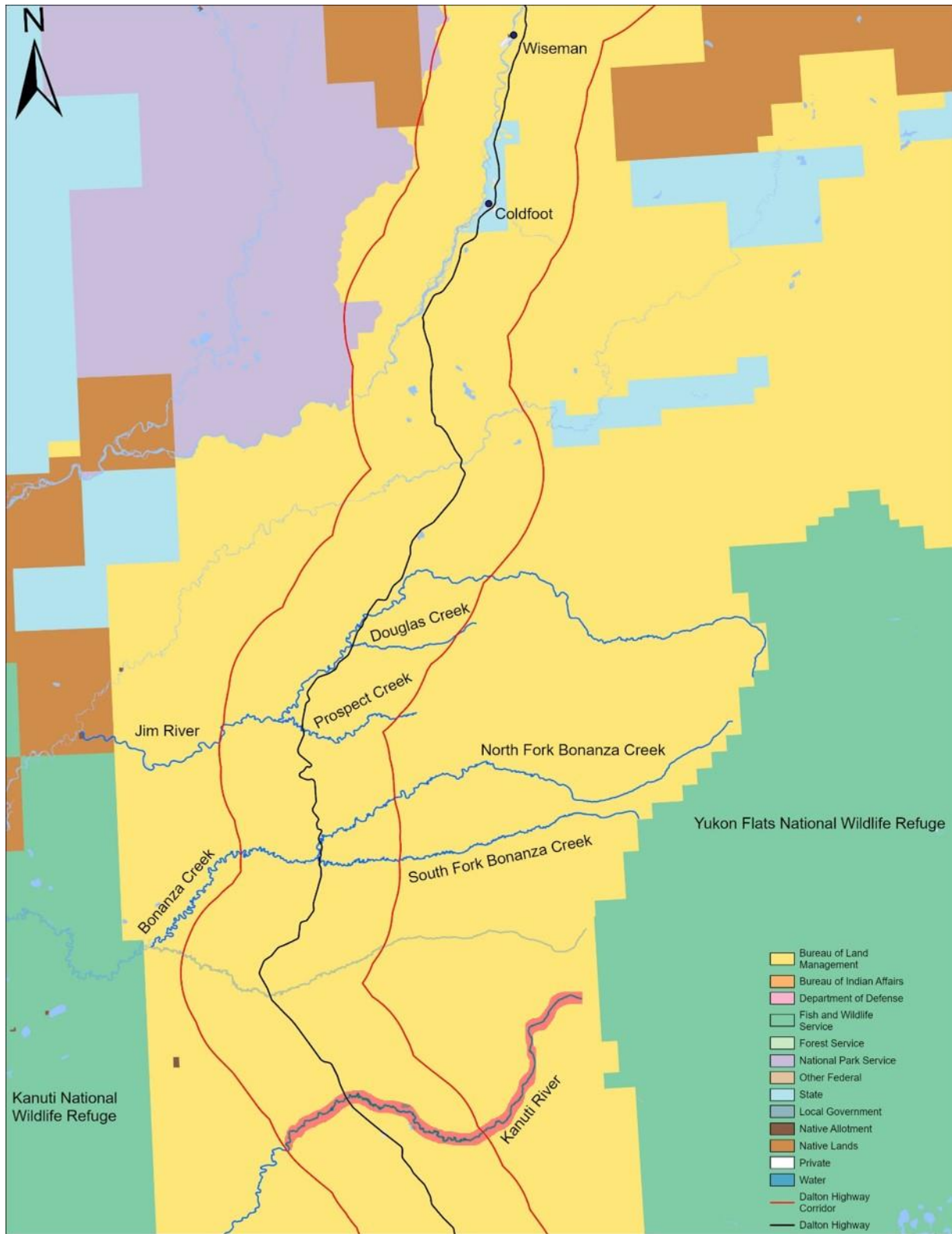


Figure 1. Map of the Dalton Highway Corridor (red lines), Kanuti River, and the other closed drainages in the area. The Kanuti River closure area (highlighted) is upstream from a point 5 miles downstream of the State highway crossing.

Customary and Traditional Use Determination

Residents of the Yukon River drainage and the community of Stebbins have a customary and traditional use determination for salmon, other than fall Chum Salmon, in the Yukon River drainage.

Residents of the Yukon River drainage and the communities of Chevak, Hooper Bay, Scammon Bay, and Stebbins have customary and traditional use determination for fall Chum Salmon in the Yukon River drainage.

Residents of the Yukon-Northern Area have a customary and traditional use determination for freshwater species other than salmon in the Yukon River drainage.

Regulatory History

Under State fishing regulations, the portion of the Kanuti River within the Dalton Highway Corridor (5 miles on either side of the highway) has been closed to subsistence fishing since the late 1970s, beginning with construction of the highway. The opening of the Dalton Highway to public travel in 1994 provided new access to lakes and streams along the route. Increases in recreational fishing effort and harvest have resulted in reductions in the sport fishing bag limits for Northern Pike and Arctic Grayling, no retention of Lake Trout, and a salmon fishing closure within the Dalton Highway Corridor (Stuby 2021).

In 1992, the Federal Subsistence Management Program promulgated regulations governing the harvest of fish for subsistence uses in non-navigable waters within and adjacent to Federal public lands (57 Fed. Reg. 22940 [May 29, 1992]). These regulations incorporated many provisions from State of Alaska subsistence fishing regulations. The closure under review in this analysis was incorporated into Federal regulations in this manner and has not been subsequently modified.

In 1999, the Board also adopted Federal regulations for fish in navigable waters within and adjacent to Federal public lands where there is a Federal reserved water right (64 Fed. Reg. 1276 [January 8, 1999]). These regulations do not apply on navigable waters within and adjacent to BLM general domain lands (see 50 CFR 100.3).

Closure Last Reviewed

There have been no previous reviews of this closure.

Justification for Original Closure

The Federal Subsistence Management Program justification for the inclusion of the original closure in Federal regulations was to minimize disruption to the State's continuing fish and game management, because of the uncertainty over the resumption of State management of subsistence, yet still fulfill the requirements of Title VIII of ANILCA (55 FR 27114, June 29, 1990).

Council Recommendation for Original Closure

N/A

State Recommendation for Original Closure

N/A

Biological Background

Salmon

According to local knowledge and the Anadromous Waters Catalog, Chinook and summer Chum salmon are present in the Kanuti River, downstream of the closure area (Trainor et al. 2019, ADF&G 2022a). However, few assessment projects have been conducted in the Kanuti River. Aerial surveys were flown in 1969, 1971, 1975, and 1985 (ADF&G 2022b). Chinook Salmon were only observed in 1985 and eight fish were counted (JTC 1985). Summer Chum Salmon were only observed in 1969 and 25 fish were counted (ADF&G 2022b).

Nonsalmon Fish

Nonsalmon fish species, such as Arctic Grayling, Burbot, Round Whitefish, Northern Pike, and Slimy Sculpin have been observed in the Kanuti River but information in the closure area is limited (BLM 2005). In addition, local knowledge indicates Longnose Sucker also inhabit the drainage (Andersen et al. 2004). Most information related to the habitat use, seasonal movements, and population status of these species (excluding Slimy Sculpin) was provided by local experts during a Traditional Ecological Knowledge study conducted by the Alaska Department of Fish and Game (ADF&G), Division of Subsistence (Andersen et al. 2004). The information collected in this study applies to the broader Koyukuk River drainage.

Arctic Grayling

Arctic Grayling have been documented in the closure area but population assessments have not been conducted (ADF&G 2022c). Local knowledge indicates Arctic Grayling spend most of their time in clear, quickly moving water in tributary streams and headwater areas whenever this habitat is clear of ice. They are reported to move into this habitat after breakup in April or May, spawning shortly afterwards and feeding on insects. Later, the larger Arctic Grayling occupy higher quality feeding areas farthest upstream and smaller fish occupy poorer feeding areas downstream (Hughes 1992, Andersen et al. 2004). Arctic Grayling move from tributary streams to overwintering areas in deeper water downstream during September and October. Local knowledge indicates that Arctic Grayling are usually the last fish to leave the tributary streams in the fall. Arctic Grayling overwinter in the Koyukuk River mainstem and large tributaries including the Alatna and Kanuti Rivers, as well as lakes in the far upper portions of the Koyukuk drainage (Andersen et al. 2004).

According to local experts, the population of Arctic Grayling in the Koyukuk drainage appeared healthy and abundant at the time of the interviews. However, they are susceptible to large mortality events from periodic flooding events in the upper portion of the Koyukuk drainage (Andersen et al. 2004).

Longnose Sucker

Local knowledge indicates that Longnose Sucker are present in small numbers in the Koyukuk River drainage but occur at relatively high numbers in the Kanuti River. Longnose Sucker occupy mainstems, sloughs, large and small tributaries, and lakes during the open water period, and move into deep portions of the main lower Koyukuk River during winter. Spawning occurs in small streams after breakup (Andersen et al. 2004).

Burbot

According to local experts, Burbot are found in major tributaries of the Koyukuk drainage, but not the smallest tributaries. Burbot may occupy headwater lakes or the mainstem of the Koyukuk River year-round. Most non lake-adapted Burbot follow a different seasonal movement pattern from other fish, moving upstream along shallow water areas beginning around October through January or February. Spawning takes place under the ice in winter (Andersen et al. 2004).

Whitefish

Several whitefish species that include Broad, Humpback, and Round whitefish and Least Cisco have been captured in the Kanuti River (Brown 2009). In addition, Humpback Whitefish and Least Cisco spawning has been documented in the Kanuti River, downstream of the closure area (Brown 2009).

Local experts indicate whitefish move upstream in the Koyukuk River just before and during spring break up. As the water becomes fast and high due to spring run-off, the fish move into calmer side waters, returning when water levels drop. They repeat this movement whenever water levels rise. In June there is a pulse of Broad Whitefish that precedes the arrival of Chinook Salmon by about two weeks. Some whitefish spend summers feeding in lakes, while others stay in the Koyukuk River and major sloughs. In fall, whitefish move towards spawning areas upstream, then descend downstream after spawning around September and October. Whitefish are said to overwinter in an inactive state in deep lakes from December to March (Andersen et al. 2004).

Local knowledge indicates the abundance and quality of whitefish in the Koyukuk drainage has declined over the previous 60 years. These declines were attributed to changes in habitat and die-offs resulting from being stranded in shallow lakes during high water periods (Andersen et al. 2004).

Northern Pike

According to local experts, Northern Pike in the Koyukuk drainage overwinter in deep lakes and move into shallow lakes and sloughs in spring. Spawning takes place in early summer. After mid-September, Northern Pike move back towards the main river and deep lakes (Andersen et al. 2004).

Cultural Knowledge and Traditional Practices

Of those communities with a customary and traditional use determination for fish in the Yukon River drainage, those located in reasonable proximity to the Kanuti River as it crosses the Dalton Highway are most likely to subsistence fish in the closed area. This includes Wiseman and Coldfoot. In addition to these communities, which are located on the road system, the communities of Evansville and Bettles are connected to the Dalton Highway via a winter road to Evansville from January through March (Holen et al. 2012). However, there is a mismatch between the timing of this road opening and that of nonsalmon fishing by these communities (Andersen et al. 2004). Furthermore, an ADF&G Division of subsistence survey indicated that residents of Bettles and Evansville focus their subsistence use in areas closer to these communities (Holen et al. 2012).

The community of Stevens Village also has access to the Dalton Highway as it crosses the Yukon River, via boat and snow machine (Trainor 2022, pers. comm.). However, a subsistence survey of Stevens Village conducted from 1984 to 1985 showed that residents focus most of their subsistence fishing activity closer to their community on the Yukon River (Sumida 1988); a more recent ADF&G Division of Subsistence survey did not map subsistence use areas (Brown et al. 2016).

Wiseman and Coldfoot

Wiseman and Coldfoot are very small communities located on the Dalton Highway. Both communities fall within the traditional boundaries of the Koyukon Athabascan people, an area which has also been influenced by historical interaction with Iñupiat. Both Wiseman and Coldfoot were established as the result of the gold mining industry in the late 1800s and early 1900s. Coldfoot was abandoned by 1930, before being re-settled in the 1970s in connection with construction of the Dalton Highway and the Trans-Alaska Pipeline. As of 2018 there were an estimated eight full-time residents in Coldfoot and 11 in Wiseman (ADLWD 2019). The area also includes a small number of residents along the Dalton Highway Corridor in camps and other isolated households. ADF&G Division of Subsistence conducted its only subsistence survey of Wiseman and Coldfoot in 2012, for the 2011 calendar year.

At the time of ADF&G's survey, there were five year-round households in Wiseman, and all were surveyed. Four of these households attempted to fish, and all households used fish, although in small quantities (Holen et al. 2012). Residents of Wiseman and Coldfoot can fish within the Kanuti River closure area with rod and reel under State sport fishing regulations.

Salmon

Wiseman residents traditionally harvested and used small amounts of Chum and Chinook salmon locally. However, in part because of local closures to both subsistence and sport fishing for salmon in place since 1978 (sport fishing for salmon is closed within a five-mile radius of the Dalton Highway), Wiseman residents primarily harvest salmon at locations far afield, such as in the Copper and Yukon rivers.

During the 2011 study year, only one of the five Wiseman households fished for salmon (at locations distant from the community), resulting in an estimated 12 pounds of Sockeye Salmon per person, or 4%

of Wiseman’s total wild food harvest in weight. In addition, Wiseman households received and shared Chinook Salmon, although they did not directly harvest any. All households used salmon (Holen et al. 2012).

Nonsalmon fish

According to Holen et al., “Since the salmon fishing closure was initiated, non-salmon fish have become even more important to Wiseman residents” (2012: 369). Nonsalmon fishing can take place under subsistence regulations in areas that are not closed (in addition to the Kanuti River closure area, subsistence fishing is also closed in Bonanza Creek and Jim River, including Prospect Creek and Douglas Creek). In addition, nonsalmon fish can be taken by rod and reel under State sport fishing regulations throughout the area. Within these regulatory restrictions, during the study period, nonsalmon fishing was reported as occurring close to Wiseman and Coldfoot adjacent to the Dalton Highway, as well as on the South Fork Koyukuk River and as far south as the Jim River (Holen et al. 2012, **Figure 2**).

During the study period, four of the five Wiseman households fished for nonsalmon species, resulting in an estimated 13 pounds of nonsalmon fish per person, or 5% of Wiseman’s total wild food harvest in weight. The three most significant nonsalmon harvests in terms of weight included Arctic Grayling, Longnose Sucker, and Burbot (Holen et al. 2012, ADF&G 2020, **Table 1**).

In 2011, about 52% of Wiseman’s nonsalmon fish harvest (measured in edible weight) was taken with gillnet or seine, about 28% was taken with “other subsistence methods,” which includes set lines, and the remainder was taken by rod and reel. However, the only nonsalmon species that participants reported taking by rod and reel was Lake Trout; a little less than half of the Lake Trout harvest was taken with this gear. The fish most significant in terms of subsistence harvest were taken entirely with subsistence gear during the study period, described in more detail below, although Wiseman’s harvest methods for Longnose Sucker and whitefish species were not quantified in the relevant subsistence survey report (Holen et al. 2012).

Arctic Grayling

In this description of harvest practices for Arctic Grayling, and for other species, below, ethnographic data are drawn both from ADF&G’s subsistence survey in Wiseman for the 2011 calendar year (Holen et al. 2012) and from a Traditional Ecological Knowledge Study conducted by ADF&G Division of Subsistence from 2001 to 2003 (Andersen et al. 2004). The latter study incorporated interviews with 29 key respondents who were life-long residents of the Koyukuk River drainage communities of Alatna, Allakaket, Bettles/Evansville, Hughes, Huslia, Koyukuk, and Wiseman. Where available, information specific to practices by residents of Wiseman is emphasized.

In the Koyukon language Arctic Grayling are called *tleghelbaaye*, which likely refers to their gray coloring (Andersen et al. 2004). Fall and early winter are the preferred times for harvesting Arctic Grayling by Koyukuk River communities (Andersen et al. 2004). In the 2011 study year, Wiseman residents harvested Arctic Grayling with gillnet or seine (25%) and “other subsistence methods” (75%) (Holen et al. 2012). Residents of the wider region fish for Arctic Grayling with hook and line beginning

when rivers begin to freeze, usually in October. They use rod and reel in open eddies until freeze-up is complete, after which they fish through holes in the ice. Arctic Grayling are also sometimes caught during fall seining for whitefish. Arctic Grayling are easily preserved by freezing, and people prefer to eat them raw and frozen. As winter progresses, Arctic Grayling are further downstream in deep water, and are less accessible (Andersen et al. 2004).

Longnose Sucker

The Koyukon term for Longnose Sucker is *toonts'ode*, “something bad went into the water” (Andersen et al. 2004). Longnose Sucker are mostly caught in the Koyukuk River drainage as by-catch in nets set out for whitefish in the spring. In areas suitable to the harvest method, they are sometimes taken during fall whitefish seining. Finally, they are sometimes taken in the winter with under-ice Burbot traps. In the past, spring-harvested Longnose Sucker were important for feeding both humans and dogs, but today they are primarily used as dog food. The many small bones in the fish make the end portion of Longnose Sucker inedible for humans (Andersen et al. 2004). Wiseman’s harvest methods for Longnose Sucker were not specifically described in Holen et al. (2012).

Burbot

Burbot are known as *il'eghes*, in the Koyukon dialect of the lower Koyukuk River, and *tsoneye* in the upper river dialect. Burbot can be an important subsistence resource for Koyukuk River communities in winter when other fish are not available. They are harvested beginning in the fall. In the middle Koyukuk River conditions are ideal for Burbot traps in winter, but in areas closer to the headwaters Burbot are most commonly taken with set hooks through the ice beginning around October. According to a key informant from Wiseman, Burbot have also traditionally been taken from lakes in the summer with spears (Andersen et al. 2004). During the 2011 study year, Wiseman residents took Burbot entirely with subsistence gear “other than gillnet or seine” (Holen et al. 2012).

In the fall and winter Burbot can be preserved by natural freezing, but do not preserve well, and people prefer to eat them soon after they are harvested. The fatty liver is the most prized part of the fish. For subsistence purposes, people prefer to catch them before they spawn, when they are a better source of fat. Burbot return downstream beginning in February (Andersen et al. 2004).

Whitefish

The generic term for whitefish in the Koyukon language is *ts'ol*. There are two species of large whitefish in the Koyukuk drainage, Broad Whitefish (*taaseze*, or “water bear”) and Humpback Whitefish (*holehge*, “it swims upwards”). There are also two species of small whitefish, Least Cisco (*tsaabaaya*) and the Round Whitefish (*hulten*). According to local experts, the latter is only thinly distributed in the Koyukuk drainage (Andersen et al. 2004).

One key informant said that he had observed a decline in whitefish populations over the previous sixty years, and that the fish had also become less fatty. He attributed this decline to habitat change, and especially to decreased weeds and insects, as well as increased silt and water temperatures. Whitefish are

susceptible to die-offs after being trapped in shallow lakes during high water periods (Andersen et al. 2004).

Gillnets are used to catch whitefish in the spring after breakup and in the fall as fish move between seasonal habitats. Whitefish are considered to be in prime condition in fall. After freeze-up they can be caught with set nets. Least Cisco may be caught with seining nets, although river conditions prevent the use of these in the upper portion of the river. In the summer, whitefish are sometimes incidentally caught in nets used for salmon. Round Whitefish are very thinly distributed and are not commonly caught. Wiseman's harvest methods for whitefish were not specifically described in Holen et al. (2012).

Northern Pike

Northern Pike are known as *k'oolkkoye* in the Koyukon language, and are an important food resource that is available year-round. Northern Pike are present but not common in the Koyukuk River near Bettles, and are not present in the Middle Fork of the Koyukuk near Wiseman.

On the Koyukuk River, Northern Pike are caught with gillnets in spring and fall. "Pike are sometimes caught during the summer using artificial lures and rod and reel gear in area lakes or specific river or slough locations known for being good pike fishing. Pike are also frequently taken as by-catch in summer nets and fishwheels targeting salmon" where conditions permit use of this gear (Andersen et al. 2004: 74). In winter they can be harvested with a hook through the ice where streams leave or enter lakes.

Key informants from the wider region reported harvesting Northern Pike with gillnets, fish traps, and hook and line gear. According to Andersen et al., "The ability to take pike using unusual methods contributed to the utility of pike as a subsistence resource" (2004:75). During the subsistence survey study year, Wisemen residents harvested Northern Pike entirely with gillnet or seine (Holen et al. 2012).

Table 1: Estimated number of nonsalmon fish and corresponding pounds per person harvested by Wiseman households in the 2011 calendar year (ADF&G 2020).

Fish species	Estimated number of fish	Estimated pounds per person
Arctic Grayling	111	5.97
Longnose Sucker	40	2.15
Burbot	9	1.66
Northern Pike	4	1.38
Char	11	1.11
Lake Trout	9	0.97
Whitefish	25	0.96
Dolly Varden	2	0.13

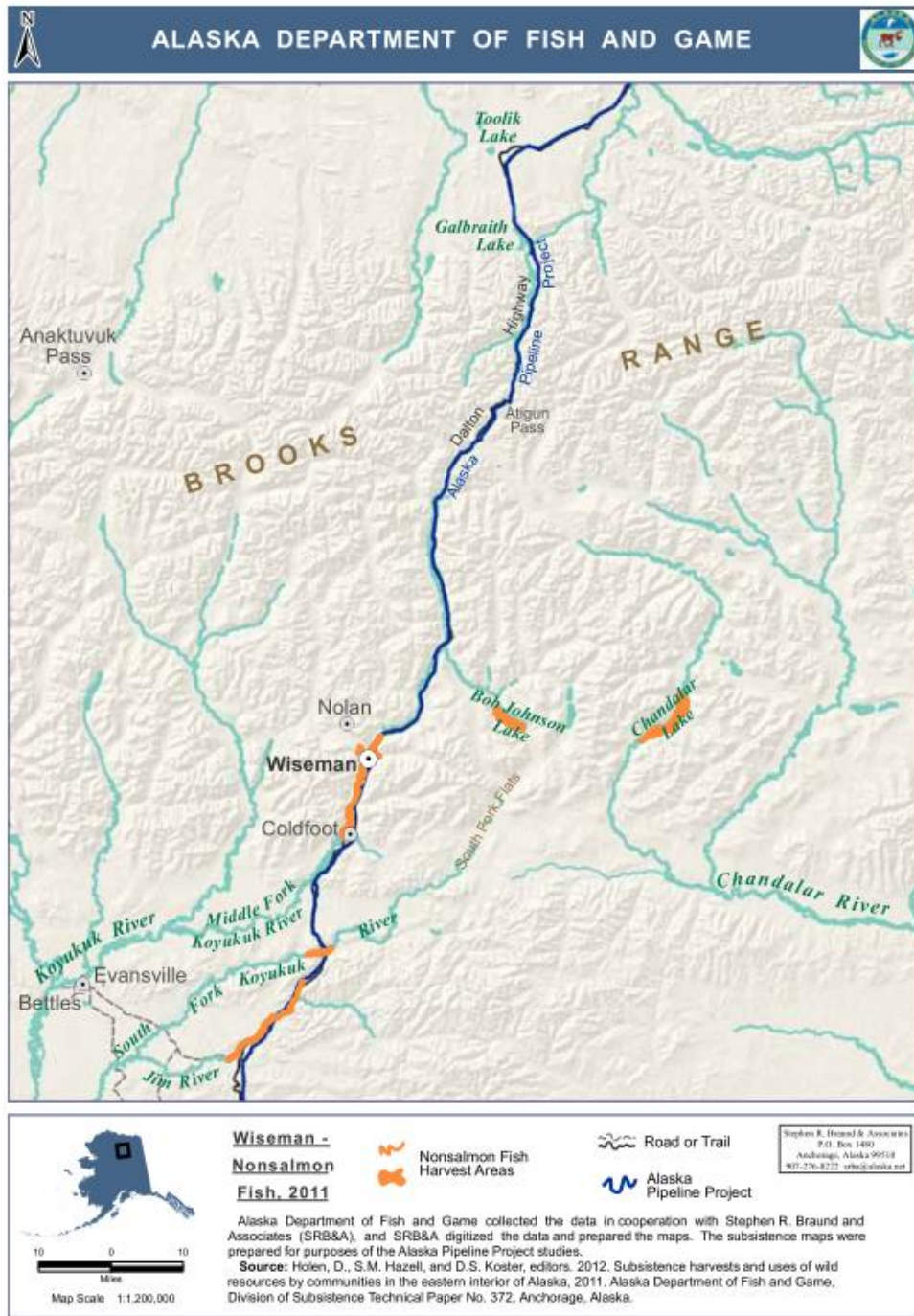


Figure 2. Wiseman’s nonsalmon fish search and harvest areas, 2011. Source: Holen et al. 2012.

Coldfoot was also surveyed by ADF&G Division of Subsistence for the 2011 calendar year. At that time, there were five year-round households in Coldfoot, four of which were surveyed, representing 10 individuals. During the survey year, no residents of the community fished for either salmon or nonsalmon

fish, but one household received and used Coho and Sockeye salmon. No use of nonsalmon fish was documented in Coldfoot during the study period (Holen et al. 2012).

Harvest History

Subsistence fishing is prohibited in the Kanuti River closure area under both State and Federal regulations so there is no legal subsistence harvest in this area. Harvest is allowed under State sport fishing regulations and is not limited to federally qualified subsistence users.

During years when sport fishing for Chinook Salmon is not closed or restricted by emergency order, Chinook Salmon throughout the Yukon River Management Area (excludes the Tanana River) can be harvested with a limit of three per day, three in possession over 20 inches (only two can be over 28 inches), and ten per day, ten in possession for under 20 inches. Other salmon have a ten per day, ten in possession limit. However, salmon fishing is closed within a 5-mile radius on either side of the Dalton Highway.

Per the general sport fish regulations that apply to the entire Yukon River Management Area that extends from the Yukon River Delta to the border with Canada and includes the entire Yukon River drainage (excluding the Tanana River), Dolly Varden can be harvested with a limit of ten per day, ten in possession (only two can be 20 inches or longer). Allowable Lake Trout harvest is two per day, two in possession, only two of which may be 20 inches or longer. Arctic Grayling have no size limit and have a limit of five per day, five in possession. Sheefish and Northern Pike have a limit of ten per day, ten in possession, and Burbot have a harvest limit of 15 per day, 15 in possession.

Special regulations apply to all streams within the Trans-Alaska Pipeline corridor, which is defined as the length of the Pipeline north of the Yukon River extending 5 miles on either side of the Dalton Highway, excluding the Ray River where General Regulations apply. The area of the Kanuti River that is closed to subsistence fishing crosses the Dalton Highway Corridor. In this area (five miles on each side of the highway), sport fishing for salmon is closed. In addition, retention of Lake Trout is prohibited and the limit of Northern Pike is five per day, five in possession (only one of which may be 30 inches or longer).

The majority of sport fish harvest along the Dalton Highway corridor for the Yukon River Management Area is for Arctic Grayling (Stuby 2021). Sport fish harvest estimates are not available for specifically the Kanuti River. Sport fish harvest estimates for Arctic Grayling in streams along the Dalton Highway south of Atigun Pass report an average of 324 fish annually during 2009–2018. Annual harvest for Northern Pike for this area during this time frame was 22 fish. Fishing effort for this entire area for all species during 2009–2018 was approximately 928 angler days (Stuby 2021). Sport fishing effort and harvest in Alaska have been estimated and reported annually since 1977 using a mail survey. Estimates based on fewer than 12 responses indicate that the sport fishing occurred and are subject to high variance. The majority of estimates for the Dalton Highway during 2009–2018 were based on fewer than 12 respondents (Stuby 2021). These data suggest that sport fish harvest and effort may not be large enough to cause conservation concerns for Arctic Grayling in the Kanuti River.

Other Alternatives Considered

One alternative is to retain the closure. Population statuses are unknown in the closure area, which is road-accessible, allowing easy access and harvest of fish. If the closure is rescinded, harvest of nonsalmon species would be unrestricted for all legal gear types other than rod and reel, and gillnets could be used to harvest high numbers of fish. Retaining the closure would protect populations from overharvest until a proposal to restrict harvest and/or gear types in the closure area could be submitted. Federally qualified subsistence users could harvest fish under State sport fishing regulations while the Federal closure was in place. This alternative was rejected because it would not provide a Federal subsistence priority in the closure area.

A second alternative is to modify the closure by closing the fishery to all users and uses. This would fully protect salmon and nonsalmon fish populations in the closure area. Under this alternative, there would be no subsistence or sport fishing opportunity. Closing to all users and uses would eliminate the current situation, in which Federal public waters are closed to subsistence fishing while remaining open to other uses. This alternative was rejected because it would be an unnecessary restriction on non-subsistence uses as sport fish harvest data suggest the sport fishery does not present a conservation concern. In addition, subsistence surveys indicate subsistence users may harvest a portion of their wild foods under sport fishing regulations.

Effects

If the closure is rescinded, Federal subsistence regulations for the Yukon-Northern Area would apply. Harvest of salmon would be allowed, and Federal subsistence fishing schedules, openings, closings, and fishing methods would be the same as those issued by State emergency order for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal special action. Salmon could be taken by gillnet, beach seine, dip net, fish wheel, or rod and reel.

Nonsalmon fish could be taken by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, with some restrictions on this gear (see "Current Federal Regulation" in this analysis). Subsistence rod and reel harvest limits would match State sport fishing harvest and possession limits. Harvest would be unrestricted for all other legal gear types.

Rescinding the closure would establish a Federal subsistence priority and provide subsistence harvest opportunity in an area that is currently closed to subsistence fishing but open to other uses. However, allowing unrestricted harvest in a road-accessible system may increase harvest pressure on stocks and result in a conservation concern. Populations may be protected by establishing a more conservative management framework during the next fisheries regulatory cycle. Before then, the Federal inseason manager may issue emergency special actions to set provisions for the fishery, such as stipulating gear types and setting harvest limits, for up to 60 days. Actions exceeding 60 days would require a temporary special action which the Board must implement.

OSM CONCLUSION

- Retain the Status Quo
- Rescind the Closure
- Modify the Closure
- Defer Decision on the Closure or Take No Action

The modified regulation should read:

§ __.27(e)(3) Yukon-Northern Area

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

(A) ~~Kanuti River upstream from a point 5 miles downstream of the State highway crossing;~~

Justification

Currently, a portion of the Kanuti River is closed to the harvest of all fish by federally qualified subsistence users but open to sport fishing under State regulations. Rescinding the closure would establish a Federal subsistence priority in the area. However, allowing unrestricted harvest for gear types other than rod and reel in an easily accessible system may lead to overharvest and local depletion of stocks. While populations may be protected by limiting subsistence harvest to rod and reel only and/or modifying harvest limits, these modifications are not possible through the closure review process and would require a fisheries proposal be submitted. Until a proposal can be submitted, the Federal inseason manager may use their delegated authority to restrict gear types and/or harvest limits, for up to 60 days, to protect populations in the closure area. Actions exceeding 60 days would require a temporary special action be implemented by the Board. If a proposal is submitted, the Office of Subsistence Management recommends that harvest be limited to rod and reel only in the Kanuti River closure area.

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SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS

Yukon-Kuskokwim Delta Subsistence Regional Advisory Council

Modify the closure for FCR23-02 by rescinding to nonsalmon species only. The Council believes rescinding the closure to nonsalmon fish would support subsistence users in the area but felt the closure to salmon should be maintained due to conservation concerns. They noted that a special action can be used to temporarily set harvest limits until a proposal can be submitted by the Western Interior Council during the next fisheries regulatory cycle.

The modified regulation should read:

§ __.27(e)(3) Yukon-Northern Area

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

~~(A) Kanuti River upstream from a point 5 miles downstream of the State highway crossing;~~

(xii) You may take salmon only by gillnet, beach seine, dip net, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(E) In the Kanuti River drainage upstream from a point 5 miles downstream of the State highway crossing, you may not harvest salmon.

Western Interior Alaska Subsistence Regional Advisory Council

Modify the closure for FCR23-02 by rescinding to nonsalmon species only. The Council noted there was little concern for overharvest of nonsalmon fish given Arctic Grayling is the predominant species in the drainage and are targeted primarily with rod and reel. In addition, the system is distant from Wiseman and Coldfoot, which are the communities most likely to subsistence fish in the area.

The modified regulation should read:

§ __.27(e)(3) Yukon-Northern Area

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

~~*(A) Kanuti River upstream from a point 5 miles downstream of the State highway crossing;*~~

(xii) You may take salmon only by gillnet, beach seine, dip net, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(E) In the Kanuti River drainage upstream from a point 5 miles downstream of the State highway crossing, you may not harvest salmon.

Seward Peninsula Subsistence Regional Advisory Council

Take no action on FCR23-02. The Council opted not to take up this closure review because the closure area is located outside of their region.

Eastern Interior Alaska Subsistence Regional Advisory Council

Modify the closure for FCR23-02 by rescinding to nonsalmon species only. The Council was concerned about Yukon salmon stocks and additional harvest on those stocks but wanted to support nonsalmon subsistence harvest opportunity for local residents since there are no conservation concerns for nonsalmon species in the Kanuti River.

The modified regulation should read:

§ __.27(e)(3) Yukon-Northern Area

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

~~*(A) Kanuti River upstream from a point 5 miles downstream of the State highway crossing;*~~

(xii) You may take salmon only by gillnet, beach seine, dip net, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(E) In the Kanuti River drainage upstream from a point 5 miles downstream of the State highway crossing, you may not harvest salmon.

North Slope Subsistence Regional Advisory Council

Rescind the closure on FCR23-02. The Council believes rescinding the closure would benefit subsistence uses and provide a Title VIII of ANILCA mandated Federal subsistence priority, as there is already sport fishing in this area.

INTERAGENCY STAFF COMMITTEE COMMENTS

The Interagency Staff Committee (ISC) acknowledges that this closure is out of compliance with Title VIII of ANILCA by being closed to fishing by federally qualified subsistence users while allowing for sport fishing under State regulations. The Federal Subsistence Board (Board) would need to take action to bring this situation back into compliance with ANILCA. The Board could modify the closure by closing to all uses. The Board could also rescind the closure and provide a priority consumptive use to federally qualified subsistence users.

Three Subsistence Regional Advisory Councils have recommended the closure be rescinded, bringing this fishery back into compliance with ANILCA, and one Council has recommended to rescind the closure. In the absence of this closure standard, area Federal subsistence regulations would apply which could present conservation concerns. Permanent regulations would be the preferable solution to address possible conservation concerns while still providing a meaningful priority to federally qualified subsistence users.

Until the Board receives and takes action on regulatory proposals, Federal managers can use their delegated authority if conservation concerns arise. The ISC recognizes that unless modified by the Board, current Fisheries delegation of authority letters limit Federal managers to emergency special actions (actions lasting no longer than 60 days).

ALASKA DEPARTMENT OF FISH AND GAME COMMENTS

Fisheries Closure Review FCR23-02

This is a routine closure review to determine if the current federal subsistence fisheries closure for the Kanuti River is still warranted. Currently, federal public waters of the Kanuti River are closed to federal subsistence fishing but remain open under state regulations.

Position

The Alaska Department of Fish & Game (ADF&G) **SUPPORTS** the closure remaining in place until such time as the Federal Subsistence Board (FSB) can reconcile the legality of effectively opening a fishery. Congress authorized the FSB to close, but not to open, a fish or wildlife harvest season as set forth in sections 815 and 816 of the Alaska National Interest Lands Conservation Act (ANILCA). Without statutory authorization, the FSB adopted a regulation improperly granting itself authority to open public lands to the taking of fish and wildlife (50 CFR § 100.19).

ADF&G also has conservation concerns over the rescinding of this closure. Resident species at high latitudes are slow growing, have lower productivity, and are present in low densities making overexploitation easier. Allowing multiple gear types, including gill nets, and no harvest limits will result in localized depletions and overharvest of populations particularly during seasonal migrations. This action will be contrary not only to the provisions within Title 8 of ANILCA but to the regulatory protections implemented by the Alaska Board of Fisheries (BOF) within the Trans-Alaska Pipeline Corridor. The Office of Subsistence Management (OSM) acknowledges the conservation concerns regarding rescinding this closure but still feels that establishing a federal subsistence priority for the area is more important than taking a cautious approach to address the lingering issues over rescinding this closure.

Background

The Western Interior Regional Advisory Council (WIRAC) voted to rescind FCR23-02 during their October 19-20, 2022 meeting with the modification that salmon fishing should remain closed. Earlier in October, the Eastern Interior Regional Advisory Council voted to rescind with a similar modification and the North Slope Regional Advisory Council deferred to the WIRAC. According to the analysis of the closure drafted by OSM, subsistence rod and reel harvests would follow sport fishing harvest and possession limits. However, no restrictions are specified for other allowable gear types, such as gillnets and dip and fyke nets, that have higher harvest potential.

The Kanuti River crosses the Dalton Highway at mile 107. Sport fishing is allowed and general regulations for the Yukon Management Area apply, but special regulations apply where the Kanuti River and its tributaries are located within a 5-mile radius of either side the trans-Alaska Pipeline corridor. These protections were implemented as conservation measures given the relatively easy access to resources along a major highway. Predominant species targeted in the sport fishery are Arctic grayling with daily bag and possession limits of 5 per day, no size limit, and northern pike with the same limit, but only 1 of which may be 30 inches or longer. Salmon fishing along this corridor is closed.

Impact on Subsistence Users

If the voluntary recommendations OSM has put forward in their analysis are enacted there will be no impact on subsistence users. Currently they are able to fish under state regulations which would be mirrored by the federal in-season manager. If none of those recommendations are implemented, then FQUs would have an immediate benefit of harvesting large amounts of fish but would then cause closures to be again implemented for the conservation of those fish species.

Impact on Other Users

There would be minimal impact on other users if the voluntary recommendations OSM has put forward in their analysis. However, if FQUs are allowed to utilize the current federal regulations in place for when the closure is rescinded other users could see a dramatic decrease in their ability to fish under state regulations and could then be restricted from fishing due to conservation concerns created under the rescission of this closure.

Opportunity Provided by State

State customary and traditional use findings: The Alaska Board of Fisheries (BOF) has closed the Kanuti to subsistence fishing.

5 AAC 01.225. Waters closed to subsistence fishing.

(b) The following drainages located north of the mainstem Yukon River are closed to subsistence fishing:

(1) Kanuti River upstream from a point five miles downstream of the state highway crossing;

Amounts Reasonably Necessary for Subsistence: Alaska state law requires the BOF to determine the amount of the harvestable portion of a fish population that is reasonably necessary for customary and traditional uses (amounts necessary for subsistence [ANS]). The BOF does this by reviewing extensive harvest data from all Alaskans, collected either by ADF&G or from other sources.

The ANS provides the BOF with guidelines on typical numbers of fish harvested for customary and traditional uses under normal conditions. Fishing regulations can be re-examined if harvests for customary and traditional uses consistently fall below ANS. This may be for many reasons: fishing regulations, changes in abundance or distribution, or changes in human use patterns, just to name a few.

5 AAC 01.236. Customary and traditional subsistence uses of fish stocks and amounts necessary for subsistence uses.

(a) The Alaska Board of Fisheries (board) finds that the following fish stocks are customarily and traditionally taken or used for subsistence:

(1) king, summer chum, fall chum, coho, and pink salmon in the Yukon Area;

(2) freshwater fish species, including sheefish, whitefish, lamprey, burbot, sucker, grayling, pike, and char;

General Regulations for the Yukon Management Area that apply to the Trans-Alaska Pipeline corridor***5 AAC 73.010. Seasons, bag, possession, and size limits, and methods and means for Yukon River Area***

(a) Except as otherwise specified in this section or through an emergency order issued under AS 16.05.060, sport fishing is permitted year-round in the waters of the Yukon River Area.

(b) Except as otherwise specified in (c) of this section, the following are the general bag, possession, and size limits for finfish and shellfish in the waters of the Yukon River Area:

(5) Arctic grayling: the bag and possession limit is five fish, with no size limit;

(6) sheefish: the bag and possession limit is 10 fish, with no size limit;

(8) burbot: the bag and possession limit is 15 fish, with no size limit;

Special Regulations for the Yukon Management Area that apply to the Trans-Alaska Pipeline corridor

(c) The following are the exceptions to the general bag, possession, and size limits, and fishing seasons specified in (a) of this section for the Yukon River Area:

(4) in the Dalton Highway corridor (Trans-Alaska Pipeline corridor) within the Yukon River Area, which is described as a corridor five miles wide on each side of the Dalton Highway north of the Yukon River, excluding the Ray River,

(A) sport fishing for salmon is closed;

(B) lake trout may be taken only by catch-and-release fishing, and may not be possessed or retained; all lake trout caught must be immediately released;

(C) the bag and possession limit for northern pike is five fish, of which only one fish may be 30 inches or greater in length;

Conservation Issues

A total rescission of this closure would cause conservation concerns for Chinook, chum, and coho salmon due to recent low returns. That concern would be eliminated if the FSB acknowledges the WIRAC's recommendation to exclude subsistence salmon fishing from the closure rescission. However, as discussed above ADF&G is concerned with the overharvest of non-salmon species under the current federal regulations in place that lack harvest limits and allow the use of highly efficient gear types such as gillnets.

Enforcement Issues

If this closure is rescinded, it will result in conflicting state and federal regulations for the Kanuti River which will complicate enforcement and cause user confusion. The FSB should request how enforcement efforts will be undertaken by federal enforcement officers.

FCR23-03 Executive Summary	
General Description	FCR23-03 reviews the closure to the harvest of all fish in the Bonanza Creek drainage by federally qualified subsistence users.
Current Regulation	<p>§___.27(e)(3) Yukon-Northern Area</p> <p>***</p> <p><i>(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:</i></p> <p>***</p> <p><i>(B) Bonanza Creek;</i></p> <p>***</p>
OSM Conclusion	Rescind
Yukon-Kuskokwim Delta Subsistence Regional Advisory Council Recommendation	Modify the closure by rescinding to nonsalmon species only
Western Interior Alaska Subsistence Regional Advisory Council Recommendation	Modify the closure by rescinding to nonsalmon species only
Seward Peninsula Subsistence Regional Advisory Council Recommendation	Take no action
Eastern Interior Alaska Subsistence Regional Advisory Council Recommendation	Modify the closure by rescinding to nonsalmon species only
North Slope Subsistence Regional Advisory Council Recommendation	Rescind
Interagency Staff Committee Comments	The Interagency Staff Committee (ISC) acknowledges that this closure is out of compliance with Title VIII of ANILCA by being closed to fishing by federally qualified subsistence users while allowing for sport fishing under State regulations. The Federal Subsistence Board (Board) would need to take action to bring this situation back into compliance with ANILCA. The Board could

FCR23-03 Executive Summary	
	<p>modify the closure by closing to all uses. The Board could also rescind the closure and provide a priority consumptive use to federally qualified subsistence users.</p> <p>Three Subsistence Regional Advisory Councils have recommended the closure be rescinded, bringing this fishery back into compliance with ANILCA, and one Council has recommended to rescind the closure. In the absence of this closure standard, area Federal subsistence regulations would apply which could present conservation concerns. Permanent regulations would be the preferable solution to address possible conservation concerns while still providing a meaningful priority to federally qualified subsistence users.</p> <p>Until the Board receives and takes action on regulatory proposals, Federal managers can use their delegated authority if conservation concerns arise. The ISC recognizes that unless modified by the Board, current Fisheries delegation of authority letters limit Federal managers to emergency special actions (actions lasting no longer than 60 days).</p>
ADF&G Comments	Retain Status Quo
Written Public Comments	None

FEDERAL FISHERIES CLOSURE REVIEW
FCR23-03

Issue

FCR23-03 is a standard review of a Federal subsistence fishery closure to the harvest of all fish in the Bonanza Creek drainage. It is the Federal Subsistence Board's (Board) policy that Federal public lands and waters should be reopened as soon as practicable once the conditions that originally justified the closure have changed to such an extent that the closure is no longer necessary. The purpose of this closure review is to determine if the closure is still warranted and to ensure the closure does not remain in place longer than necessary.

Closure Location: Yukon River Drainage, Bonanza Creek—all fish

Current Federal Regulation**§___.27(e)(3) Yukon-Northern Area**

(i) Unless otherwise restricted in this section, you may take fish in the Yukon-Northern Area at any time... You may subsistence fish for salmon with rod and reel in the Yukon River drainage 24 hours per day, 7 days per week, unless rod and reel are specifically otherwise restricted in this paragraph (e)(3).

(ii) For the Yukon River drainage, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060 [emergency orders]), unless superseded by a Federal special action.

(v) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, you may take fish other than salmon at any time.

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

(B) Bonanza Creek;

(xii) You may take salmon only by gillnet, beach seine, dip net, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(xvi) Unless otherwise specified in this section, you may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, subject to the following restrictions, which also apply to subsistence salmon fishing:

(B) You may not use an aggregate length of set gillnet in excess of 150 fathoms, and each drift gillnet may not exceed 50 fathoms in length.

(C) In Districts 4, 5, and 6, you may not set subsistence fishing gear within 200 feet of other fishing gear operating for commercial, personal, or subsistence use . . .

(xvii) In District 4, from September 21 through May 15, you may use jigging gear from shore ice.

Relevant Federal Regulation

§ __.27 (b) Subsistence Taking of Fish

(16) Unless specified otherwise in this section, you may use a rod and reel to take fish without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(ii) Except as otherwise provided for in this section, if you are not required to obtain a subsistence fishing permit for an area, the harvest and possession limits for taking fish for subsistence uses with a rod and reel are the same as for taking fish under State of Alaska subsistence fishing regulations in those same areas. If the State does not have a specific subsistence season and/or harvest limit for that particular species, the limit shall be the same as for taking fish under State of Alaska sport fishing regulations.

Closure Dates: Year-round

Current State Regulation

Yukon Area—Subsistence

5 AAC 01.225. Waters closed to subsistence fishing

(b) The following drainages located north of the mainstem Yukon River are closed to subsistence fishing:

(3) Bonanza Creek;

Yukon River Area—Sport

5 AAC 73.010. Seasons, bag, possession, and size limits, and methods and means for Yukon River Area

(a) Except as otherwise specified in this section or through an emergency order issued under AS 16.05.060, sport fishing is permitted year round in the waters of the Yukon River Area.

(b) Except as otherwise specified in (c) of this section, the following are the general bag, possession, and size limits for finfish and shellfish in the waters of the Yukon River Area:

(1) king salmon 20 inches or greater in length: the bag and possession limit is three fish, of which only two fish may be 28 inches or greater in length;

(2) salmon, other than king salmon: the bag and possession limit is 10 fish, with no size limit;

(3) Arctic char/Dolly Varden and lake trout:

(B) in all flowing waters: the bag and possession limit is 10 fish of all species combined, of which only two fish may be 20 inches or greater in length, and of which only two fish may be lake trout;

(5) Arctic grayling: the bag and possession limit is five fish, with no size limit;

(6) sheefish: the bag and possession limit is 10 fish, with no size limit;

(7) northern pike: the bag and possession limit is 10 fish, with no size limit;

(8) burbot: the bag and possession limit is 15 fish, with no size limit;

(10) finfish and shellfish species that are not specified in this section: there are no bag, possession, or size limits;

(c) The following are the exceptions to the general bag, possession, and size limits, and fishing seasons specified in (a) of this section for the Yukon River Area:

(4) in the Dalton Highway corridor (Trans-Alaska Pipeline corridor) within the Yukon River Area, which is described as a corridor five miles wide on each side of the Dalton Highway north of the Yukon River, excluding the Ray River,

(A) sport fishing for salmon is closed;

(B) lake trout may be taken only by catch-and-release fishing, and may not be possessed or retained; all lake trout caught must be immediately released;

(C) the bag and possession limit for northern pike is five fish, of which only one fish may be 30 inches or greater in length;

Regulatory Year Initiated: 1992

Extent of Federal Public Lands/Waters

For purposes of this analysis, the phrase “Federal public waters” is defined as those waters described under 36 CFR §242.3 and 50 CFR §100.3. The entire length of Bonanza Creek is on general domain land managed by the Bureau of Land Management (BLM; **Figure 1**). On general domain lands, Federal subsistence regulations apply only to non-navigable waters.

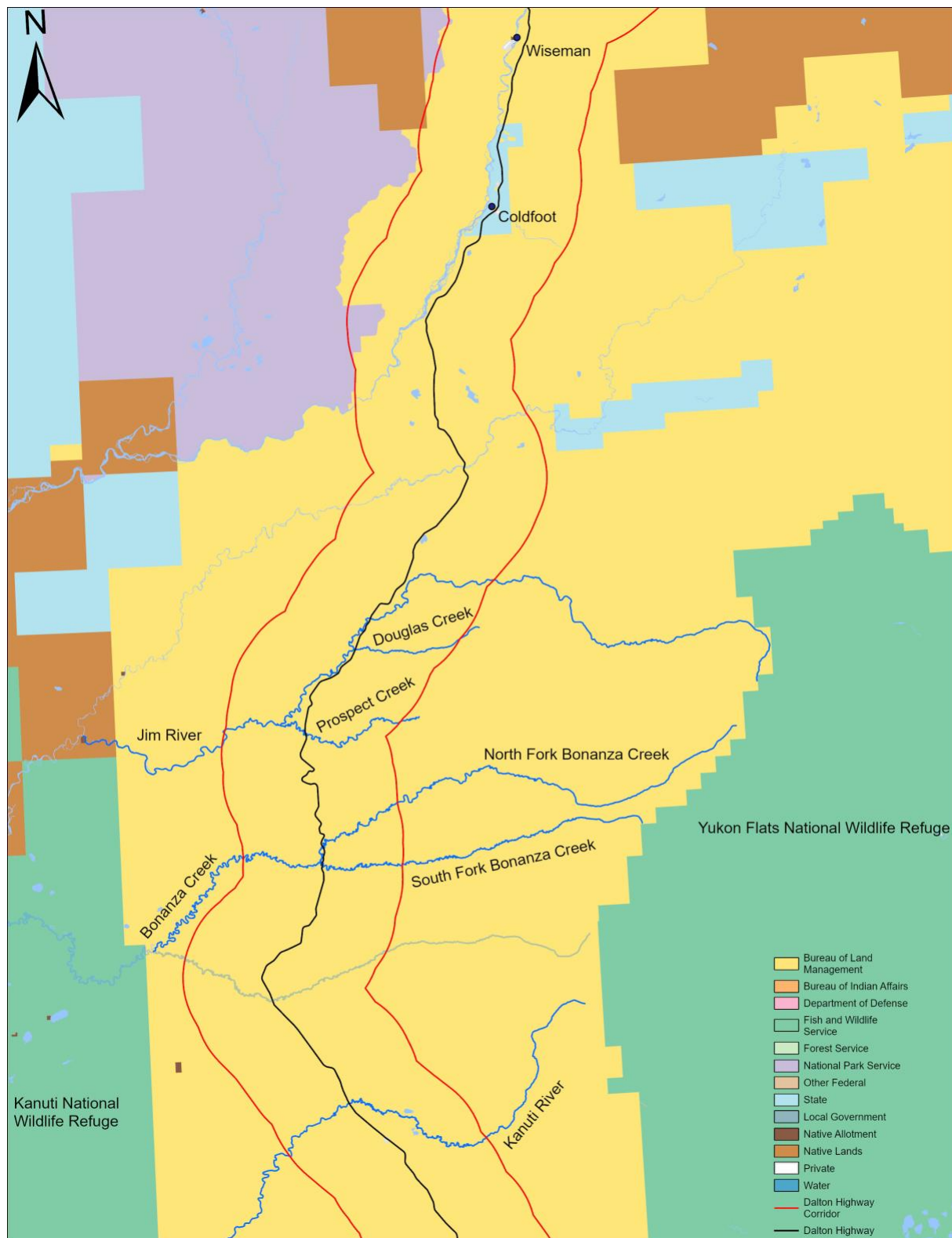


Figure 1. Map of the Dalton Highway Corridor (red lines), Bonanza Creek, and the other closed drainages in the area.

Customary and Traditional Use Determination

Residents of the Yukon River drainage and the community of Stebbins have a customary and traditional use determination for salmon, other than fall Chum Salmon, in the Yukon River drainage.

Residents of the Yukon River drainage and the communities of Chevak, Hooper Bay, Scammon Bay, and Stebbins have customary and traditional use determination for fall Chum Salmon in the Yukon River drainage.

Residents of the Yukon-Northern Area have a customary and traditional use determination for freshwater species other than salmon in the Yukon River drainage.

Regulatory History

Under State regulations, the portion of Bonanza Creek within the Dalton Highway Corridor (5 miles on either side of the highway) has been closed to subsistence fishing since the late 1970s, beginning with construction of the Dalton Highway (Holen et al. 2012). The opening of the Dalton Highway to public travel in 1994 provided new access to lakes and streams along the route. Increases in recreational fishing effort and harvest have resulted in reductions in the sport fishing bag limits for Northern Pike and Arctic Grayling, no retention of Lake Trout, and a salmon fishing closure within the Dalton Highway Corridor (Stuby 2021).

In 1992, the Federal Subsistence Management Program promulgated regulations governing the harvest of fish for subsistence uses in non-navigable waters within and adjacent to Federal public lands (57 Fed. Reg. 22940 [May 29, 1992]). These regulations incorporated many provisions from State of Alaska subsistence fishing regulations. The closure under review in this analysis was incorporated into Federal regulations in this manner and has not been subsequently modified.

In 1999, the Board also adopted Federal regulations for fish in navigable waters within and adjacent to Federal public lands where there is a Federal reserved water right (64 Fed. Reg. 1276 [January 8, 1999]). These regulations do not apply on navigable waters within and adjacent to BLM general domain lands (see 50 CFR 100.3).

Closure Last Reviewed

There have been no previous reviews of this closure.

Justification for Original Closure

The Federal Subsistence Management Program justification for the inclusion of the original closure in Federal regulations was to minimize disruption to the State's continuing fish and game management, because of the uncertainty over the resumption of State management of subsistence, yet still fulfill the requirements of Title VIII of ANILCA (55 FR 27114, June 29, 1990).

Council Recommendation for Original Closure

N/A

State Recommendation for Original Closure

N/A

Biological Background

Salmon

Information regarding salmon is limited in Bonanza Creek. According to the Anadromous Waters Catalog (AWC), Chum Salmon may spawn in Bonanza Creek and have been documented downriver of the Dalton Highway (ADF&G 2022a). No other salmon species are listed in the AWC and population assessment near and above the Dalton Highway for all salmon species is lacking.

Nonsalmon Fish

The nonsalmon fish community in Bonanza Creek is comprised of Arctic Grayling, Burbot, Slimy Sculpin, Round Whitefish, Longnose Sucker, and Northern Pike (BLM 2005, ADF&G 2022b). Information for these species is limited in the closure area. However, the habitat use, seasonal movements, and population status of these species (excluding Slimy Sculpin) was provided by local experts during a Traditional Ecological Knowledge study conducted by the Alaska Department of Fish and Game (ADF&G), Division of Subsistence (Andersen et al. 2004). The local knowledge provided in this study applies to the broader Koyukuk River drainage.

Arctic Grayling

Local knowledge indicates Koyukuk River drainage Arctic Grayling spend most of their time in clear, quickly moving water in tributary streams and headwater areas whenever this habitat is clear of ice. They are reported to move into this habitat after breakup in April or May, spawning shortly afterwards and feeding on insects. Later, the larger Arctic Grayling occupy higher quality feeding areas farthest upstream and smaller fish occupy poorer feeding areas downstream (Hughes 1992, Andersen et al. 2004). Arctic Grayling move from tributary streams to overwintering areas in deeper water downstream during September and October. Local knowledge indicates that Arctic Grayling are usually the last fish to leave the tributary streams in the fall. Arctic Grayling overwinter in the Koyukuk River mainstem and large tributaries, as well as lakes in the far upper portions of the Koyukuk drainage (Andersen et al. 2004).

Arctic Grayling abundance and age composition were assessed in Bonanza Creek in 1996 (Fish 1997). Abundance of Arctic Grayling (>150 mm FL) was estimated using mark recapture techniques in a 3.3 mi section of Bonanza Creek that crosses the Dalton Highway. The estimated abundance of Arctic Grayling within the study area was 1,152 fish (SE = 445) which resulted in a density of 349 fish/mi. Ages of Arctic Grayling ranged from age-3 to age-9. Age-6 made up the largest proportion of sampled fish (P = 0.39), followed by age-4 (P = 0.19) and age-5 (P = 0.14).

Burbot

According to local experts, Burbot are found in major tributaries of the Koyukuk drainage, but not the smallest tributaries. Burbot may occupy headwater lakes or the mainstem of the Koyukuk River year-round. Most non lake-adapted Burbot follow a different seasonal movement pattern from other fish, moving upstream along shallow water areas beginning around October through January or February. Spawning takes place under the ice in winter (Andersen et al. 2004).

Whitefish

Local experts indicate whitefish move upstream in the Koyukuk River just before and during spring break up. As the water becomes fast and high due to spring run-off, the fish move into calmer side waters, returning when water levels drop. They repeat this movement whenever water levels rise. Some whitefish spend summers feeding in lakes, while others stay in the Koyukuk River and major sloughs (Andersen et al. 2004). In fall, whitefish move towards spawning areas upstream, then descend downstream after spawning around September and October. Whitefish are said to overwinter in an inactive state in deep lakes from December to March. Round Whitefish is a “clear water fish” that prefers to spend time in smaller streams and headwaters, “similar to grayling” (Andersen et al. 2004: 93).

Local knowledge indicates the abundance and quality of whitefish in the Koyukuk drainage has declined over the previous 60 years. These declines were attributed to changes in habitat and die-offs resulting from being stranded in shallow lakes during high water periods (Andersen et al. 2004).

Longnose Sucker

Local knowledge indicates that Longnose Sucker are present in small numbers in the Koyukuk River drainage but occur at relatively high numbers in some tributaries. Longnose Sucker occupy mainstems, sloughs, large and small tributaries, and lakes during the open water period, and move into deep portions of the main lower Koyukuk River during winter. Spawning occurs in small streams after breakup (Andersen et al. 2004).

Northern Pike

According to local experts, Northern Pike in the Koyukuk drainage overwinter in deep lakes and move into shallow lakes and sloughs in spring. Spawning takes place in early summer. After mid-September, Northern Pike move back towards the main river and deep lakes (Andersen et al. 2004).

Cultural Knowledge and Traditional Practices

Of those communities with a customary and traditional use determination for fish in the Yukon River drainage, those located in reasonable proximity to Bonanza Creek as it crosses the Dalton Highway are most likely to subsistence fish in the closed area. This includes Wiseman and Coldfoot. In addition to these communities, which are located on the road system, the communities of Evansville and Bettles are connected to the Dalton Highway via a winter road to Evansville from January through March (Holen et al. 2012). However, there is a mismatch between the timing of this road opening and that of nonsalmon

fishing by these communities (Andersen et al. 2004). Furthermore, an ADF&G Division of Subsistence survey indicated that residents of Bettles and Evansville focus their subsistence use in areas closer to these communities (Holen et al. 2012).

The community of Stevens Village also has access to the Dalton Highway as it crosses the Yukon River, via boat and snow machine (Trainor 2022, pers. comm.). However, a subsistence survey of Stevens Village conducted from 1984 to 1985 showed that residents focus most of their subsistence fishing activity closer to their community on the Yukon River (Sumida 1988); a more recent ADF&G Division of Subsistence survey did not map subsistence use areas (Brown et al. 2016).

Wiseman and Coldfoot

Wiseman and Coldfoot are very small communities located on the Dalton Highway. Both communities fall within the traditional boundaries of the Koyukon Athabascan people, an area which has also been influenced by historical interaction with Iñupiat. Both Wiseman and Coldfoot were established as the result of the gold mining industry in the late 1800s and early 1900s. Coldfoot was abandoned by 1930, before being re-settled in the 1970s in connection with construction of the Dalton Highway and the Trans-Alaska Pipeline. As of 2018 there were an estimated eight full-time residents in Coldfoot and 11 in Wiseman (ADLWD 2019). The area also includes a small number of residents along the Dalton Highway Corridor in camps and other isolated households. ADF&G Division of Subsistence conducted its only subsistence survey of Wiseman and Coldfoot in 2012, for the 2011 calendar year.

At the time of ADF&G's survey, there were five year-round households in Wiseman, and all were surveyed. Four of these households attempted to fish, and all households used fish, although in small quantities (Holen et al. 2012). Residents of Wiseman and Coldfoot can fish within Bonanza Creek with rod and reel under State sport fishing regulations.

Salmon

Wiseman residents traditionally harvested and used small amounts of Chum and Chinook salmon locally. However, in part because of local closures to both subsistence and sport fishing for salmon in place since 1978 (sport fishing for salmon is closed within a 5-mile radius of the Dalton Highway, Wiseman residents primarily harvest salmon at locations far afield, such as in the Copper and Yukon rivers.

During the 2011 study year, only one of the five Wiseman households fished for salmon (at locations distant from the community), resulting in an estimated 12 pounds of Sockeye Salmon per person, or 4% of Wiseman's total wild food harvest in weight. In addition, Wiseman households received and shared Chinook Salmon, although they did not directly harvest any. All households used salmon (Holen et al. 2012).

Nonsalmon fish

According to Holen et al., "Since the salmon fishing closure was initiated, non-salmon fish have become even more important to Wiseman residents" (2012: 369). Nonsalmon fishing can take place under

subsistence regulations in areas that are not closed (in addition to Bonanza Creek, subsistence fishing is also closed in Jim River, including Prospect Creek and Douglas Creek and a portion of the Kanuti River). In addition, nonsalmon fish can be taken by rod and reel under State sport fishing regulations throughout the area. Within these regulatory restrictions, during the study period, nonsalmon fishing was reported as occurring close to Wiseman and Coldfoot adjacent to the Dalton Highway, as well as on the South Fork Koyukuk River and as far south as the Jim River (Holen et al. 2012, **Figure 2**).

During the study period, four of the five Wiseman households fished for nonsalmon species, resulting in an estimated 13 pounds of nonsalmon fish per person, or 5% of Wiseman's total wild food harvest in weight. The three most significant nonsalmon harvests in terms of edible weight included Arctic Grayling, Longnose Sucker, and Burbot (Holen et al. 2012, ADF&G 2020, **Table 1**).

In 2011, about 52% of Wiseman's nonsalmon fish harvest (measured in edible weight) was taken with gillnet or seine, about 28% was taken with "other subsistence methods," which includes set lines, and the remainder was taken by rod and reel. However, the only nonsalmon species that participants reported taking by rod and reel was Lake Trout; a little less than half of the Lake Trout harvest was taken with this gear. The fish most significant in terms of subsistence harvest were taken entirely with subsistence gear during the study period, described in more detail below, although Wiseman's harvest methods for Longnose Sucker and whitefish species were not quantified in the relevant subsistence survey report (Holen et al. 2012).

Arctic Grayling

In this description of harvest practices for Arctic Grayling, and for other species, below, ethnographic data are drawn both from ADF&G's subsistence survey in Wiseman for the 2011 calendar year (Holen et al. 2012) and from a Traditional Ecological Knowledge Study conducted by ADF&G Division of Subsistence from 2001 to 2003 (Andersen et al. 2004). The latter study incorporated interviews with 29 key respondents who were life-long residents of the Koyukuk River drainage communities of Alatna, Allakaket, Bettles/Evansville, Hughes, Huslia, Koyukuk, and Wiseman. Where available, information specific to practices by residents of Wiseman is emphasized.

In the Koyukon language Arctic Grayling are called *tleghelbaaye*, which likely refers to their gray coloring (Andersen et al. 2004). Fall and early winter are the preferred times for harvesting Arctic Grayling by Koyukuk River communities (Andersen et al. 2004). In the 2011 study year, Wiseman residents harvested Arctic Grayling with gillnet or seine (25%) and "other subsistence methods" (75%) (Holen et al. 2012). Residents of the wider region fish for Arctic Grayling with hook and line beginning when rivers begin to freeze, usually in October. They use rod and reel in open eddies until freeze-up is complete, after which they fish through holes in the ice. Arctic Grayling are also sometimes caught during fall seining for whitefish. Arctic Grayling are easily preserved by freezing, and people prefer to eat them raw and frozen. As winter progresses, Arctic Grayling are further downstream in deep water, and are less accessible (Andersen et al. 2004).

Burbot

Burbot are known as *tl'eghes*, in the Koyukon dialect of the lower Koyukuk River, and *tsoneye* in the upper river dialect. Burbot can be an important subsistence resource for Koyukuk River communities in winter when other fish are not available. They are harvested beginning in the fall. In the middle Koyukuk River conditions are ideal for Burbot traps in winter, but in areas closer to the headwaters Burbot are most commonly taken with set hooks through the ice beginning around October. According to a key informant from Wiseman, Burbot have also traditionally been taken from lakes in the summer with spears (Andersen et al. 2004). During the 2011 study year, Wiseman residents took Burbot entirely with subsistence gear “other than gillnet or seine” (Holen et al. 2012).

In the fall and winter Burbot can be preserved by natural freezing, but do not preserve well, and people prefer to eat them soon after they are harvested. The fatty liver is the most prized part of the fish. For subsistence purposes, people prefer to catch them before they spawn, when they are a better source of fat. Burbot return downstream beginning in February (Andersen et al. 2004).

Whitefish

The generic term for whitefish in the Koyukon language is *ts'ol*. There are two species of large whitefish in the Koyukuk drainage, Broad Whitefish (*taaseze*, or “water bear”) and Humpback Whitefish (*holehge*, “it swims upwards”). There are also two species of small whitefish, Least Cisco (*tsaabaaya*) and the Round Whitefish (*hulten*). According to local experts, the latter is only thinly distributed in the Koyukuk drainage (Andersen et al. 2004).

One key informant said that he had observed a decline in whitefish populations over the previous sixty years, and that the fish had also become less fatty. He attributed this decline to habitat change, and especially to decreased weeds and insects, as well as increased silt and water temperatures. Whitefish are susceptible to die-offs after being trapped in shallow lakes during high water periods (Andersen et al. 2004).

Gillnets are used to catch whitefish in the spring after breakup and in the fall as fish move between seasonal habitats. Whitefish are considered to be in prime condition in fall. After freeze-up they can be caught with set nets. Least Cisco may be caught with seining nets, although river conditions prevent the use of these in the upper portion of the river. In the summer, whitefish are sometimes incidentally caught in nets used for salmon. Round Whitefish are very thinly distributed and are not commonly caught. Wiseman’s harvest methods for whitefish were not specifically described in Holen et al. (2012).

Longnose Sucker

The Koyukon term for Longnose Sucker is *toonts'ode*, “something bad went into the water” (Andersen et al. 2004). Longnose Sucker are mostly caught in the Koyukuk River drainage as by-catch in nets set out for whitefish in the spring. In areas suitable to the harvest method, they are sometimes taken during fall whitefish seining. Finally, they are sometimes taken in the winter with under-ice Burbot traps. In the past, spring-harvested Longnose Sucker were important for feeding both humans and dogs, but today they are primarily used as dog food. The many small bones in the fish make the end portion of Longnose Sucker

inedible for humans (Andersen et al. 2004). Wiseman’s harvest methods for Longnose Sucker were not specifically described in Holen et al. (2012).

Northern Pike

Northern Pike are known as *k’oolkkoye* in the Koyukon language, and are an important food resource that is available year-round. Northern Pike are present but not common in the Koyukuk River near Bettles, and are not present in the Middle Fork of the Koyukuk near Wiseman.

On the Koyukuk River, Northern Pike are caught with gillnets in spring and fall. “Pike are sometimes caught during the summer using artificial lures and rod and reel gear in area lakes or specific river or slough locations known for being good pike fishing. Pike are also frequently taken as by-catch in summer nets and fishwheels targeting salmon” where conditions permit use of this gear (Andersen et al. 2004: 74). In winter they can be harvested with a hook through the ice where streams leave or enter lakes.

Key informants from the wider region reported harvesting Northern Pike with gillnets, fish traps, and hook and line gear. According to Andersen et al., “The ability to take pike using unusual methods contributed to the utility of pike as a subsistence resource” (2004:75). During the subsistence survey study year, Wisemen residents harvested Northern Pike entirely with gillnet or seine (Holen et al. 2012).

Table 1: Estimated number of nonsalmon fish and corresponding pounds per person harvested by Wiseman households in the 2011 calendar year (ADF&G 2020).

Fish species	Estimated number of fish	Estimated pounds per person
Arctic Grayling	111	5.97
Longnose Sucker	40	2.15
Burbot	9	1.66
Northern Pike	4	1.38
Char	11	1.11
Lake Trout	9	0.97
Whitefish	25	0.96
Dolly Varden	2	0.13

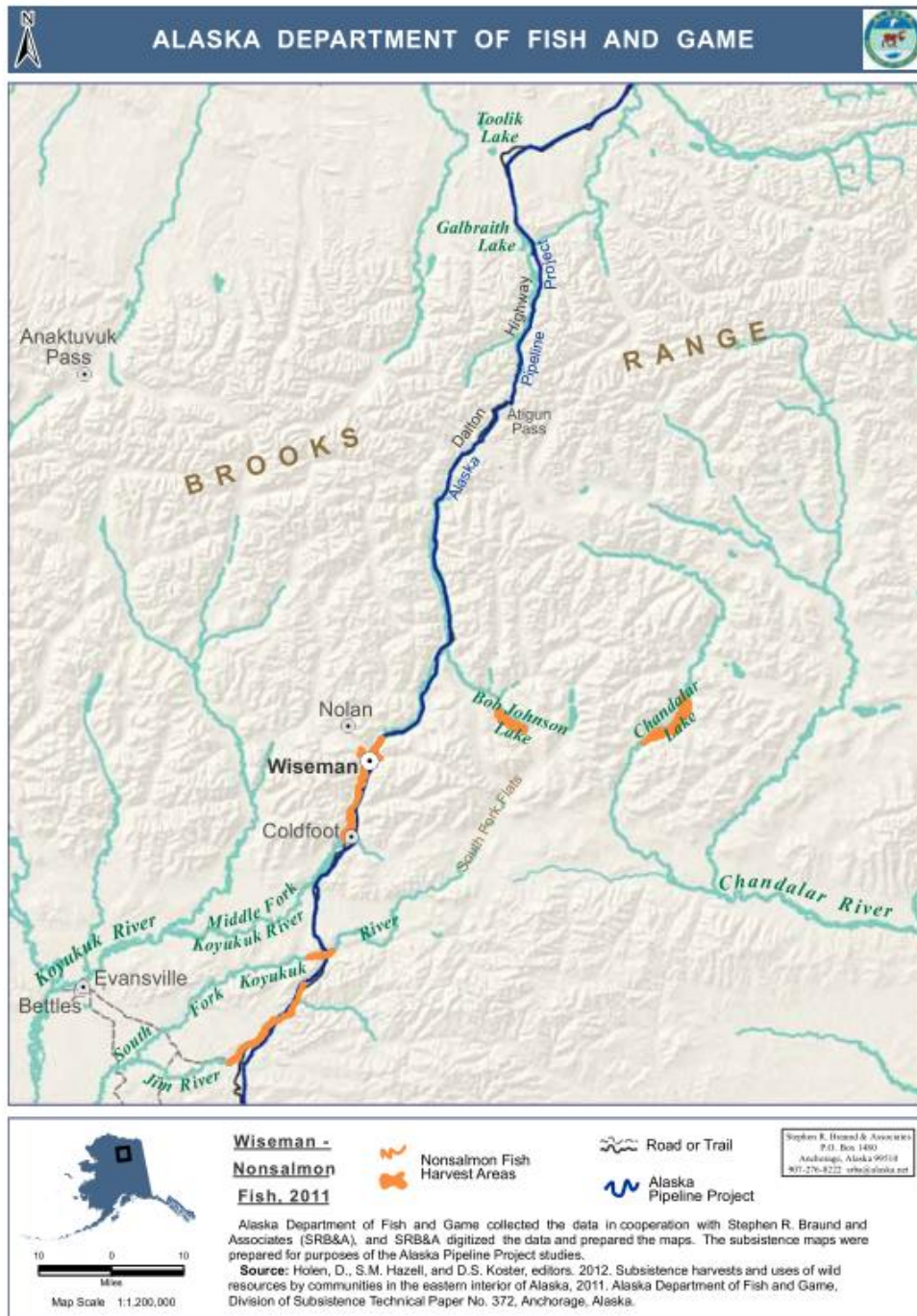


Figure 2. Wiseman's nonsalmon fish search and harvest areas, 2011. Source: Holen et al. 2012.

Coldfoot was also surveyed by ADF&G Division of Subsistence for the 2011 calendar year. At that time, there were five year-round households in Coldfoot, four of which were surveyed, representing 10 individuals. During the survey year, no residents of the community fished for either salmon or nonsalmon

fish, but one household received and used Coho and Sockeye salmon. No use of nonsalmon fish was documented in Coldfoot during the study period (Holen et al. 2012).

Harvest History

Subsistence fishing is prohibited in Bonanza Creek under State and Federal regulations so there is no legal subsistence harvest in this system. Harvest is allowed under State sport fishing regulations and is not limited to federally qualified subsistence users.

During years when sport fishing for Chinook Salmon isn't closed or restricted by emergency order, Chinook Salmon throughout the Yukon River Management Area (excludes the Tanana River) can be harvested with a limit of three per day, three in possession over 20 inches (only two can be over 28 inches), and ten per day, ten in possession for under 20 inches. Other salmon have a ten per day, ten in possession limit. However, salmon fishing is closed within a 5-mile radius on either side of the Dalton highway.

Per the general sport fish regulations that apply to the entire Yukon River Management Area that extends from the Yukon River Delta to the border with Canada and includes the entire Yukon River drainage (excluding the Tanana River), Dolly Varden can be harvested with a limit of ten per day, ten in possession (only two can be 20 inches or longer). Allowable Lake Trout harvest is two per day, two in possession, only two of which may be 20 inches or longer. Arctic Grayling have no size limit and have a limit of five per day, five in possession. Sheefish and Northern Pike have a limit of ten per day, ten in possession, and Burbot have a harvest limit of 15 per day, 15 in possession.

Special regulations apply to all streams within the Trans-Alaska Pipeline corridor, which is defined as the length of the Pipeline north of the Yukon River extending 5 miles on either side of the Dalton Highway, excluding the Ray River where General Regulations apply. Bonanza Creek crosses the Dalton Highway Corridor. In this area (five miles on each side of the highway), sport fishing for salmon is closed. In addition, retention of Lake Trout is prohibited and the limit of Northern Pike is five per day, five in possession (only one of which may be 30 inches or longer).

The majority of sport fish harvest along the Dalton Highway corridor for the Yukon River Management Area is for Arctic Grayling (Stuby 2021). Sport fish harvest estimates are not available for specifically Bonanza Creek. Sport fish harvest estimates for Arctic Grayling in streams along the Dalton Highway south of Atigun Pass report an average of 324 fish annually during 2009–2018. Fishing effort for this entire area for all species during 2009–2018 was approximately 928 angler days (Stuby 2021). Sport fishing effort and harvest in Alaska have been estimated and reported annually since 1977 using a mail survey. Estimates based on fewer than 12 responses indicate that the sport fishing occurred and are subject to high variance. The majority of estimates for the Dalton Highway during 2009–2018 were based on fewer than 12 respondents (Stuby 2021). These data suggest that sport fish harvest and effort may not be large enough to cause conservation concerns for Arctic Grayling in Bonanza Creek.

Other Alternatives Considered

One alternative is to retain the closure. Population statuses are unknown in Bonanza Creek, which is road-accessible, allowing easy access and harvest of fish. If the closure is rescinded, harvest of nonsalmon species would be unrestricted for all legal gear types other than rod and reel, and gillnets could be used to harvest high numbers of fish. Retaining the closure would protect populations from overharvest until a proposal to restrict harvest and/or gear types in the closure area could be submitted. Federally qualified subsistence users could harvest fish under State sport fishing regulations while the Federal closure was in place. This alternative was rejected because it would not provide a Federal subsistence priority in the closure area.

A second alternative is to modify the closure by closing the fishery to all users and uses. This would fully protect salmon and nonsalmon fish populations in Bonanza Creek. Under this alternative, there would be no subsistence or sport fishing opportunity. Closing to all users and uses would eliminate the current situation, in which Federal public waters are closed to subsistence fishing while remaining open to other uses. This alternative was rejected because it would be an unnecessary restriction on non-subsistence uses as sport fish harvest data suggest the sport fishery does not present a conservation concern. In addition, subsistence surveys indicate subsistence users may harvest a portion of their wild foods under sport fishing regulations.

Effects

If the closure is rescinded, Federal subsistence regulations for the Yukon-Northern Area would apply. Harvest of salmon would be allowed, and Federal subsistence fishing schedules, openings, closings, and fishing methods would be the same as those issued by State emergency order for the subsistence taking of fish under Alaska Statutes (AS 16.05.060), unless superseded by a Federal special action. Salmon could be taken by gillnet, beach seine, dip net, fish wheel, or rod and reel.

Nonsalmon fish could be taken by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, with some restrictions on this gear (see “Current Federal Regulation” in this analysis). Subsistence rod and reel harvest limits would match State sport fishing harvest and possession limits. Harvest would be unrestricted for all other legal gear types.

Rescinding the closure would establish a Federal subsistence priority and provide subsistence harvest opportunity in an area that is currently closed to subsistence fishing but open to other uses. However, allowing unrestricted harvest in a road-accessible system may increase harvest pressure on stocks and result in a conservation concern. Populations may be protected by establishing a more conservative management framework during the next fisheries regulatory cycle. Before then, the Federal inseason manager may issue emergency special actions to set provisions for the fishery, such as stipulating gear types and setting harvest limits, for up to 60 days. Actions exceeding 60 days would require a temporary special action which the Board must implement.

OSM CONCLUSION

- Retain the Status Quo
- Rescind the Closure
- Modify the Closure
- Defer Decision on the Closure or Take No Action

The modified regulation should read:

§ __.27(e)(3) Yukon-Northern Area

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

~~*(B) Bonanza Creek;*~~

Justification

Currently, Bonanza Creek is closed to the harvest of all fish by federally qualified subsistence users but open to sport fishing under State regulations. Rescinding the closure would establish a Federal subsistence priority in the area. However, allowing unrestricted harvest for gear types other than rod and reel in an easily accessible system may lead to overharvest and local depletion of stocks. While populations may be protected by limiting subsistence harvest to rod and reel only and/or modifying harvest limits, these modifications are not possible through the closure review process and would require a fisheries proposal be submitted. Until a proposal can be submitted, the Federal inseason manager may use their delegated authority to restrict gear types and/or harvest limits, for up to 60 days, to protect populations in Bonanza Creek. Actions exceeding 60 days would require a temporary special action be implemented by the Board. If a proposal is submitted, the Office of Subsistence Management recommends that harvest be limited to rod and reel only in Bonanza Creek.

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SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS

Yukon-Kuskokwim Delta Subsistence Regional Advisory Council

Modify the closure for FCR23-03 by rescinding to nonsalmon species only. The Council noted that rescinding the closure to nonsalmon fish would support subsistence users in the area but felt the closure to salmon should be maintained due to conservation concerns. They noted that special actions can be used to temporarily set harvest limits until a proposal is submitted by the Western Interior Council during the next regulatory cycle.

The modified regulation should read:

§ __.27(e)(3) Yukon-Northern Area

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

~~*(B) Bonanza Creek;*~~

(xii) You may take salmon only by gillnet, beach seine, dip net, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(F) In the Bonanza Creek drainage, you may not harvest salmon.

Western Interior Alaska Subsistence Regional Advisory Council

Modify the closure for FCR23-03 by rescinding to nonsalmon species only. The Council noted there was little concern for overharvest of nonsalmon fish given that Arctic Grayling is the predominant species in the system and are harvested primarily by rod and reel. In addition, the Council believes that Arctic Grayling will largely be harvested when engaging in other subsistence activities.

The modified regulation should read:

§ __.27(e)(3) Yukon-Northern Area

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

~~*(B) Bonanza Creek;*~~

(xii) You may take salmon only by gillnet, beach seine, dip net, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(F) In the Bonanza Creek drainage, you may not harvest salmon.

Seward Peninsula Subsistence Regional Advisory Council

Take no action on FCR23-03. The Council opted not to take up this closure review because the closure area is located outside of their region.

Eastern Interior Alaska Subsistence Regional Advisory Council

Modify the closure for FCR23-03 by rescinding to nonsalmon species only. The Council was concerned about Yukon salmon stocks and additional harvest on those stocks but wanted to support nonsalmon subsistence harvest opportunity for local residents since there are no conservation concerns for nonsalmon species in Bonanza Creek.

The modified regulation should read:

§ __.27(e)(3) Yukon-Northern Area

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

~~*(B) Bonanza Creek;*~~

(xii) You may take salmon only by gillnet, beach seine, dip net, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(F) In the Bonanza Creek drainage, you may not harvest salmon.

North Slope Subsistence Regional Advisory Council

Rescind the closure on FCR23-03. The Council believes that rescinding the closure would benefit subsistence uses and provide a Title VIII of ANILCA mandated Federal subsistence priority, as there is already sport fishing in this area.

INTERAGENCY STAFF COMMITTEE COMMENTS

The Interagency Staff Committee (ISC) acknowledges that this closure is out of compliance with Title VIII of ANILCA by being closed to fishing by federally qualified subsistence users while allowing for sport fishing under State regulations. The Federal Subsistence Board (Board) would need to take action to bring this situation back into compliance with ANILCA. The Board could modify the closure by closing to all uses. The Board could also rescind the closure and provide a priority consumptive use to federally qualified subsistence users.

Three Subsistence Regional Advisory Councils have recommended the closure be rescinded, bringing this fishery back into compliance with ANILCA, and one Council has recommended to rescind the closure. In the absence of this closure, standard area Federal subsistence regulations would apply which could present conservation concerns. Permanent regulations would be the preferable solution to address possible conservation concerns while still providing a meaningful priority to federally qualified subsistence users.

Until the Board receives and takes action on regulatory proposals, Federal managers can use their delegated authority if conservation concerns arise. The ISC recognizes that unless modified by the Board, current Fisheries delegation of authority letters limit Federal managers to emergency special actions (actions lasting no longer than 60 days).

ALASKA DEPARTMENT OF FISH AND GAME COMMENTS

Fisheries Closure Review FCR23-03

This is a routine closure review to determine if the current federal subsistence fisheries closure for Bonanza Creek is still warranted. Currently, federal public waters of Bonanza Creek are closed to federal subsistence fishing but remains open under state regulations.

Position

The Alaska Department of Fish & Game (ADF&G) **SUPPORTS** the closure remaining in place until such time as the Federal Subsistence Board (FSB) can reconcile the legality of effectively opening a fishery. Congress authorized the FSB to close, but not to open, a fish or wildlife harvest season as set forth in sections 815 and 816 of the Alaska National Interest Lands Conservation Act (ANILCA). Without statutory authorization, the FSB adopted a regulation improperly granting itself authority to open public lands to the taking of fish and wildlife (50 CFR § 100.19).

ADF&G also has conservation concerns over the rescinding of this closure. Resident species at high latitudes are slow growing, have lower productivity, and are present in low densities making overexploitation easier. Allowing multiple gear types, including gill nets, and no harvest limits will result in localized depletions and overharvest of populations particularly during seasonal migrations. This action will be contrary not only to the provisions within Title 8 of ANILCA but to the regulatory protections implemented by the Alaska Board of Fisheries (BOF) within the Trans-Alaska Pipeline Corridor. The Office of Subsistence Management (OSM) acknowledges the conservation concerns regarding rescinding this closure but still feels that establishing a federal subsistence priority for the area is more important than taking a cautious approach to address the lingering issues over rescinding this closure.

Background

The Western Interior Regional Advisory Council (WIRAC) voted to rescind FCR23-03 during their October 19-20, 2022 meeting with the modification that salmon fishing should remain closed. Earlier in October, the Eastern Interior Regional Advisory Council voted to rescind with a similar modification and the North Slope Regional Advisory Council deferred to the WIRAC. According to the analysis of the closure drafted by OSM, subsistence rod and reel harvests would follow sport fishing harvest and possession limits. However, no restrictions are specified for other allowable gear types, such as gillnets and dip and fyke nets, that have higher harvest potential.

The South and North Forks of Bonanza Creek cross the Dalton Highway at miles 123 and 124. Sport fishing is allowed, but special regulations apply where Bonanza Creek crosses within a 5-mile radius of either side the trans-Alaska Pipeline corridor. These protections were implemented as conservation measures given the relatively easy access to resources along a major highway. Predominant species targeted in the sport fishery are Arctic grayling with daily bag and possession limits of 5 per day, no size limit, and northern pike with the same limit, but only 1 of which may be 30 inches or longer. Salmon fishing along this corridor is closed.

The results from a 1996 study to acquire an abundance estimate of Arctic grayling in Bonanza Creek should be interpreted with caution as the implication of a robust population of Arctic grayling based on the results of this mark-recapture experiment may over inflate harvestable surplus. The FCR23-03 implies that the abundance estimate of 1,152 (SE = 445), with a resultant density of 349 fish/mi, is for the entire Bonanza Creek drainage. However, this study was conducted in 3.3 mi of the most suitable habitat and densities are likely far lower upstream. Only 4 fish were recaptured and a minimum of 7 recaptured fish is needed to test for bias. The precision of the estimate is very poor with 95% confidence ranging from 285-2,020 fish, and its accuracy cannot be tested. Lastly, there is no information on other nonsalmon species such as whitefish and northern pike which may have very low densities.

Impact on Subsistence Users

If the voluntary recommendations OSM has put forward in their analysis are enacted there will be no impact on subsistence users. Currently they are able to fish under state regulations which would be mirrored by the federal in-season manager. If none of those recommendations are implemented, then FQUs would have an immediate benefit of harvesting large amounts of fish but would then cause closures to be again implemented for the conservation of those fish species.

Impact on Other Users

There would be minimal impact on other users if the voluntary recommendations OSM has recommended are enacted. However, if FQUs are allowed to utilize the current federal regulations in place for when the closure is rescinded other users could see a dramatic decrease in their ability to fish under state regulations and could then be restricted from fishing due to conservation concerns created due to the rescission of this closure.

Opportunity Provided by State

State customary and traditional use findings: The Alaska Board of Fisheries (BOF) has closed the Bonanza Creek to subsistence fishing.

5 AAC 01.225. Waters closed to subsistence fishing.

(b) The following drainages located north of the mainstem Yukon River are closed to subsistence fishing:

(3) Bonanza Creek;

Amounts Reasonably Necessary for Subsistence: Alaska state law requires the BOF to determine the amount of the harvestable portion of a fish population that is reasonably necessary for customary and traditional uses (amounts necessary for subsistence [ANS]). The BOF does this by reviewing extensive harvest data from all Alaskans, collected either by ADF&G or from other sources.

The ANS provides the BOF with guidelines on typical numbers of fish harvested for customary and traditional uses under normal conditions. Fishing regulations can be re-examined if harvests for customary and traditional uses consistently fall below ANS. This may be for many reasons: fishing regulations, changes in abundance or distribution, or changes in human use patterns, just to name a few.

5 AAC 01.236. Customary and traditional subsistence uses of fish stocks and amounts necessary for subsistence uses.

(a) The Alaska Board of Fisheries (board) finds that the following fish stocks are customarily and traditionally taken or used for subsistence:

(1) king, summer chum, fall chum, coho, and pink salmon in the Yukon Area;

(2) freshwater fish species, including sheefish, whitefish, lamprey, burbot, sucker, grayling, pike, and char;

General Regulations for the Yukon Management Area that apply to the Trans-Alaska Pipeline corridor

5 AAC 73.010. Seasons, bag, possession, and size limits, and methods and means for Yukon River Area

(a) Except as otherwise specified in this section or through an emergency order issued under AS 16.05.060, sport fishing is permitted year-round in the waters of the Yukon River Area.

(b) Except as otherwise specified in (c) of this section, the following are the general bag, possession, and size limits for finfish and shellfish in the waters of the Yukon River Area:

(5) Arctic grayling: the bag and possession limit is five fish, with no size limit;

(6) sheefish: the bag and possession limit is 10 fish, with no size limit;

(8) burbot: the bag and possession limit is 15 fish, with no size limit;

Special Regulations for the Yukon Management Area that apply to the Trans-Alaska Pipeline corridor

(c) The following are the exceptions to the general bag, possession, and size limits, and fishing seasons specified in (a) of this section for the Yukon River Area:

(4) in the Dalton Highway corridor (Trans-Alaska Pipeline corridor) within the Yukon River Area, which is described as a corridor five miles wide on each side of the Dalton Highway north of the Yukon River, excluding the Ray River,

(A) sport fishing for salmon is closed;

(B) lake trout may be taken only by catch-and-release fishing, and may not be possessed or retained; all lake trout caught must be immediately released;

(C) the bag and possession limit for northern pike is five fish, of which only one fish may be 30 inches or greater in length;

Conservation Issues

A total rescission of this closure would cause conservation concerns for Chinook, chum, and coho salmon due to recent low returns. That concern would be eliminated if the FSB acknowledges the WIRAC's recommendation to exclude subsistence salmon fishing from the closure rescission. However, as discussed above ADF&G is concerned with the overharvest of non-salmon species under the current federal regulations in place that lack harvest limits and allow the use of highly efficient gear types such as gillnets.

Enforcement Issues

If this closure is rescinded, it will result in conflicting state and federal regulations for the Kanuti River which will complicate enforcement and cause user confusion. The FSB should request how enforcement efforts will be undertaken by federal enforcement officers.

FCR23-05 Executive Summary	
General Description	FCR23-05 reviews the closure to the harvest of all fish in the Delta River by federally qualified subsistence users.
Current Regulation	§ __.27(e)(3) Yukon-Northern Area *** <i>(x)You may not subsistence fish in the Delta River.</i>
OSM Conclusion	Rescind
Yukon-Kuskokwim Delta Subsistence Regional Advisory Council Recommendation	Defer to Eastern Interior Alaska Subsistence Regional Advisory Council
Western Interior Alaska Subsistence Regional Advisory Council Recommendation	Defer to Eastern Interior Alaska Subsistence Regional Advisory Council
Eastern Interior Alaska Subsistence Regional Advisory Council Recommendation	Defer to the next fisheries regulatory cycle
North Slope Subsistence Regional Advisory Council Recommendation	Defer to Eastern Interior Alaska Subsistence Regional Advisory Council
Southcentral Alaska Subsistence Regional Advisory Council Comment	Rescind
Interagency Staff Committee Comments	The Interagency Staff Committee found the staff analysis to be a thorough and accurate evaluation of the proposal and that it provides sufficient basis for the Regional Advisory Council recommendation and Federal Subsistence Board action on the proposal.
ADF&G Comments	Retain Status Quo
Written Public Comments	None

FEDERAL FISHERIES CLOSURE REVIEW
FCR23-05

Issue

FCR23-05 is a standard review of a Federal subsistence fishery closure to the harvest of all fish in the Delta River. It is the Federal Subsistence Board's (Board) policy that Federal public lands and waters should be reopened as soon as practicable once the conditions that originally justified the closure have changed to such an extent that the closure is no longer necessary. The purpose of this closure review is to determine if the closure is still warranted and to ensure the closure does not remain in place longer than necessary.

Closure Location: Yukon River Drainage, Delta River—all fish

Current Federal Regulation**§___.27(e)(3) Yukon-Northern Area**

(i) Unless otherwise restricted in this section, you may take fish in the Yukon-Northern Area at any time... You may subsistence fish for salmon with rod and reel in the Yukon River drainage 24 hours per day, 7 days per week, unless rod and reel are specifically otherwise restricted in this paragraph (e)(3).

(ii) For the Yukon River drainage, Federal subsistence fishing schedules, openings, closings, and fishing methods are the same as those issued for the subsistence taking of fish under Alaska Statutes (AS 16.05.060 [emergency orders]), unless superseded by a Federal special action.

(v) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, you may take fish other than salmon at any time.

(x) You may not subsistence fish in the Delta River.

(xvi) Unless otherwise specified in this section, you may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, subject to the following restrictions, which also apply to subsistence salmon fishing:

(B) You may not use an aggregate length of set gillnet in excess of 150 fathoms, and each drift gillnet may not exceed 50 fathoms in length.

(C) In Districts 4, 5, and 6, you may not set subsistence fishing gear within 200 feet of other fishing gear operating for commercial, personal, or subsistence use . . .

Relevant Federal Regulation

§___.27 (b) Subsistence Taking of Fish

(16) Unless specified otherwise in this section, you may use a rod and reel to take fish without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(ii) Except as otherwise provided for in this section, if you are not required to obtain a subsistence fishing permit for an area, the harvest and possession limits for taking fish for subsistence uses with a rod and reel are the same as for taking fish under State of Alaska subsistence fishing regulations in those same areas. If the State does not have a specific subsistence season and/or harvest limit for that particular species, the limit shall be the same as for taking fish under State of Alaska sport fishing regulations.

Closure Dates: Year-round

Current State Regulation

Yukon Area—Subsistence

5 AAC 01.225. Waters closed to subsistence fishing

(e) The Delta River is closed to subsistence fishing

(1) between the mouth of the Delta River and an ADF&G regulatory marker placed two miles upstream from the mouth of the Delta River;

(2) for salmon;

(3) for finfish other than salmon in that portion of the Delta River not included in the nonsubsistence area described in 5 AAC 99.015(a)(4).

Tanana River Area—Sport

5 AAC 74.010. Seasons, bag, possession, and size limits, and methods and means for the Tanana River Area

(a) Except as otherwise specified in this section or through an emergency order issued under AS 16.05.060, sport fishing is permitted year round in the waters of the Tanana River Area.

(b) Except as otherwise specified in (c) and (d) of this section, the following are the general bag, possession, and size limits and means for finfish in the waters of the Tanana River Area:

(1) king salmon 20 inches or greater in length: the bag and possession limit is one fish;

(2) salmon, other than king salmon: the bag and possession limit is three fish, with no size limit;

(3) Arctic char/Dolly Varden: the bag and possession limit is 10 fish, with no size limit;

(4) lake trout: the bag and possession limit is two fish, with no size limit;

(6) Arctic grayling: the bag and possession limit is five fish, with no size limit;

(7) whitefish: the bag and possession limit is 15 fish, with no size limit;

(8) sheefish: the bag and possession limit is two fish, with no size limit;

(9) northern pike: the bag and possession limit is five fish, of which only one fish may be 30 inches or greater in length;

(10) burbot: the bag and possession limit is 15 fish, with no size limit;

(11) finfish species that are not specified in this section: there are no bag, possession, or size limits;

(c) The following are the exceptions to the general bag, possession, and size limits, and fishing seasons specified in (a) and (b) of this section for the Tanana River Area:

(6) in the Delta River and its tributaries,

(A) sport fishing for salmon is closed;

(B) all sport fishing is closed in that portion of the Delta River between its mouth and an ADF&G regulatory marker located two miles upstream;

(24) in the Tangle Lake system, including all waters of the Delta River drainage upstream from Wildhorse Creek,

(B) the bag and possession limit for lake trout is one fish, no size limit;

(C) the bag and possession limit for burbot is two fish, with no size limit;

(d) In the Tanana River Management Area, the following special provisions to methods and means apply:

(1) from October 15 through May 15, set lines may be used to take burbot in all lakes in the Tanana River drainage, except

(G) the Tangle Lake system;

(19) in the Tangle Lake system, the use of set lines is prohibited;

Regulatory Year Initiated: 1992

Extent of Federal Public Lands/Waters

For purposes of this analysis, the phrase “Federal public waters” is defined as those waters described under 36 CFR §242.3 and 50 CFR §100.3. ANILCA established the upper portion of the Delta River (**Figure 1**) as a component of the National Wild and Scenic River System to be administered by the Bureau of Land Management (BLM). The first 20 miles of the Delta River, from the outlet of Lower Tangle Lake, are classified as “wild.” The subsequent 18 miles of the Delta River are classified as “recreational”. Approximately 12 miles of the Delta River downstream of the “recreational” waters are on general domain land which is also managed by BLM (**Figure 1**). On general domain lands, Federal subsistence regulations apply only to non-navigable waters.

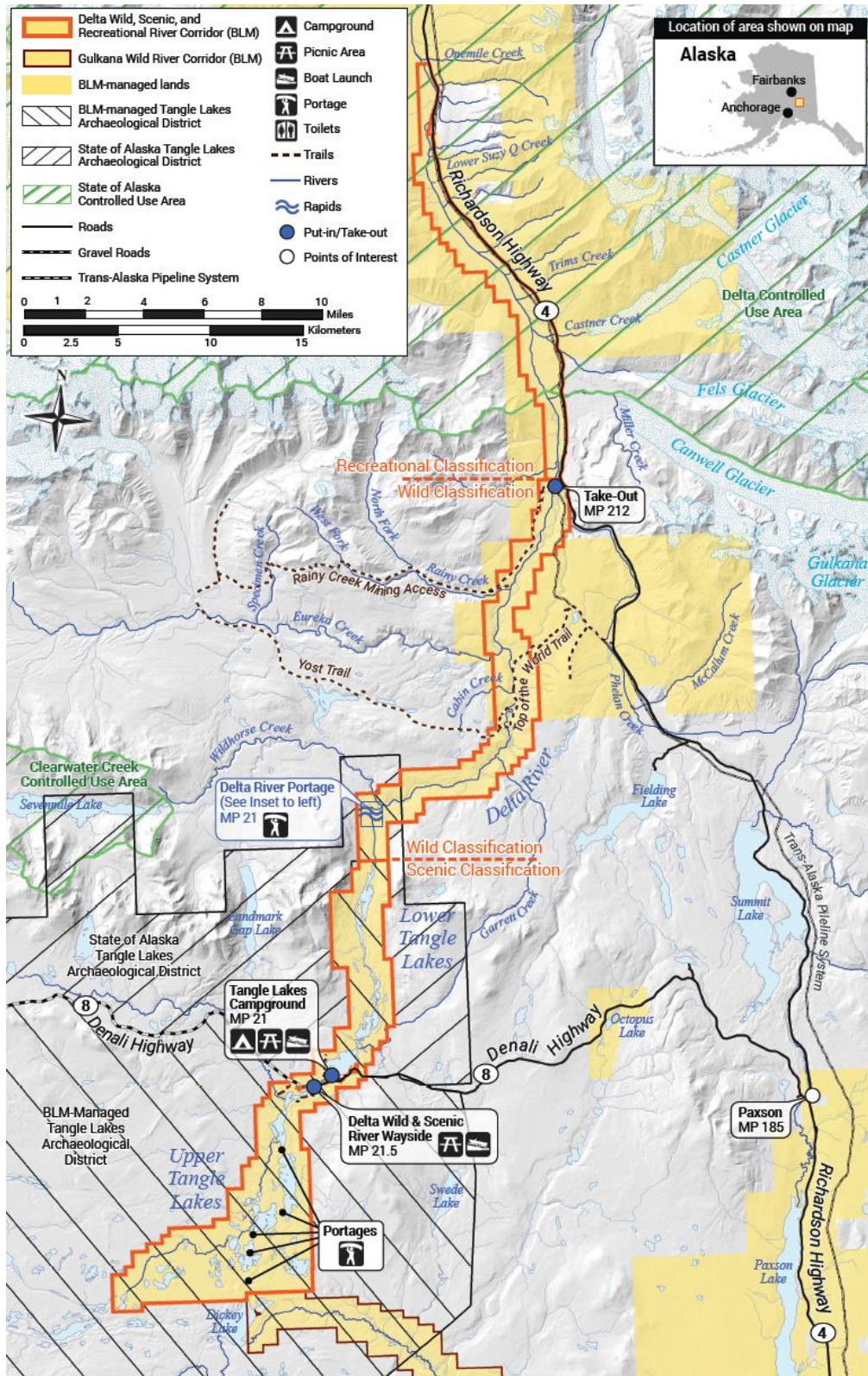


Figure 1. Federal public waters of the Delta River (BLM n.d.).

Customary and Traditional Use Determination

Residents of the Yukon-Northern Area have a customary and traditional use determination for freshwater species other than salmon in the Yukon River drainage.

Regulatory History

In 1992, the Federal Subsistence Management Program promulgated regulations governing the harvest of fish for subsistence uses in non-navigable waters within and adjacent to Federal public lands (57 Fed. Reg. 22940 [May 29, 1992]). These regulations incorporated many provisions from State of Alaska subsistence fishing regulations. The closure under review in this analysis was incorporated into Federal regulations in this manner and has not been subsequently modified.

In 1999, the Board also adopted Federal regulations for fish in navigable waters within and adjacent to Federal public lands where there is a Federal reserved water right (64 Fed. Reg. 1276 [January 8, 1999]). These regulations do not apply on navigable waters within and adjacent to Bureau of Land Management general domain lands (see 50 CFR 100.3).

Closure Last Reviewed

There have been no previous reviews of this closure.

Justification for Original Closure

The Federal Subsistence Management Program justification for the inclusion of the original closure in Federal regulations was to minimize disruption to the State's continuing fish and game management, because of the uncertainty over the resumption of State management of subsistence, yet still fulfill the requirements of Title VIII of ANILCA (55 FR 27114, June 29, 1990).

Council Recommendation for Original Closure

N/A

State Recommendation for Original Closure

N/A

Biological Background

Salmon

Chum and Coho salmon spawn in the lower section of the Delta River (ADF&G 2022a); however, salmon do not inhabit the closure area (BLM n.d.).

Nonsalmon Fish

The nonsalmon fish community in the Delta River is comprised of Arctic Grayling, Burbot, Round Whitefish, Longnose Sucker, Lake Trout, Dolly Varden, and Slimy Sculpin (Gryska 2011). Arctic Grayling is the predominant member of the nonsalmon fish community and limited information exists for the other nonsalmon species.

Arctic Grayling

Arctic Grayling abundance and seasonal movements were assessed within an approximately 10.5 mile portion of the Delta River closure area by the Alaska Department of Fish and Game (ADF&G) and BLM (Gryska 2011, 2015). The abundance of Arctic Grayling was estimated using mark-recapture techniques in 2008. The estimated number of Arctic Grayling ≥ 240 mm FL was 44,212 fish (SE = 9,108), ≥ 270 mm FL was 23,152 fish (SE = 3,189), and ≥ 330 mm FL was 5,864 fish (SE = 818; Gryska 2011). The density estimates for Arctic Grayling ≥ 240 mm and ≥ 270 mm FL were among the highest ever documented for this species in Alaska. The seasonal movements and locations of Arctic Grayling (≥ 320 mm FL) were assessed using radio telemetry in 2008 and 2009 (Gryska 2015). Approximately 95% of radio tagged fish overwintered in the study area. Locations and patterns of dispersal varied by season. In summer, Arctic Grayling were dispersed throughout the study area before concentrating in two locations during winter. Spawning likely occurred in late spring/early summer with most fish occupying the upper portion of the study area. This research indicates the study area provides year-round habitat for this large population of Arctic Grayling.

Cultural Knowledge and Traditional Practices

Of the communities with a customary and traditional use determination for fish in the Yukon River drainage, those located in reasonable proximity to the Delta River and to road access to the river along the Richardson Highway are most likely to subsistence fish in the closed area, were the closure to be rescinded. This includes Big Delta and Delta Junction. In 2019, the estimated populations of Big Delta and Delta Junction were 476, and 1,157, respectively (ADLWD 2019).

Unfortunately, there are no readily available data on fishing by residents of Big Delta and Delta Junction in the Delta River. Although these communities are only able to fish on the Delta River under sport fishing regulations, their harvest by rod and reel would be included in any subsistence survey of these communities. However, although Big Delta and Delta Junction are considered “rural” by the Board, they are in the State of Alaska’s Fairbanks Nonsubsistence Use Area, and ADF&G Division of Subsistence has never conducted a subsistence survey for either of these communities.

Data are available for Delta Junction and Big Delta’s reported subsistence harvest of nonsalmon species in areas adjacent to the closure area under the Upper Tanana River subsistence permit. This permit includes both the Delta River drainage south of the Fairbanks nonsubsistence area (but not the Delta River itself, which is closed), as well as the Upper Tanana River, but data for these two areas cannot be disaggregated. Despite these limitations, the data are included here to give a general sense of the communities’ nonsalmon subsistence use patterns for a nearby area (**Table 1**). Of the five species

harvested, residents harvested the greatest number of whitefish, followed by Northern Pike. Overall, harvest was greatest from 2017 to 2020.

Table 1. Reported nonsalmon harvest under the Upper Tanana drainage subsistence use permit (which includes the portion of the Delta River drainage south of the Fairbanks nonsubsistence area, excluding the Delta River itself), by residents of Delta Junction and Big Delta from 2012 to 2021. The table includes permits registered to residents with a Delta Junction or Big Delta mailing or physical address. Source: Ransbury 2022, pers. comm.).

Year	Permits	Whitefish	Northern Pike	Arctic Grayling	Burbot	Longnose Sucker
2021	5	5	14	0	9	0
2020	11	514	284	5	55	86
2019	7	406	126	23	2	0
2018	8	342	67	5	25	0
2017	5	311	23	0	5	1
2016	3	12	0	0	23	0
2015	2	Confidential	Confidential	Confidential	Confidential	Confidential
2014	1	0	0	0	0	0
2013	3	0	0	0	0	0
2012	7	41	0	0	0	0
Total	47	1626	500	33	110	87

Paxson-Sourdough, the only other community in proximity to the Delta River, does not have a customary and traditional use determination for salmon or nonsalmon in any portion of the Yukon-Northern Area, which includes the Delta River. Paxson’s nonsalmon fishing takes place primarily under State sport and subsistence fishing regulations and is focused on lakes located near the community, including the Tangle Lakes (Holen et al. 2015). As Paxson would not be qualified to fish in the Delta River under Federal regulations, were the closure to be rescinded, its fishing patterns are not described here.

Harvest History

Subsistence fishing is prohibited in the Delta River under State and Federal regulations so there is no legal subsistence harvest in this system. Harvest is allowed under State sport fishing regulations and is not limited to federally qualified subsistence users.

In the Delta River and its tributaries sport fishing for salmon is closed. Arctic Char and Dolly Varden can be harvested with a limit of ten per day with no size limit. Lake Trout have a harvest and possession limit of two fish with no size limit. The Arctic Grayling harvest and possession limit is five fish with no size limit. Whitefish and Burbot harvest and possession limits are 15 fish with no size limits. Sheefish have a limit of two per day and two in possession with no size limit. Northern Pike harvest and possession limit is five fish (only one can be 30 inches or longer). There are no harvest, possession, or size limits for other finfish species. In all waters of the Delta River drainage upstream from Wildhorse Creek (approximately

two miles to the outlet of Lower Tangle Lake), the Lake Trout harvest and possession limit is one fish with no size limit and the Burbot harvest and possession limit is two fish with no size limit.

Sport fish harvest estimates for the Delta River are provided by the Alaska Sport Fishing Survey (ADF&G 2022b). Estimates for the Delta River below Tangle Lakes are available for 1996 to 2006. For Arctic Grayling, median estimated sport fish harvest over this time period was 298 fish and ranged from 159 fish in 1998 to 770 fish in 1997. Lake Trout were reportedly harvested in 1999 (14 fish) and 2002 (48 fish). There were multiple other nonsalmon species where harvest was only estimated for a single year. Dolly Varden were harvested in 1996 (12 fish), whitefish were harvested in 2000 (7 fish), and Burbot were harvested in 2002 (26 fish). Over the time period when sport fishing harvest estimates are available, the median number of anglers was 319 and ranged from 311 in 1996 to 381 in 1997. Sport fish harvest estimates are not reported when fewer than 12 estimates were received. The Delta River below Tangle Lakes has not received more than 12 responses since 2006 suggesting sport fish harvest and effort may not be large enough to cause conservation concerns in the Delta River below Tangle Lakes.

Other Alternatives Considered

One alternative is to retain the closure. The closure area is road accessible allowing for easy access and harvest of fish. If the closure is rescinded, harvest would be unrestricted for all legal gear types other than rod and reel, and gillnets could be used to harvest high numbers of fish. Retaining the closure would protect populations from overharvest until a proposal to restrict harvest and/or gear types in the closure area could be submitted. Federally qualified subsistence users could harvest fish under State sport fishing regulations while the Federal closure was in place. This alternative was rejected because it would not provide a Federal subsistence priority in the closure area.

A second alternative is to modify the closure by closing the fishery to all users and uses. This would fully protect fish populations in the closure area. Under this alternative, there would be no subsistence or sport fishing opportunity. Closing to all users and uses would eliminate the current situation, in which Federal public waters are closed to subsistence fishing while remaining open to other uses. This alternative was rejected because it would be an unnecessary restriction on non-subsistence uses as sport fish harvest data suggest the sport fishery does not present a conservation concern.

Effects

If the closure is rescinded, Federal subsistence regulations for the Yukon-Northern Area would apply. Nonsalmon fish could be taken by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, with some restrictions on this gear (see “Current Federal Regulation” in this analysis). Subsistence rod and reel harvest limits would match State sport fishing harvest and possession limits. Harvest would be unrestricted for all other legal gear types.

Rescinding the closure would establish a Federal subsistence priority and provide subsistence harvest opportunity in an area that is currently closed to subsistence fishing but open to other uses. However, allowing unrestricted harvest in a road-accessible system may increase harvest pressure on stocks and result in a conservation concern. Populations may be protected by establishing a more conservative

management framework during the next fisheries regulatory cycle. Before then, the Federal inseason manager may issue emergency special actions to set provisions for the fishery, such as stipulating gear types and setting harvest limits, for up to 60 days. Actions exceeding 60 days would require a temporary special action which the Board must implement.

OSM CONCLUSION

- Retain the Status Quo**
- Rescind the Closure**
- Modify the Closure**
- Defer Decision on the Closure or Take No Action**

The modified regulation should read:

§ __.27(e)(3) Yukon-Northern Area

~~(x) You may not subsistence fish in the Delta River.~~

Justification

Currently Federal public waters of the Delta River are closed to the harvest of all fish by federally qualified subsistence users but open to sport fishing under State regulations. Rescinding the closure would establish a Federal subsistence priority in the area. Previous research indicates the closure area contains an abundant population of Arctic Grayling with one of the highest recorded densities in the State of Alaska. However, allowing unrestricted harvest for gear types other than rod and reel may lead to overharvest and local depletion of stocks. While populations may be protected by limiting subsistence harvest to rod and reel only and/or modifying harvest limits, these modifications are not possible through the closure review process and would require a fisheries proposal be submitted. Until a proposal can be submitted, the Federal inseason manager may use their delegated authority to restrict gear types and/or harvest limits, for up to 60 days, to protect populations in the closure area. Actions exceeding 60 days would require a temporary special action be implemented by the Board. If a proposal is submitted, the Office of Subsistence Management recommends that harvest be limited to rod and reel only in the Delta River.

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SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS

Yukon-Kuskokwim Delta Subsistence Regional Advisory Council

Defer FCR23-05 to Eastern Interior Alaska Subsistence Regional Advisory Council. The Council noted the home region wanted to defer to hear from affected users. The Council believes the home region should make the decision.

Western Interior Alaska Subsistence Regional Advisory Council

Defer FCR23-05 to Eastern Interior Alaska Subsistence Regional Advisory Council. The Council noted that the Eastern Interior Council is the home region and should make the decision.

Eastern Interior Alaska Subsistence Regional Advisory Council

Defer FCR23-05 to the next fisheries regulatory cycle. The Council stated they need to hear from more local residents that will be affected by rescinding this closure before making a decision, including from the Delta AC who had not yet discussed the closure review at the time of the Council meeting. Although the Council supported the notion of increasing subsistence opportunity, they expressed conservation concerns due to a lack of harvest monitoring and potential for overharvest if the closure were lifted with no regulations in place to limit harvest. Because of these conservation concerns, the Council suggested deferring this closure review until such a time that it would align with the fisheries regulatory cycle and a concurrent proposal could be submitted to put harvest restrictions in place. This would also give time for more local residents to weigh in on the issue.

North Slope Subsistence Regional Advisory Council

Defer FCR23-05 to Eastern Interior Alaska Subsistence Regional Advisory Council. The Council deferred to Eastern Interior Council, who is affected most by this closure.

SUBSISTENCE REGIONAL ADVISORY COUNCIL COMMENTS

Southcentral Alaska Subsistence Regional Advisory Council

Rescind the closure on FCR23-05. The Southcentral Subsistence Regional Advisory Council recommends the Office of Subsistence Management remove the Federal subsistence fishing closure on the Delta River but delay opening the fishery until such time that OSM has conducted an analysis to determine which federally qualified subsistence users should receive a customary and traditional use determination of the Delta River drainage and to recommend appropriate methods and means of harvest to ensure the fishery is sustainable. It is the Council's understanding that, as written, OSM's recommendation would make the Federal public waters of the Delta River drainage available to all federally qualified subsistence users of the Yukon-Northern Area whereas federally qualified subsistence users in the Ahtna Traditional Use Territory would not be eligible to subsistence fish under Federal regulations in an area that the Ahtna people have fished and stewarded for countless generations.

INTERAGENCY STAFF COMMITTEE COMMENTS

The Interagency Staff Committee found the staff analysis to be a thorough and accurate evaluation of the proposal and that it provides sufficient basis for the Regional Advisory Council recommendation and Federal Subsistence Board action on the proposal.

ALASKA DEPARTMENT OF FISH AND GAME COMMENTS

Fisheries Closure Review FCR23-05

This is a routine closure review to determine if the current federal subsistence fisheries closure for the Delta River is still warranted. Currently, federal public waters of the Delta River are closed to federal subsistence fishing but remains open under state regulations.

Position

The Alaska Department of Fish & Game (ADF&G) **SUPPORTS** the closure remaining in place until such time as the Federal Subsistence Board (FSB) can reconcile the legality of effectively opening a fishery. Congress authorized the FSB to close, but not to open, a fish or wildlife harvest season as set forth in sections 815 and 816 of the Alaska National Interest Lands Conservation Act (ANILCA). Without statutory authorization, the FSB adopted a regulation improperly granting itself authority to open public lands to the taking of fish and wildlife (50 CFR § 100.19).

ADF&G also has conservation concerns over the rescinding of this closure. The Delta River is very accessible, and downstream of Eureka Creek there is no information on nonsalmon species in these cold, low-productivity waters. In the absence of data, ADF&G utilizes conservative regulations to avoid overexploitation. Allowing multiple gear types, including gill nets, and no harvest limits will result in localized depletions and overharvest of populations particularly during seasonal migrations. The Office of Subsistence Management (OSM) acknowledges the conservation concerns regarding rescinding this closure but still feels that establishing a federal subsistence priority for the area is more important than taking a cautious approach to address the lingering issues over rescinding this closure.

Background

At recent meetings, the Western Interior Regional Advisory Council and North Slope Regional Advisory Council deferred a decision on FCR23-05 to the Eastern Interior Regional Advisory Council (EIRAC). The EIRAC decided to wait to develop an opinion until more information was available. In particular, the EIRAC was concerned about how the fishery would be monitored and what the local residents thought via the Delta Junction Fish and Game Advisory Committee. At a public meeting the following week, the Delta Junction Fish and Game Advisory Committee decided to oppose the rescission. According to the analysis of the closure drafted by OSM, subsistence rod and reel harvests would follow sport fishing harvest and possession limits. However, no restrictions are specified for other allowable gear types, such as gillnets and dip and fyke nets, that have higher harvest potential.

The Delta River is adjacent to Delta Junction and parallels the Richardson Highway south to the Alaska Range. Sport fishing in the Delta River and its tributaries is allowed under general and special

regulations for the Tanana Management Area. The Delta River is closed to sport fishing the lower 2 miles of the Delta River between its mouth and an ADF&G regulatory marker as well as for salmon throughout the drainage.

The predominant species targeted in the Delta River sport fishery is Arctic grayling with daily bag and possession limits of 5 per day, no size limit. Nearly all Arctic grayling fishing effort occurs in a 10 mile stretch of the Delta River between the waterfalls and the glacial Eureka Creek mouth. A stock assessment of Arctic grayling in 10-mile reach fishery area of the Delta River produced an abundance estimate of 23,152 (SE=3,189) fish ≥ 270 mm FL (~12 inches TL), which is one of the highest densities of Arctic grayling ever observed. A companion radiotelemetry study also demonstrated the population remains in this stretch of river throughout the year. This population is concentrated in a small 10-mile reach making them easy to target and potentially overexploit.

Below Eureka Creek, the Delta River is highly turbid, swift, and braided to its mouth at the Tanana River. No information on nonsalmon species exists, but fish densities are likely to be very low. Several small clearwater streams cross the Richardson Highway that are vulnerable to overharvest due accessibility, such as Donnelly Creek where there is a public use area and campground.

Impact on Subsistence Users

If the voluntary recommendations OSM has put forward in their analysis are enacted there will be no impact on subsistence users. Currently they are able to fish under state regulations which would be mirrored by the federal in-season manager. If none of those recommendations are implemented, then FQUs would have an immediate benefit of harvesting large amounts of fish but would then cause closures to be again implemented for the conservation of those fish species.

Impact on Other Users

There would be minimal impact on other users if the voluntary recommendations OSM has recommended are enacted. However, if FQUs are allowed to utilize the current federal regulations in place for when the closure is rescinded other users could see a dramatic decrease in their ability to fish under state regulations and could then be restricted from fishing due to conservation concerns created due to the rescission of this closure.

Opportunity Provided by State

State customary and traditional use findings: The Alaska Board of Fisheries (BOF) has closed the Delta River to subsistence fishing.

5 AAC 01.225. Waters closed to subsistence fishing.

(e) The Delta River is closed to subsistence fishing:

(1) between the mouth of the Delta River and an ADF&G marker placed two miles upstream from the mouth of the Delta River;

(2) for salmon;

(3) for finfish other than salmon in that portion of the Delta River not included in the nonsubsistence area described in 5 AAC 99.015(a)(4).

Amounts Reasonably Necessary for Subsistence: Alaska state law requires the BOF to determine the amount of the harvestable portion of a fish population that is reasonably necessary for customary and traditional uses (amounts necessary for subsistence [ANS]). The BOF does this by reviewing extensive harvest data from all Alaskans, collected either by ADF&G or from other sources.

The ANS provides the BOF with guidelines on typical numbers of fish harvested for customary and traditional uses under normal conditions. Fishing regulations can be re-examined if harvests for customary and traditional uses consistently fall below ANS. This may be for many reasons: fishing regulations, changes in abundance or distribution, or changes in human use patterns, just to name a few.

5 AAC 01.236. Customary and traditional subsistence uses of fish stocks and amounts necessary for subsistence uses.

(a) The Alaska Board of Fisheries (board) finds that the following fish stocks are customarily and traditionally taken or used for subsistence:

- (1) king, summer chum, fall chum, coho, and pink salmon in the Yukon Area;*
- (2) freshwater fish species, including sheefish, whitefish, lamprey, burbot, sucker, grayling, pike, and char;*

General Regulations for the Tanana Management Area

5 AAC 74.010. Seasons, bag, possession, and size limits, and methods and means for the Tanana River Area

(a) Except as otherwise specified in this section or through an emergency order issued under AS 16.05.060, sport fishing is permitted year round in the waters of the Tanana River Area.

(b) Except as otherwise specified in (c) and (d) of this section, the following are the general bag, possession, and size limits and means for finfish in the waters of the Tanana River Area:

- (1) king salmon 20 inches or greater in length: the bag and possession limit is one fish;*
- (2) salmon, other than king salmon: the bag and possession limit is three fish, with no size limit;*
- (3) Arctic char/Dolly Varden: the bag and possession limit is 10 fish, with no size limit;*
- (4) lake trout: the bag and possession limit is two fish, with no size limit;*
- (6) Arctic grayling: the bag and possession limit is five fish, with no size limit;*
- (7) whitefish: the bag and possession limit is 15 fish, with no size limit;*
- (8) sheefish: the bag and possession limit is two fish, with no size limit;*
- (9) northern pike: the bag and possession limit is five fish, of which only one fish may be 30 inches or greater in length;*
- (10) burbot: the bag and possession limit is 15 fish, with no size limit;*
- (11) finfish species that are not specified in this section: there are no bag, possession, or size limits;*

(c) The following are the exceptions to the general bag, possession, and size limits, and fishing seasons specified in (a) and (b) of this section for the Tanana River Area:

(6) in the Delta River and its tributaries,

(A) sport fishing for salmon is closed;

(B) all sport fishing is closed in that portion of the Delta River between its mouth and an ADF&G regulatory marker located two miles upstream;

(9) in Fielding Lake

(B) lake trout may be taken only from October 1 through August 31, with a bag and possession limit of one fish, which must be 26 inches or greater in length; all lake trout caught that are less than 26 inches must be released immediately;

(C) burbot may be taken only from October 1 through August 31, with a bag and possession limit of one fish, with no size limit;

(24) in the Tangle Lake system, including all waters of the Delta River drainage upstream from Wildhorse Creek,

(B) the bag and possession limit for lake trout is one fish, no size limit;

(C) the bag and possession limit for burbot is two fish, with no size limit;

(d) In the Tanana River Management Area, the following special provisions to methods and means apply:

(1) from October 15 through May 15, set lines may be used to take burbot in all lakes in the Tanana River drainage, except

(G) the Tangle Lake system;

(19) in the Tangle Lake system, the use of set lines is prohibited;

Conservation Issues

A total rescission of this closure would cause conservation concerns for Chinook, chum, and coho salmon due to recent low returns. There would also be conservation concerns for resident species as discussed earlier. There is very little known about species distributions and abundances in the area. The Delta River downstream of Eureka Creek is a glacially turbid river that has several small clearwater tributaries that are important rearing habitat, but overall, habitat is limited as are abundances of fish. Upstream of Eureka Creek mouth to the waterfalls, the Delta River has a 10 mile stretch of clear water that is very productive and holds a large population of Arctic grayling. The abundant population has a very high density because it exists only in a small area, and a radiotelemetry study of the population has demonstrated they are even more densely concentrated in 2 locations during winter. While the high density of Arctic grayling is interesting, it also makes the population very vulnerable to overharvest by highly efficient gear types such as gillnets especially if there are no harvest limits. Other species (round

whitefish, burbot, Dolly Varden, and lake trout) are in the area, but there is very limited information about their distribution and no information about their abundance.

Enforcement Issues

If this closure is rescinded, it will result in conflicting state and federal regulations for the Delta River which will complicate enforcement and cause user confusion. The FSB should request how enforcement efforts will be undertaken by federal enforcement officers.

FCR23-12 Executive Summary	
General Description	FCR23-12 is a routine review of a Federal closure to salmon fishing in all freshwaters on Adak and Kagalaska Island.
Current Regulation	<p>§ ____.27(e)(6) <i>Aleutian Islands Area</i></p> <p>***</p> <p>(iv) <i>You may not subsistence fish for salmon in the following waters:</i></p> <p style="padding-left: 40px;">***</p> <p style="padding-left: 40px;"><i>(E) All fresh water on Adak Island and Kagalaska Island in the Adak District.</i></p> <p style="padding-left: 40px;">***</p>
OSM Conclusion	Rescind
Kodiak/Aleutians Subsistence Regional Advisory Council Recommendation	Rescind
Interagency Staff Committee Comments	<p>The Interagency Staff Committee (ISC) acknowledges that this closure is out of compliance with Title VIII of ANILCA by being closed to fishing by federally qualified subsistence users while allowing for sport fishing under State regulations. The Federal Subsistence Board (Board) would need to take action to bring this situation back into compliance with ANILCA. The Board could modify the closure by closing to all uses. The Board could also rescind the closure and provide a priority consumptive use to federally qualified subsistence users.</p> <p>The Regional Advisory Council has recommended the closure be rescinded, bringing this fishery back into compliance with ANILCA. In the absence of this closure standard, area Federal subsistence regulations would apply which could present conservation concerns. Permanent regulations would be the preferable solution to address possible conservation concerns while still providing a meaningful priority to federally qualified subsistence users.</p> <p>Until the Board receives and takes action on regulatory proposals, Federal managers can use their delegated authority if conservation</p>

FCR23-12 Executive Summary	
	concerns arise. The ISC recognizes that unless modified by the Board, current Fisheries delegation of authority letters limit Federal managers to emergency special actions (actions lasting no longer than 60 days).
ADF&G Comments	Retain status quo
Written Public Comments	None

FEDERAL FISHERIES CLOSURE REVIEW
FCR23-12

Issue

FCR23-12 is a routine review of a Federal closure to salmon fishing in all freshwaters on Adak and Kagalaska Island. It is the Board's policy that Federal public lands and waters should be reopened as soon as practicable once the conditions that originally justified the closure have changed to such an extent that the closure is no longer necessary. The purpose of this closure review is to determine if the closure is still warranted and to ensure the closure does not remain in place longer than necessary.

Closure Location: Adak and Kagalaska Island freshwaters—Salmon

Current Federal Regulation

§ ____.27(e)(6) *Aleutian Islands Area*

(iv) *You may not subsistence fish for salmon in the following waters:*

(E) *All fresh water on Adak Island and Kagalaska Island in the Adak District.*

Relevant Federal Regulations

§ ____.25 *Subsistence taking of fish, wildlife, and shellfish: general regulations.*

(a) *Definitions. The following definitions apply to all regulations contained in this part:*

Subsistence fishing permit means a subsistence harvest permit issued by the Alaska Department of Fish and Game or the Federal Subsistence Board.

§ ____.27 *Subsistence taking of fish*

(b) *Methods, means, and general restrictions.*

(16) Unless specified otherwise in this section, you may use a rod and reel to take fish without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(i) If you are required to obtain a subsistence fishing permit for an area, that permit is required to take fish for subsistence uses with rod and reel in that area. The harvest and possession limits for taking fish with a rod and reel in those areas are the same as indicated on the permit issued for subsistence fishing with other gear types.

(18) Provisions on ADF&G subsistence fishing permits that are more restrictive or in conflict with the provisions contained in this section do not apply to Federal subsistence users.

§____.27(e)(6) Aleutian Islands Area

(iii) In the Adak, Akutan, Atka-Amlia, and Umnak Districts, you may take salmon at any time.

(v) You may take salmon by seine and gillnet, or with gear specified on a subsistence fishing permit.

(viii) You may take salmon, trout, and char only under the terms of a subsistence fishing permit, except that you do not need a permit in the Akutan, Umnak, and Atka-Amlia Islands Districts.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit, except that in the Unalaska and Adak Districts, you may take no more than 25 salmon plus an additional 25 salmon for each member of your household listed on the permit. You may obtain an additional permit.

(x) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

Note: In the Adak District, you are required to have a State Subsistence Fishing Permit when subsistence fishing for salmon (see 5 AAC 01.380. Subsistence fishing permits).

Closure Dates: Year-round

Current State Regulation

Subsistence Regulations

Aleutian Islands Area

5 AAC 01.375 Waters closed to subsistence fishing

The following waters are closed to subsistence fishing for salmon:

(6) the following waters of and around Adak Island and Kagalaska Island in the Adak District:

(A) all freshwater; and

(B) all salt waters within 100 yards of a stream terminus.

Relevant State Regulations

Subsistence Regulations

Aleutians Island Area

5 AAC 01.370. Lawful gear and gear specifications

(a) Salmon may be taken by seine and gillnet, or with gear specified on a subsistence fishing permit.

5 AAC 01.380. Subsistence fishing permits

(a) Salmon, trout, and char may be taken only under the terms of a subsistence fishing permit, except that a permit is not required in the Akutan, Umnak, and Atka-Amlia Islands Districts.

(b) No more than 250 salmon may be taken for subsistence purposes unless otherwise specified on the subsistence fishing permit, except that in the Unalaska and Adak Districts,

(c) A record of subsistence-caught fish must be kept on the permit. The record must be completed immediately upon taking subsistence-caught fish and must be returned to the local representative of the department no later than October 31.

Sport Regulations

Alaska Peninsula and Aleutian Islands Area

5 AAC 65.020. General provisions for seasons and bag, possession, annual, and size limits for the Alaska Peninsula and Aleutian Islands Area

Except as otherwise provided in 5 AAC 65.022, 5 AAC 65.051, or by an emergency order issued under AS 16.05.060, the seasons and bag, possession, annual, and size limits for finfish and shellfish in the Alaska Peninsula and Aleutian Islands Area are as follows:

(1) king salmon:

(A) in fresh waters: may be taken only from January 1 through July 25, except that king salmon may be taken in the Chignik River only from January 1 through August 9, and as follows:

(i) 20 inches or greater in length; bag and possession limit of two fish; annual limit of five fish; a harvest record is required as specified in 5 AAC 75.006;

(ii) less than 20 inches in length; bag and possession limit of 10 fish; no annual limit;

(2) salmon, other than king salmon: may be taken from January 1 through December 31, as follows:

(A) 20 inches or greater in length; bag limit of five fish and a possession limit of 10 fish;

(B) less than 20 inches in length; bag and possession limit of 10 fish;

Regulatory Year Initiated: 1990

Extent of Federal Public Lands/Waters

For purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 36 CFR 242.3 and 50 CFR 100.3. Federal public freshwaters on Adak and Kagalaska comprise all freshwaters within and adjacent to the exterior boundaries of Alaska Maritime Wildlife Refuge (**Figure 1**).



Figure 1. Map of Adak and Kagalaska Islands with Federal public lands outlined.

Customary and Traditional Use Determination

Residents of the Residents of the Aleutian Islands Area and the Pribilof Islands have a customary and traditional use determination for salmon in the Aleutian Islands Area.

Regulatory History

In 1990, the Federal Subsistence Management Program adopted temporary subsistence management regulations for public lands in Alaska, which included this closure, to minimize disruption to the State's continuing fish and game management, because of the uncertainty over the resumption of State management of subsistence, yet still fulfill the requirements of the Title VIII of ANILCA (55 Fed. Reg. 126; 27125, 27155 [June 29, 1990]).

Closure last reviewed

There have been no previous reviews of this closure.

Justification for Original Closure

In 1997, the closure was in the proposed rule for the management of fish in navigable waters, in addition to non-navigable waters. The justification was that "The proposed wording of these sections is based on the existing State subsistence regulations with some exceptions" (62 Fed. Reg. 242, 66220 [December 17, 1997]). It was adopted as final in 2001 (66 Fed. Reg. 30, 10154 [February 13, 2001]).

Council Recommendation for Original Closure

None

State Recommendation for Original Closure

None

Biological Background

There are some Federal public freshwaters of interest on Adak and Kagalaska Islands. Notable ones include drainages in Hidden Bay on Adak Island, and Quail Bay and Galas Point on Kagalaska Island. Anadromous species present in these drainages, according to the ADF&G Anadromous Waters Catalog, are displayed in **Table 1** (Johnson and Blossom 2021). None of the fish populations in these freshwaters are monitored so there is little abundance information available.

Table 1. Primary Federal public freshwaters on Adak and Kagalaska Islands

Drainage	Species present
Hidden Bay	Chum, Coho, Pink, Sockeye, Dolly Varden
Quail Bay	Pink, Sockeye
Galas Point	Sockeye, Dolly Varden

Cultural Background

The Aleutian Islands and Pribilof Islands are located west of the Alaska Peninsula and are the homelands of the Unangan, or Aleut, peoples. As of 2021, there are an estimated 6,754 Alaska Native, Euro-

American, Asian, African American, and Native Hawaiian or Pacific Islander people living in eight communities (**Table 2**). It is common for residents in the region to recognize a mixed Aleut, Russian, Scandinavian, and/or European heritage (Reedy-Maschner 2010). Archaeological and ethnographic evidence indicates that people have been practicing subsistence in this region for at least 10,000 years. Many residents across the region continue to live a subsistence way of life; subsistence and commercial fishing “allows the Aleut to maintain individual identity, social relationships, and collective identity” (Reedy-Maschner 2010: 242). Key subsistence resources have included salmon, halibut, cod, sculpins, greenling, cetaceans, sea otter, seals, sealions, shellfish, shorebirds, and waterfowl (Dumond and Bland 1995, Byers et al. 2011, Krylovich et al. 2019).

The Aleutian and Pribilof Islands have a long history of tumultuous cultural and socio-economic change (Reedy-Maschner 2010). The mid-1700s started a period marked by mass disease, death, and social reorganization following Russian and European contact. Populations of Unangan people were forced to translocate to the Pribilof Islands to sustain the fur seal industry, which continued with U.S. support after the purchase of Alaska in 1867. By the early 1900s, whaling and commercial cod, halibut, and salmon fisheries were established (Reedy-Maschner and Maschner 2012). The western Aleutian Islands were occupied by the Japanese during World War II, at which point the U.S. government forced many people from the eastern Aleutian Islands to evacuate to internment camps in southeast Alaska. Internment resulted in a significant disease and death (Kohlhoff 1999 in Reedy-Maschner and Maschner 2012). Insufficient Federal support to rebuild after internment was later exacerbated by U.S. withdrawal of support for and collapse of the fur seal industry in the mid-1980s. Today, commercial fisheries in the region—particularly on Akutan, Unalaska, and the Pribilof Islands—are exceptionally productive and bring in many non-local employees who primarily reside at on-site housing (Reedy-Maschner 2010, Schmidt and Berman 2018). As of 2010, Akutan Island was home to the largest seafood processing plant in the U.S. (Sepez and Hunn 2010).

Subsistence fishing is central to Aleut identity, culture, and economy. Ethnohistorical data demonstrates that traditional ecological knowledge about subsistence resources, trophic relationships, and climate has been passed down over generations (Sepez and Hunn 2010, Maschner et al. 2014). Salmon, halibut, and other finfish are all recognized as being customarily or traditionally taken or used for subsistence throughout the Aleutian Islands and Pribilof Islands (Fall et al. 2020). While salmon is the most important resource in the Aleutian Islands, the primary subsistence resources in the Pribilof Islands include seals, sea lions, walrus and whales, reindeer, and nonsalmon fish (Veltre and Veltre 1981). Throughout the region, harvested resources are shared throughout the community and were historically used as trade items among residents to gain social status and prestige (Reedy-Maschner 2010). Community-based research in the eastern Aleutians highlights that “subsistence is an institution for many households and is enacted through vast sharing networks for family and friends” (Reedy-Maschner and Maschner 2012: 14). Reports from Unalaska underscore the cultural importance of sharing subsistence foods, with 71.4% of households receiving shared salmon and 52.5% of households gifting harvested salmon to others (Scarborough and Fall 1997).

Subsistence remains a part of people’s identity “rooted in multi-generational attachments to the local land and seascapes.” Household surveys conducted on Akutan in 2008 indicate that salmon comprised 45% of

total subsistence harvest, followed by nonsalmon fish (25%), marine invertebrates (10%), marine mammals (8%), and wild plants, birds, eggs, and land mammals (12%) (Fall et al. 2012). Similar harvest patterns were recorded in Unalaska, with salmon as the primary resource by weight, followed by nonsalmon fish (primarily halibut), marine invertebrates (primarily crab), then game (including caribou, deer, harbor seal, and Steller sea lion) (Scarborough and Fall 1997). Survey data from 2018 indicate that 2,563 salmon (72% Sockeye, 19% Coho, 6% Pink, 3% Chum, and 1% Chinook) were harvested for subsistence in the Unalaska District in 2018, primarily from Reese Bay (Brown et al. 2021). Most residents harvest subsistence resources locally. Sepez and Hunn (2010) report that in Akutan, most people are limiting their travel to < 10 miles from their village or approximately one hour by boat. Thus, subsistence resources of each island in the region are of critical importance to its residents.

Adak Island is centrally located among the Aleutian Islands. Closure of the Naval Air Base in 1997 resulted in a population decline from almost 10,000 people to 70-100 year-round residents. The Board therefore changed the status of Adak from nonrural to rural in 2006 (FR 25688, May 7, 2007). In this district, subsistence salmon harvest consists mainly of Sockeye Salmon harvested at Quail Bay and Galas Point on Kagalaska Island and at Finger Bay and Airport Creek on Adak Island (Fox and Whiteside 2020). Sockeye Salmon are also harvested at Hidden Bay, and a few Pink and Coho Salmon are also harvested on the north side of Adak Island (ADF&G n.d.). In recent years, Sockeye Salmon have also been harvested from Lake Andrew on the north side of the island (KARAC 2021). However, Adak council member Richard Koso reports that salmon fisheries on Kagalaska Island are among the most critical to Adak residents (KARAC 2022).

Discussions at Regional Advisory Council meetings indicate that people on Adak continue to rely on salmon and halibut subsistence fisheries. Like elsewhere in the Aleutians (Reedy-Maschner 2010), lack of boat access and lack of money for fuel and supplies constrain Adak people's ability to harvest salmon (KARAC 2019). Many people reportedly do not apply for a subsistence permits because the permit limit of 25 salmon per subsistence user is "almost not enough to even run out because it cost so much for fuel... it's a four-hour round-trip run on the skiff to get [salmon] so it's quite costly..." (KARAC 2019: 187). Adak council member Richard Koso reported that community members with boats would historically "bring in a couple hundred fish and they give them to people in town that can't get out," but are unable to do so with the existing subsistence harvest limits (KARAC 2019: 187). These discussions suggest that existing harvest limits and permitting processes on Adak, which are much lower than the limit of 250 salmon per subsistence user in nearby Cold Bay, impede cultural practices of resource sharing.

In 2018, 460 Sockeye Salmon were reported harvested for subsistence on Adak (Fox and Whiteside 2020). Estimates of Adak District subsistence use from 1998-2013 indicate a small annual harvest, averaging 76 salmon harvested/year, of which 45 are Sockeye, 27 are Pink, and four are Coho (Fox and Whiteside 2020). However, the Kodiak-Aleutians Area Planning Workgroup suggested that underreporting is likely an issue in this region, both due to confusion regarding the 25 salmon/permit limit and due to reporting subsistence resources as sportfishing harvest (OSM 2006).

Table 2. Estimated population of Aleutian Island Area communities, based on 2020 census data (Department of Labor and Workforce Development, 2021).

Community	2021 Population Estimate
Akutan	1,588
Unalaska Dutch Harbor	4,195
Nikolski	42
Atka	59
Adak	179
Saint Paul	391
Saint George	68
Eareckson Station (Shemya)	232
Total	6,754

Harvest History

Subsistence harvest is reported on State issued subsistence fishing permits. There are few subsistence permits issued for the Adak District recently since the U.S. Navy presence has declined. According to Fox et al. 2020, “In 2020 the estimated harvest of 250 sockeye salmon were the only fish reported harvested in the Adak District. Between 2015 and 2019, an average of 2 Adak District subsistence permits were issued with an estimated average harvest of 141 sockeye and 6 coho, no other species were harvested between 2015 and 2019”.

Effects

According to Title VIII, section 804 of the Alaska National Interest Lands Conservation Act (ANILCA), “...the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over taking on such lands of fish and wildlife for other purposes.” There are currently nonsubsistence uses permitted in this area making the current situation out of compliance with Title VIII of ANILCA. Rescinding the closure would provide Federal opportunity to harvest salmon in freshwater drainages on Adak and Kagalaska Islands, thereby providing priority consumptive use to federally qualified subsistence users.

If the closure is rescinded, Federal subsistence regulations for the Aleutian Islands Area would apply but conservation concerns are unlikely because subsistence harvest in recent years has been very minimal and occurs primarily in marine waters. If necessary to conserve fish populations, the Federal in-season manager could exercise their delegated authority to manage the fisheries (**Appendix 1**).

OSM CONCLUSION

_ Retain the Status Quo

X Rescind the Closure

- _ Modify the Closure
- _ Defer Decision on the Closure or Take No Action

The regulations would read:

§ __.27(e)(6) *Aleutian Islands Area*

(iv) *You may not subsistence fish for salmon in the following waters:*

~~(E) All fresh water on Adak Island and Kagalaska Island in the Adak District.~~

Justification

These drainages are currently closed to the harvest of salmon by federally qualified subsistence users and remain open to other uses. Federal subsistence opportunity should also be provided to comply with the rural preference mandated by ANILCA. The closure broadly covers all Federal public freshwaters on Adak and Kagalaska Islands. There is no evidence to suggest it is necessary to close all these Federal public freshwaters to Federal subsistence salmon fishing. Providing opportunity for federally qualified subsistence users is not likely to lead to a conservation concern because subsistence harvest in recent years has been very minimal and occurs primarily in marine waters. The Federal in-season manager has been delegated authority to issue emergency special actions for up to 60 days to open or close Federal subsistence fishing periods or areas provided under codified regulations and to specify methods and means; to specify permit requirements; and to set harvest and possession limits for Federal subsistence fisheries (**Appendix 1**). The in-season manager can use this authority to manage the fisheries as necessary. A proposal outlining desired parameters for these fisheries may be submitted during the next fisheries cycle so they can be put into regulation.

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SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS

Kodiak Aleutians Subsistence Regional Advisory Council

Rescind the closure on FCR23-12. The Council acknowledges the current lack of priority for federally qualified subsistence users at this location. The Council prefers to provide opportunity for federally qualified subsistence users and to be able to provide a rural preference in times of conservation concern.

INTERAGENCY STAFF COMMITTEE COMMENTS

The Interagency Staff Committee (ISC) acknowledges that this closure is out of compliance with Title VIII of ANILCA by being closed to fishing by federally qualified subsistence users while allowing for sport fishing under State regulations. The Federal Subsistence Board (Board) would need to take action to bring this situation back into compliance with ANILCA. The Board could modify the closure by closing to all uses. The Board could also rescind the closure and provide a priority consumptive use to federally qualified subsistence users.

The Regional Advisory Council has recommended the closure be rescinded, bringing this fishery back into compliance with ANILCA. In the absence of this closure standard, area Federal subsistence regulations would apply which could present conservation concerns. Permanent regulations would be the preferable solution to address possible conservation concerns while still providing a meaningful priority to federally qualified subsistence users.

Until the Board receives and takes action on regulatory proposals, Federal managers can use their delegated authority if conservation concerns arise. The ISC recognizes that unless modified by the Board, current Fisheries delegation of authority letters limit Federal managers to emergency special actions (actions lasting no longer than 60 days).

ALASKA DEPARTMENT OF FISH AND GAME COMMENTS

Fisheries Closure Review FCR23-12

This is a routine review of a federal fishery closure to subsistence salmon fishing in the freshwater systems of Adak and Kagalaska Islands.

Position

The Alaska Department of Fish & Game (ADF&G) **SUPPORTS** the closure remaining in place until such time as the Federal Subsistence Board (FSB) can reconcile the legality of effectively opening a fishery. Congress authorized the FSB to close, but not to open, a fish or wildlife harvest season as set forth in sections 815 and 816 of the Alaska National Interest Lands Conservation Act (ANILCA). Without statutory authorization, the FSB adopted a regulation improperly granting itself authority to open public lands to the taking of fish and wildlife (50 CFR § 100.19).

These areas are currently open to sport fishing; however, historically there has been little to no harvest in them and all federally qualified users (FQU) have been eligible to participate in these fisheries. As a result, there has never been a need to pass sport fish regulatory changes pertaining to them. Additionally, the subsistence gear type allowed is much more liberal and efficient at harvesting salmon in salt water in the Alaska Peninsula and Aleutian Islands areas and if modifications to gear types allowed were needed, those modifications could be addressed through the Alaska Board of Fisheries (BOF).

ADF&G suggests that the BOF process be used to bring subsistence and sport fishery regulations into alignment for Adak and Kagalaska Island salmon systems if subsistence needs are not being met by current regulations. Doing so would prohibit conflicting regulations from being put into effect which would reduce the burden on subsistence users and alleviate conservation and enforcement concerns. This would also reduce confusion among users of the resource, subsistence and sport users are often both FQUs and are primarily harvesting fish for food versus recreation. Based on past subsistence salmon concerns that have been raised at KARAC meetings, ADF&G submitted proposals for the 2023 BOF meeting to alleviate these concerns in line with its long history of working with local subsistence users to pass regulations to their benefit in a timely manner.

Background

There are some federal public freshwaters of interest on Adak and Kagalaska Islands. Notable ones include drainages in Hidden Bay on Adak Island, and Quail Bay and Galas Point on Kagalaska Island. Anadromous species present in these drainages, according to the ADF&G Anadromous Waters Catalog, are displayed in Table 1 (Johnson and Blossom 2021). None of the fish populations in these freshwaters are monitored so there is little abundance information available.

Table 1. Primary Federal public freshwaters on Adak and Kagalaska Islands

Drainage	Species present
Hidden Bay	Chum, Coho, Pink, Sockeye, Dolly Varden
Quail Bay	Pink, Sockeye
Galas Point	Sockeye, Dolly Varden

Subsistence harvest is reported on ADF&G issued subsistence fishing permits. There are few subsistence permits issued for the Adak District recently since the U.S. Navy presence has declined. According to Fox et al. 2020, “In 2020 the estimated harvest of 250 sockeye salmon were the only fish reported harvested in the Adak District. Between 2015 and 2019, an average of 2 Adak District subsistence permits were issued with an estimated average harvest of 141 sockeye and 6 coho, no other species were harvested between 2015 and 2019”.

Impact on Subsistence Users

Subsistence salmon fishing on Adak and Kagalaska Islands has historically been managed by the state, even under federal regulations which often require a state subsistence fishing permit. Thus, users are familiar with the state subsistence regulations they have been following for decades. Applying conflicting federal regulations would burden users to know which gear types they would be allowed to legally use, and without clear demarcation of federal boundaries they may unknowingly fish illegally and be subject to prosecution. While this closure has prohibited FQUs from harvesting salmon in these waters under federal regulations it will not necessarily benefit them because they’ve had the opportunity to harvest salmon under state regulations.

Impact on Other Users

There would be minimal impact on any other users since there are a very small number of people fishing in this area who are not FQUs. Despite this minimal impact for those who do take advantage of fishing in this area, there is a possibility of confusion between the regulations and boundaries.

Opportunity Provided by State

§ 5 AAC 01.366. Customary and traditional subsistence uses of fish stocks and amounts necessary for subsistence uses

(a) The Alaska Board of Fisheries (board) finds that halibut and all other finfish in the Aleutian Islands Area and the waters surrounding the Pribilof Islands are customarily and traditionally taken or used for subsistence.

(b) The board finds that

(1) 13,500 – 23,000 salmon are reasonably necessary for subsistence uses in the Aleutian Islands Area

Conservation Issues

Rescinding this closure would allow for dramatically increased harvest opportunity by allowing the use of gillnets or beach seines in freshwater as well as greatly increasing harvest limits. Depending on a federal in-season manager to make that decision on the appropriate gear type does not give ADF&G the confidence in supporting the rescinding of this closure.

Enforcement Issues

Enforcement of fishery regulations is an issue on Adak and Kagalaska Islands with several complaints a year coming from Adak residents about subsistence harvest issues. The nearest enforcement officer is in Dutch Harbor, which only has one Alaska Wildlife Trooper (AWT) position assigned there and that AWT is on detail in Bristol Bay for most of the salmon run. ADF&G has no staff present on Adak Island.

Subsistence salmon fishing on Adak Island has historically been managed by the state, even under federal regulations which often require a state subsistence fishing permit. Thus, users are familiar with the state subsistence regulations they have been following for decades. Applying conflicting federal regulations would burden users to know which gear types they would be allowed to legally use, and without clear demarcation of federal boundaries they may unknowingly fish illegally and be subject to prosecution.

The FSB should request past and current enforcement efforts undertaken by federal law enforcement officers on Adak Island to ensure adequate enforcement of the federal fisheries in the area.

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Appendix 1

Delegation of authority letter to the in-season manager of the Southwest Alaska Area.

Branch Chief - Fisheries
 U.S. Fish and Wildlife Service
 Anchorage Fish and Wildlife Conservation Office
 4700 BLM Road
 Anchorage, Alaska 99507

Dear Branch Chief:

This letter delegates specific regulatory authority from the Federal Subsistence Board (Board) to the Branch Chief - Fisheries of the Anchorage Fish and Wildlife Conservation Office (Branch Chief) to issue emergency special actions when necessary to ensure the conservation of a healthy fish population, to continue subsistence uses of fish, for the continued viability of a fish population, or for public safety reasons. This delegation only applies to Federal public waters subject to the Alaska National Interest Lands Conservation Act (ANILCA) Title VIII in the Bristol Bay/Alaska Peninsula/Aleutian Islands/Chignik Areas.

It is the intent of the Board that Federal subsistence fisheries management by Federal officials be coordinated, prior to implementation, with Regional Advisory Council (Council) representatives, the Office of Subsistence Management (OSM), and the Alaska Department of Fish and Game (ADF&G), to the extent possible. The OSM will be used by managers to facilitate communication of actions and to ensure proposed actions are technically and administratively aligned with legal mandates and policies. Federal managers are expected to cooperate with managers from the State and other Federal agencies, the Council Chair(s), and applicable Council members to minimize disruption to resource users and existing agency programs, consistent with the need for emergency special action.

DELEGATION OF AUTHORITY

1. **Delegation:** The Branch Chief is hereby delegated authority to issue emergency special actions affecting fisheries in Federal public waters as outlined under the **Scope of Delegation** below. Although a public hearing is not required for emergency special actions, if deemed necessary by you, then a public hearing on the emergency special action is recommended. Special actions are governed by regulation at 36 CFR 242.19 and 50 CFR 100.19.
2. **Authority:** This delegation of authority is established pursuant to 36 CFR 242.10(d)(6) and 50 CFR 100.10(d)(6), which state: “The Board may delegate to agency field officials the authority to set harvest and possession limits, define harvest areas, specify methods or means of harvest, specify permit requirements, and open or close specific fish or wildlife harvest seasons within frameworks established by the Board.”
3. **Scope of Delegation:** The regulatory authority hereby delegated is limited to the issuance of emergency special actions as defined by 36 CFR 242.19(a) and 50 CFR 100.19(a). Such an emergency action may not exceed 60 days, and may not be extended.

This delegation permits you to open or close Federal subsistence fishing periods or areas provided under codified regulations. It also permits you to specify methods and means; to specify permit requirements; and to set harvest and possession limits for Federal subsistence fisheries.

This delegation also permits you to close and re-open Federal public waters to nonsubsistence fishing, but does not permit you to specify methods and means, permit requirements, or harvest and possession limits for State-managed fisheries. This delegation may be exercised only when it is necessary to conserve healthy populations of fish or to ensure the continuation of subsistence uses.

All other proposed changes to codified regulations, such as customary and traditional use determinations or requests for special actions greater than 60 days, shall be directed to the Board.

The Federal public waters subject to this delegated authority are those within the Bristol Bay/Alaska Peninsula/Aleutian Islands/Chignik Areas (as described in the Subsistence Management Regulations for the Harvest of Fish and Shellfish on Federal Public Lands and Waters in Alaska). You will coordinate all local fishery decisions with all affected Federal land managers.

4. Effective Period: This delegation of authority is effective from the date of this letter and continues until superseded or rescinded.

5. Guidelines for Review of Proposed Special Actions: You will use the following guidelines to determine the appropriate course of action when reviewing proposed special actions.

- a) Does the proposed special action fall within the geographic and regulatory scope of delegation?
- b) Have you communicated with the OSM to ensure the emergency special action is aligned with Federal subsistence regulations and policy?
- c) Does the proposed action need to be implemented immediately as an emergency special action, or can the desired conservation or subsistence use goal be addressed by deferring the issue to the next regulatory cycle?
- d) Does the supporting information in the proposed special action substantiate the need for the action?
- e) Are the assertions in the proposed special action confirmed by available current biological information and/or by affected subsistence users?
- f) Is the proposed special action supported in the context of available historical information on stock status and harvests by affected users?
- g) Is the proposed special action likely to achieve the expected results?
- h) Have the perspectives of the Chair or alternate of the affected Council(s), OSM, and affected State and Federal managers been fully considered in the review of the proposed special action?
- i) Have the potential impacts of the proposed special action on all affected subsistence users and non-Federally qualified users within the drainage been considered?
- j) Can public announcement of the proposed special action be made in a timely manner to accomplish the management objective?

k) After evaluating all information and weighing the merits of the special action against other actions, including no action, is the proposed emergency special action reasonable, rational, and responsible?

6. Guidelines for Delegation: You will become familiar with the management history of the fisheries in the region, with the current State and Federal regulations and management plans, and be up-to-date on stock and harvest status information.

You will provide subsistence users in the region a local point of contact about Federal subsistence fishery issues and regulations and facilitate a local liaison with State managers and other user groups. For in-season management decisions and special actions, consultation is not always possible, but to the extent practicable, two-way communication will take place before decisions are implemented. You will also establish meaningful and timely opportunities for government-to-government consultation related to pre-season and post-season management actions as established in the Board's Government to Government Tribal Consultation Policy (Federal Subsistence Board Government to Government Tribal Consultation Policy 2012).

You will review emergency special action requests or situations that may require an emergency special action and all supporting information to determine (1) consistency with 36 CFR 242.19 and 50 CFR 100.19, (2) if the request/situation falls within the scope of your delegated authority, (3) if significant conservation problems or subsistence harvest concerns are indicated, and (4) what the consequences of taking an action may be on potentially affected subsistence uses and nonsubsistence uses. Requests not within your delegated authority will be forwarded to the Board for consideration.

You will maintain a record of all special action requests and justification of your decisions. A copy of this record will be provided to the Administrative Records Specialist at OSM no later than sixty days after development of the document.

You will immediately notify the Board through the Assistant Regional Director for the OSM, and coordinate with Chair or alternate of the affected Council(s), local ADF&G managers, and other affected Federal conservation unit managers concerning emergency special actions being considered.

If the timing of a regularly scheduled meeting of the affected Council(s) permits without incurring undue delay, you may seek Council recommendations on the proposed emergency special action.

You will issue decisions in a timely manner. Before the effective date of any decision, reasonable efforts will be made to notify Council representatives, the public, OSM, affected State and Federal managers, and law enforcement personnel. If an action is to supersede a State action not yet in effect, the decision will be communicated to Council representatives, the public, OSM, and State and Federal managers at least 24 hours before the State action would be effective. If a decision to take no action is made, you will notify the proponents of the request immediately.

You may defer an emergency special action request, otherwise covered by the delegation of authority, to the Board in instances when the proposed management action will have a significant impact on a large number of Federal subsistence users or is particularly controversial. These options should be exercised judiciously and only when sufficient time allows. Such deferrals should not be considered when immediate management actions are necessary for conservation purposes. The Board may determine that an emergency special action request may best be handled by the Board, subsequently rescinding the delegated authority for the specific action only.

7. Reporting: You must provide to the Board, through the Assistant Regional Director for the OSM, a report describing the pre-season coordination efforts, local fisheries management decisions, and post-season evaluation activities for the previous fishing season by November 15. A summary of emergency special action requests and your resultant actions must be provided to the coordinator of the appropriate Council(s) at the end of the calendar year for presentation during regularly scheduled Council meetings.

8. Support Services: Administrative support for your local Federal subsistence fisheries management activities will be provided by the Office of Subsistence Management.

Should you have any questions about this delegation of authority, please feel free to contact the Assistant Regional Director for the OSM at toll-free 1-800-478-1456 or (907) 786-3888.

Sincerely,



Anthony Christianson
Chair

Enclosures: Maps of the Bristol Bay, Aleutian Islands, and Alaska Peninsula/Chignik areas

cc: Federal Subsistence Board

Assistant Regional Director, Office of Subsistence Management
Deputy Assistant Regional Director, Office of Subsistence Management
Subsistence Policy Coordinator, Office of Subsistence Management
Fisheries Division Supervisor, Office of Subsistence Management
Chair, Bristol Bay Subsistence Regional Advisory Council
Chair, Kodiak/Aleutians Subsistence Regional Advisory Council
Superintendent, Lake Clark/Katmai National Parks and Preserve
Manager, Togiak National Wildlife Refuge
Manager, Alaska Peninsula/Becharof National Wildlife Refuge Complex
Manager, Izembek National Wildlife Refuge
Manager, Alaska Maritime National Wildlife Refuge
Assistant Regional Director, Law Enforcement, U.S. Fish and Wildlife Service (Region 7)
Commissioner, Alaska Department of Fish and Game
Interagency Staff Committee
Administrative Record

FCR21-13 Executive Summary	
General Description	FCR21-13 is a routine review of a Federal closure to salmon fishing at Russell Creek and Nurse Lagoon in the Alaska Peninsula Area.
Current Regulation	<p>§ __.27(e)(7) <i>Alaska Peninsula Area</i></p> <p style="text-align: center;">***</p> <p style="text-align: center;"><i>(v) You may not subsistence fish for salmon in the following waters:</i></p> <p style="text-align: center;"><i>(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;</i></p> <p style="text-align: center;">***</p>
OSM Conclusion	Rescind
Kodiak/Aleutians Subsistence Regional Advisory Council Recommendation	Rescind
Bristol Bay Subsistence Regional Advisory Council Recommendation	Rescind
Interagency Staff Committee Comments	<p>The Interagency Staff Committee (ISC) acknowledges that this closure is out of compliance with Title VIII of ANILCA by being closed to fishing by federally qualified subsistence users while allowing for sport fishing under State regulations. The Federal Subsistence Board (Board) would need to take action to bring this situation back into compliance with ANILCA. The Board could modify the closure by closing to all uses. The Board could also rescind the closure and provide a priority consumptive use to federally qualified subsistence users.</p> <p>The Regional Advisory Councils have recommended the closure be rescinded, bringing this fishery back into compliance with ANILCA. In the absence of this closure standard, area Federal subsistence regulations would apply which could present conservation concerns. Permanent regulations would be the preferable solution to address possible conservation concerns while still providing a meaningful</p>

FCR21-13 Executive Summary	
	<p>priority to federally qualified subsistence users.</p> <p>Until the Board receives and takes action on regulatory proposals, Federal managers can use their delegated authority if conservation concerns arise. The ISC recognizes that unless modified by the Board, current Fisheries delegation of authority letters limit Federal managers to emergency special actions (actions lasting no longer than 60 days).</p>
ADF&G Comments	Retain status quo where federal government still has jurisdiction and rescind where there is no jurisdiction
Written Public Comments	None

FEDERAL FISHERIES CLOSURE REVIEW
FCR21-13

Issue

FCR21-13 is a routine review of a Federal closure to salmon fishing at Russell Creek and Nurse Lagoon in the Alaska Peninsula Area. It is the Board's policy that Federal public lands and waters should be reopened as soon as practicable once the conditions that originally justified the closure have changed to such an extent that the closure is no longer necessary. The purpose of this closure review is to determine if the closure is still warranted and to ensure the closure does not remain in place longer than necessary.

Closure Location: Russell Creek and Nurse Lagoon—Salmon

Current Federal Regulation

§ ____.27(e)(7) *Alaska Peninsula Area*

(v) *You may not subsistence fish for salmon in the following waters:*

(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;

Relevant Federal Regulations

§ ____.25 *Subsistence taking of fish, wildlife, and shellfish: general regulations.*

Subsistence fishing permit means a subsistence harvest permit issued by the Alaska Department of Fish and Game or the Federal Subsistence Board.

§ ____.27 *Subsistence Taking of Fish*

(b) *Methods, means, and general restrictions.*

(16) Unless specified otherwise in this section, you may use a rod and reel to take fish without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(i) If you are required to obtain a subsistence fishing permit for an area, that permit is required to take fish for subsistence uses with rod and reel in that area. The harvest and possession limits for taking fish with a rod and reel in those areas are the same as indicated on the permit issued for subsistence fishing with other gear types.

(18) Provisions on ADF&G subsistence fishing permits that are more restrictive or in conflict with the provisions contained in this section do not apply to Federal subsistence users.

§ __.27(e)(7) Alaska Peninsula Area

(ii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit.

(iii) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(iv) You may take salmon at any time, except in those districts and sections open to commercial salmon fishing where salmon may not be taken during the 24 hours before and 12 hours following each State open weekly commercial salmon fishing period, or as may be specified on a subsistence fishing permit.

(vi) You may take salmon by seine, gillnet, rod and reel, or with gear specified on a subsistence fishing permit. You may also take salmon without a permit by snagging (by handline or rod and reel), using a spear, bow and arrow, or capturing by bare hand.

(viii) You may not use a set gillnet exceeding 100 fathoms in length.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on your subsistence fishing permit.

Note: In the Alaska Peninsula Area, you are required to have a State Subsistence Fishing Permit when subsistence fishing for salmon (Appendix 1, see 5 AAC 01.420. Subsistence fishing permits)

Closure Dates: Year-round

Current State Regulations

Subsistence Regulations

Alaska Peninsula Area

5 AAC 01.420. Lawful gear and gear specifications

(a) Salmon may be taken only by seine and gillnet, or with gear specified on a subsistence fishing permit.

(c) In waters open to commercial salmon fishing, salmon may be taken only with a set or drift gillnet that does not exceed 50 fathoms in total length.

(d) Except as specified in (a) and (c) of this section, a permit holder may not operate a

(1) set gillnet that is more than 100 fathoms in length; and

(2) drift gillnet that is more than 200 fathoms in length.

(e) A purse seine or hand purse seine may not exceed 250 fathoms in length or 375 meshes in depth. Seine mesh size may not exceed three and one-half inches stretched measure, except that the first 25 meshes above the leadline may not exceed seven inches stretched measure.

(f) A person may not operate subsistence fishing gear within 100 feet of a set gillnet.

5 AAC 01.430. Subsistence fishing permits

(a) Salmon, trout, and char may only be taken under the authority of a subsistence fishing permit. The department will only issue one permit per household.

(b) No more than 250 salmon may be taken for subsistence purposes, per household, unless otherwise specified by a local representative of the department on the subsistence fishing permit. A permit holder may obtain an additional permit from the department.

(c) A record of subsistence-caught fish must be kept on the permit. The record must be completed immediately upon taking subsistence-caught fish and must be returned to the local representative of the department no later than October 31.

5 AAC 01.425 Waters closed to subsistence fishing

The following waters are closed to subsistence fishing for salmon:

- (1) Russell Creek and Nurse Lagoon and within 500 yards from the stream terminus of Russell Creek and Nurse Lagoon;*

Sport Regulations

Alaska Peninsula and Aleutian Islands Area

5 AAC 65.020. General provisions for seasons and bag, possession, annual, and size limits for the Alaska Peninsula and Aleutian Islands Area

Except as otherwise provided in 5 AAC 65.022, 5 AAC 65.051, or by an emergency order issued under AS 16.05.060, the seasons and bag, possession, annual, and size limits for finfish and shellfish in the Alaska Peninsula and Aleutian Islands Area are as follows:

- (1) king salmon:*

(A) in fresh waters: may be taken only from January 1 through July 25, except that king salmon may be taken in the Chignik River only from January 1 through August 9, and as follows:

(i) 20 inches or greater in length; bag and possession limit of two fish; annual limit of five fish; a harvest record is required as specified in 5 AAC 75.006;

(ii) less than 20 inches in length; bag and possession limit of 10 fish; no annual limit;

(B) in salt waters: may be taken from January 1 through December 31; bag and possession limit of two fish; no size limit; no annual limit;

- (2) salmon, other than king salmon: may be taken from January 1 through December 31, as follows:*

(A) 20 inches or greater in length; bag limit of five fish and a possession limit of 10 fish;

(B) less than 20 inches in length; bag and possession limit of 10 fish;

Regulatory Year Initiated: 1992

Extent of Federal Public Lands/Waters

For purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 36 CFR 242.3 and 50 CFR 100.3. Russell Creek consists of Federal public waters within and adjacent to the external boundaries of the Alaska Peninsula National Wildlife Refuge (**Figure 1**). Nurse Lagoon was at one time considered Federal public waters. The Secretaries of the Interior and Agriculture later determined that some marine waters, including Nurse Lagoon, were added to Federal subsistence regulation erroneously and should be removed (70 Fed. Reg. 247. 76407 [December 27, 2005]).



Figure 1. Map showing Trout Creek and Russell Creek salmon closures and areas used by residents of Cold Bay and King Cove to harvest salmon for subsistence: Mortensens Lagoon, Thin Point, and Leonard Harbor.

Customary and Traditional Use Determination

Residents of the Alaska Peninsula Area have a customary and traditional use determination for all fish in the Alaska Peninsula Area.

Regulatory History

In 1990, the Federal Subsistence Management Program adopted temporary subsistence management regulations for public lands in Alaska, which included this closure, to minimize disruption to the State’s continuing fish and game management because of the uncertainty over the resumption of State management of subsistence yet still fulfilling the requirements of the Title VIII of ANILCA (55 Fed. Reg. 126; 27125, 27155 [June 29, 1990]).

Closure Last Reviewed

A review was initiated during the 2021 fish proposal cycle and was recommended to be deferred by the Kodiak Aleutian Subsistence Regional Advisory Council to allow for additional feedback from the rural public in affected communities. The Board subsequently deferred the review until the 2023 fisheries regulatory cycle.

Justification for Original Closure

In 1990, the Federal Subsistence Management Program adopted temporary subsistence management regulations for public lands in Alaska, which included this closure, to minimize disruption to the State’s continuing fish and game management because of the uncertainty over the resumption of State management of subsistence yet still fulfilling the requirements of the Title VIII of ANILCA (55 Fed. Reg. 126; 27125, 27155 [June 29, 1990]).

Council Recommendation for Original Closure

None

State Recommendation for Original Closure

None

Biological Background

Russell Creek has been surveyed and found to contain Chum, Coho, Pink, and Sockeye salmon as well as steelhead trout (Johnson and Blossom 2018). Annual indexing of salmon escapement is conducted through aerial surveys and recent data shows variable returns of Chum and Pink salmon (**Table 1**). There was also a count of 600 Coho Salmon observed during the 2014 season (Keyse and Fox 2015) and 100 Sockeye Salmon observed during the 2020 season (Fox et al. 2021).

Table 1. Aerial survey estimates of Chum and Pink salmon in Russell Creek 2013-2021 (Poetter and Nichols 2014; Keyse and Fox 2015; Keyse et al. 2016; Fox et al. 2017, 2018, 2019, 2020, 2021, 2022).

Year	Chum Salmon	Pink Salmon
2013	20,000	8,000
2014	55,500	60,400
2015	18,800	29,000

Year	Chum Salmon	Pink Salmon
2016	113,000	0
2017	125,000	140,000
2018	12,500	2,500
2019	15,000	38,000
2020	13,800	11,800
2021	32,400	23,500

Community Background

Introduction

Two communities have consistent access to Russell Creek. One, Cold Bay with a population of 50 residents is home to the Izembek National Wildlife Refuge offices (**Table 2**). Cold Bay is located at the western end of the Alaska Peninsula, 634 miles southwest of Anchorage and 180 miles northeast of Unalaska (**Figure 1**). Cold Bay residents can access Russell Creek by road vehicle or by foot. The small watershed is located directly east of the end of the Cold Bay airport runway. Cold Bay School closed in 2015 due to a lack of student enrollment (ADCRA 2022). The other community with consistent access to Russell Creek is King Cove with a population of 807 residents (**Table 2**). King Cove is located across the bay from the Cold Bay community and travel between the communities is limited to boat or plane. An Alaska State ferry arrives in Cold Bay and King Cove monthly from May through October (City of King Cove 2022).

Table 2. The population of Cold Bay and King Cove, 1960–2020 (Source: ADCCED 2022).

Community	1960	1970	1980	1990	2000	2010	2020
Cold Bay	86	256	192	148	88	108	50
King Cove	290	283	460	677*	792	938	757
Total	376	539	652	148	880	1,046	807

*The U.S. Census left out Ram Creek Subdivision in the community total of 451 in 1990 (ADLWFD 1993:82).

Cold Bay

The town began with the airport's construction. Aleut people used the site only seasonally because there were more sheltered areas in the region. Fort Randall Army Base was built at Cold Bay during WWII and had the largest airport west of Anchorage. The base was primarily a refueling stop and an advanced base where squadrons of fighters were stationed and infantrymen awaited transport to the fighting. After the Aleutians were retaken, the base was a garrison town. The military had total control of all land in the area, handing off to other authorities over time, and retarding the growth of permanent residents and sense of community throughout the history of Cold Bay. In 1948 Cold Bay became Thornborough Air Force Base. The Air Force Base was activated during the Korean War and again during the Viet Nam War in the 1960s when there was a massive military presence in town. Statehood in 1959 brought Alaska Department of Transportation workers to Cold Bay. In 1960, the Izembek National Wildlife Refuge was

formed and increased the presence by the U.S. Fish and Wildlife Service. This removed a large amount of land from the possibility of private purchase (Pettersen et al. 1983).

King Cove

King Cove community sits along a small cove on the south side of the Alaska Peninsula between Belkofski Bay on the east and Cold Bay on the west. The cash economy is dependent on commercial fisheries and seafood processors. A cannery operates year-round, and the boat harbor contains a large number of vessels used for purse seining, trawling, crabbing, and driftnetting. Travel between the communities of Cold Bay and King Cove is limited to boat or plane. A high priority for local transportation has long been construction of an access road between King Cove and Cold Bay through the Izembek Wilderness Area to provide a more reliable link to the outside world during emergencies. The City of King Cove is again awaiting a decision on a proposed land transfer that would allow the access road to be extended directly to Cold Bay (Risdaahl 2022, pers. comm.).

Settled in 1911 by cannery operators and commercial fishermen, the older Aleut community in the area was Belkofski. Belkofski remained a viable community even after the first cannery was built in King Cove in 1911. The cannery provided only seasonal employment. However, in the 1970s the cannery began to process crab and bottom fish and remained open year-round, and one-by-one, Belkofski families began to move to King Cove to secure more steady employment. The last Belkofski family moved to King Cove in the 1980s. Belkofski's former residents retained their own Tribal government. In addition to Belkofski, King Cove drew residents from other settlements in the area, including Thin Point, False Pass, Morzhovoi, Ikatan, Unga, and Sanak (Braund et al. 1986).

King Cove Aleut are within the Aleutians East Borough, the "Eastern Aleut," whose boundaries form a distinct cultural zone both historically and today and occupy six communities (Sand Point, King Cove, Nelson Lagoon, False Pass, Akutan, and Cold Bay). The Agdaagux Tribal Council is the King Cove Tribal Council. Most former residents of Belkofski now live in King Cove and are part of the Belkofski Corporation and Tribal Council (Reedy-Maschner 2010).

In the early days of salmon fishing, canneries owned fish traps and dories and hired their own labor or Aleut labor to move the fish from traps to the plants. Over time, the village struggled to become more independent of the cannery's patronage, a process that is still alive. The cannery blocked attempts to incorporate King Cove as a second-class city for fear of the tax burden. The village successfully petitioned again in 1949. The ability to tax allowed leaders to start infrastructure projects. The cannery has threatened to withhold fuel and other amenities if fishermen strike in protest of low fish prices (Reedy-Maschner 2010). Government recognition and citizenship are recent to Aleuts. Full U.S. citizenship did not come until the passage of the Fur Seal Act by Congress in 1966 (Mercurieff 1997 in Reedy-Maschner 2010).

Salmon for Home Use Removed from Commercial Catches

For the Aleut, commercial fishing is more than a “job” that finances subsistence harvesting. Dr. Katherine Reedy-Maschner collaborated with residents of King Cove to document their involvement in fisheries and wrote a book “Aleut Identities.” She describes the catch of salmon for home use:

Although both men and women fish with rod and reel at Ram’s Creek, which has a Pink Salmon run in July and August, or fish for a multitude of nonsalmon species off the docks, most fish taken for subsistence are from commercial catches, with the captain and crew using commercial gear. This is in part because Sockeye and Chinook (King) salmon are preferred over Pink and Chum salmon in taste and usage, and are usually stored in greater quantities but can be caught only at sea. Fishermen seldom turn prized King Salmon in to the cannery because the price is often too low to make it worth their while. And because they would rather eat them. The fishermen catch salmon while out in their boats and send them back to town with the tenders—the large boats that move fish and supplies from the fishing grounds to the cannery—who leave them in metal containers on the fish dock. The tendermen then call or radio those for whom the fish are intended, and someone picks them up and takes them home or delivers them The decisions people make regarding the proportion of fish to remove from the commercial catch are based on knowledge of past distribution, assessment of the current needs of the people to whom that individual distributes, his wife’s or mother’s knowledge of who should get fish and how much, and the price of fish offered by the cannery. The lower the price paid, the more fish people bring home Limited entry restricts the number of boat and permit owners and can greatly affect an individual’s ability to provide subsistence resources to this household or to other households that depend on him. Economic status, age, or other circumstances exclude some households from being able to fish, but extended family or friends often include them in their own activities or share a portion of their catches (Reedy-Maschner 2010:88).

Salmon removed from commercial salmon harvest, “home pack,” is an important source of salmon. This number may be substantial, especially in years when commercial salmon prices are low. (Fall et al. 1993; ADF&G 2022). Non-permitted, non-crewing fishermen set their subsistence nets close to the village.

Community Harvest and Use

The Alaska Department of Fish and Game issues subsistence permits to subsistence fishermen who then must record the numbers of fish taken on the permits and return them. The permits, however, do not generally include salmon retained by commercial fishermen, and the number of permits does not indicate every subsistence harvester (Fall et al. 1993; Brown et al. 2021).

In addition to Mortensen’s Lagoon located about 9 miles southeast of Cold Bay with easy road access, Thin Point Lagoon, situated 12 miles west of King Cove, and Leonard Harbor, situated near the King Cove road system, are some of the primary areas used for obtaining subsistence Sockeye and Coho salmon for King Cove and Cold Bay residents (Johnson and Fox 2015). Most nonlocal residents of

Alaska fish at Mortensen’s Lagoon primarily because of easy road access from the Cold Bay airport (Tscherich and Russ 2008; Brown et al. 2021).

The estimated harvest of salmon by residents of King Cove and Cold Bay, based on household surveys, is described in **Table 3**. King Cove residents harvested over 17,000 salmon in 1992 and 2016, which equated to over 50% of the harvest of all wild resources in pounds edible weight. Cold Bay residents harvested 1,141 salmon in 2016, which equated to 64% of the harvest of all wild resources in pounds edible weight. The majority of harvests was comprised of Sockeye Salmon (**Figure 3**).

In 1992, data from household surveys estimated that 51% of the salmon harvested for home use in King Cove and 27% in 2016 were removed from commercial harvests (Fall et al. 1993; ADF&G 2022).

Table 3. The estimated harvest of salmon for subsistence in numbers of fish, the per person harvest of salmon in pounds edible weight, and the percentage of salmon in the total wild resource harvest, based on households surveys in study years 1992 and 2016 (ADF&G 2022).

Community	Study Year	Estimated harvest (#s of fish)	Lower harvest estimate (#s of fish)	Upper harvest estimate (#s of fish)	Per person harvest (lbs edible weight)	Percentage of total wild resource harvest (lbs edible weight)
King Cove	1992	17,073	10,985	23,161	137	53%
King Cove	2016	17,445	12,245	23,095	192	64%
Cold Bay	2016	1,141	1,191	1,994	148	64%

Although freezing is widely used, residents preserve salmon harvest by salting, smoking, and drying (Pink Salmon). Dried Pink Salmon are call “yukola.” Pickling of salted salmon, canning, and jarring also occurs. Freezer space is not usually sufficient to freeze all salmon harvested. Most freeze a few Chinook (King) and Sockeye Salmon (Fall et al. 1993).

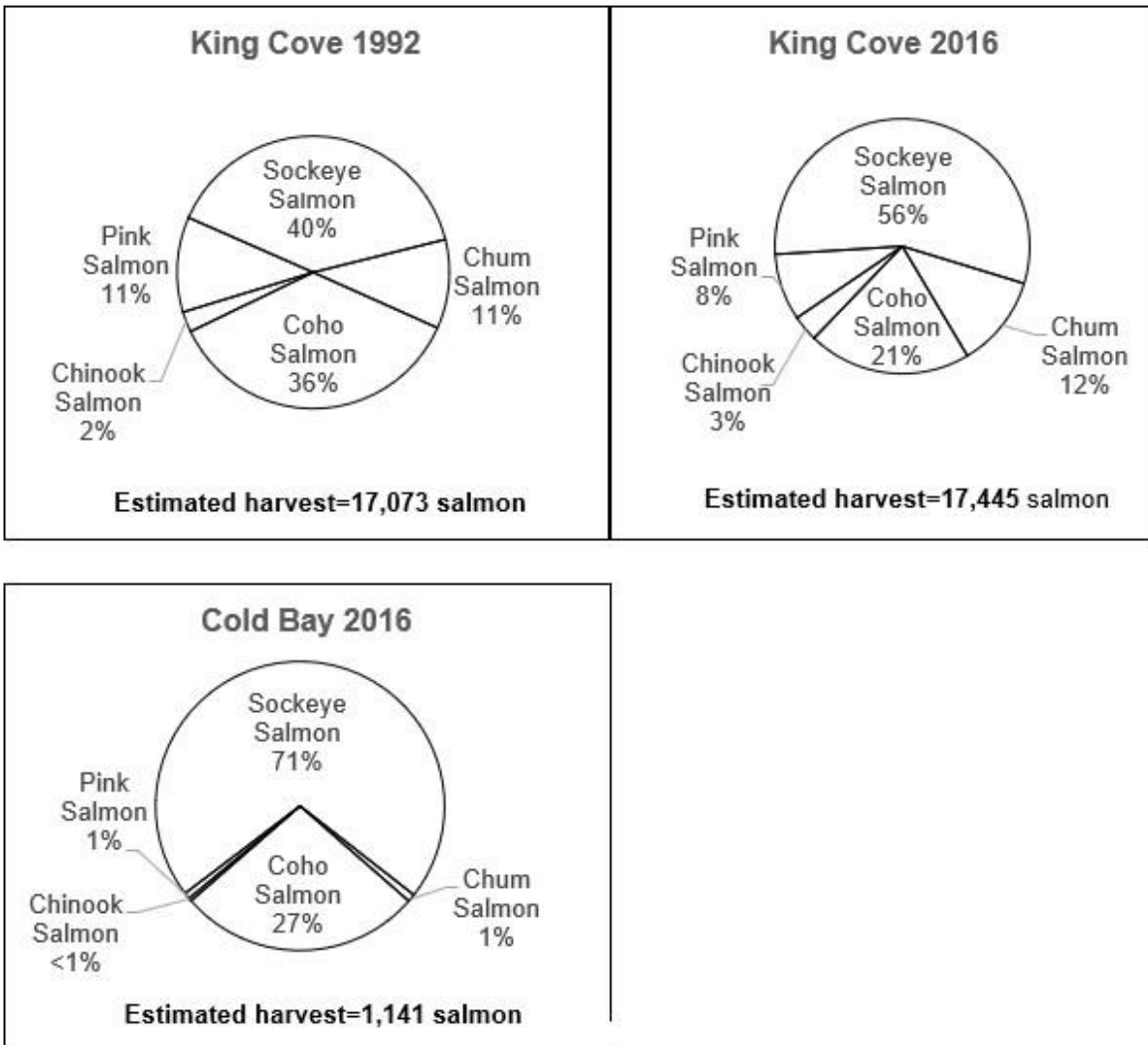


Figure 2. The estimated harvest of salmon by species in 1992 and 2016 at King Cove and Cold Bay (Source: ADF&G 2022).

Harvest History

Russell Creek is closed to subsistence fishing under both Federal and State regulations; however, it is open to sport fishing. The general Alaska Peninsula/Aleutian Island Remote Zone sport fishing salmon regulations allow 5 salmon (combination of species excluding Chinook Salmon) per day and 10 in possession. There is no specific harvest reported for Russell Creek as harvest is so low, but the harvest for the combined Cold Bay Area in years where 12 or more Statewide Sport Fish Harvest Survey responses were received between 2009 and 2018 range between 1,249 and 5,048 salmon (ADF&G 2020).

Federally qualified subsistence users harvest salmon with rod and reel under State sport fishing regulations at Russell Creek (Reedy 2020, pers. comm.). The adjacent land is owned by the King Cove Corporation, and a person must get a permit from the Corporation to access Russell Creek, or a person can access the creek using Bureau of Land Management access easements (Risdaahl 2020, pers comm.).

For Cold Bay residents, the larger Sockeye Salmon subsistence efforts are at Mortensen's Lagoon (a couple miles southeast of Russell Creek), with rod and reel and beach seines. Many King Cove subsistence harvesters come over to Mortenson's Lagoon as well for the majority of their homepack since fishing options closer to King Cove are limited. They use the ferry or share on a family member's boat to travel between the communities (Reedy 2020, pers. comm.).

Effects

According to Title VIII, section 804 of the Alaska National Interest Lands Conservation Act (ANILCA), "...the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over taking on such lands of fish and wildlife for other purposes." There are currently nonsubsistence uses permitted in this area making the current situation out of compliance with Title VIII of ANILCA. Rescinding the closure would provide Federal opportunity to harvest salmon in the Russell Creek drainage, thereby providing priority consumptive use to federally qualified subsistence users.

If the closure is rescinded, Federal subsistence regulations for the Alaska Peninsula Area would apply which could lead to overharvest and conservation concerns. For salmon this would require a State subsistence permit with reporting due annually by October 31. Salmon taken under the permit could be harvested by gillnet, rod and reel, or gear specified on the permit. Salmon could also be taken under Federal regulation by snagging (hand line or rod and reel), using a spear, bow and arrow, or capture by hand. The salmon harvest limit per household for the Alaska Peninsula Area is 250 fish. To conserve fish populations, the Federal in-season manager could issue emergency special actions for up to 60 days to set provisions for the fishery, such as stipulating gear types like rod and reel only and setting conservative harvest limits.

OSM CONCLUSION

- Retain the Status Quo
- Rescind the Closure
- Modify the Closure
- Defer Decision on the Closure or Take No Action

The regulations should read:

Alaska Peninsula Area

§____.27(e)(7)

(v) You may not subsistence fish for salmon in the following waters:

(A) ~~Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;~~

Justification

The Russell Creek drainage is currently closed to the harvest of salmon by federally qualified subsistence users but remains open to other uses. Federal subsistence opportunity should also be provided to comply with the rural preference mandated by ANILCA. The Federal in-season manager has been delegated authority to open or close Federal subsistence fishing periods or areas provided under codified regulations and to specify methods and means; to specify permit requirements; and to set harvest and possession limits for Federal subsistence fisheries (**Appendix 2**). The in-season manager can use this authority to manage the fishery in the short term. A proposal outlining desired parameters for this fishery may be submitted during the next fisheries cycle so they can be put into regulation.

If this closure is retained, reference to Nurse Lagoon should be removed and the work “drainage” should be added after Russell Creek to clarify that the closure applies to the entire drainage.

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SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS

Kodiak Aleutians Subsistence Regional Advisory Council

Rescind the closure on FCR21-13. The Council acknowledges the current lack of priority for federally qualified subsistence users at this location. The Council prefers to provide opportunity for federally qualified subsistence users and to be able to provide a rural preference in times of conservation concern.

Bristol Bay Subsistence Regional Advisory Council

Rescind the closure on FCR21-13. The Councils agrees with the recommendations of the Kodiak Aleutians Regional Advisory Council and supports following Title VIII of ANILCA when resources are limited.

INTERAGENCY STAFF COMMITTEE COMMENTS

The Interagency Staff Committee (ISC) acknowledges that this closure is out of compliance with Title VIII of ANILCA by being closed to fishing by federally qualified subsistence users while allowing for sport fishing under State regulations. The Federal Subsistence Board (Board) would need to take action to bring this situation back into compliance with ANILCA. The Board could modify the closure by closing to all uses. The Board could also rescind the closure and provide a priority consumptive use to federally qualified subsistence users.

The Regional Advisory Councils have recommended the closure be rescinded, bringing this fishery back into compliance with ANILCA. In the absence of this closure standard, area Federal subsistence regulations would apply which could present conservation concerns. Permanent regulations would be the preferable solution to address possible conservation concerns while still providing a meaningful priority to federally qualified subsistence users.

Until the Board receives and takes action on regulatory proposals, Federal managers can use their delegated authority if conservation concerns arise. The ISC recognizes that unless modified by the Board, current Fisheries delegation of authority letters limit Federal managers to emergency special actions (actions lasting no longer than 60 days).

ALASKA DEPARTMENT OF FISH AND GAME COMMENTS

Fisheries Closure Review FCR21-13

This is a routine review of a federal closure to subsistence salmon fishing in Russell Creek and Nurse Lagoon in the Alaska Peninsula area.

Position

The Alaska Department of Fish and Game (ADF&G) **SUPPORTS** the closure remaining in place at this

time where the Federal Subsistence Board (FSB) still has jurisdiction. After the Kodiak/Aleutians Regional Advisory Council (KARAC) first discussed the 2021 closure reviews, questions over federal jurisdiction arose that prompted ADF&G to look into the federal records to confirm jurisdiction. In this regard it was found that the FSB had no jurisdiction for Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon per 50 CFR 100.27(e)(7)(v)(A). The final rule at 70 FR 76407, Dec. 27, 2005 specifically excluded these waters and other marine waters from FSB regulations. The area that lies within the Alaska Peninsula National Wildlife Refuge should remain closed until such time as it can reconcile the legality of effectively opening a fishery. Congress authorized the FSB to close, but not to open, a fish or wildlife harvest season as set forth in sections 815 and 816 of the Alaska National Interest Lands Conservation Act (ANILCA). Without statutory authorization, the FSB adopted a regulation improperly granting itself authority to open public lands to the taking of fish and wildlife (50 CFR § 100.19).

These areas are currently open to sport fishing; however, historically there has been little to no harvest in them and all federally qualified users (FQU) have been eligible to participate in these fisheries. As a result, there has never been a need to pass sport fish regulatory changes pertaining to them. Additionally, the subsistence gear type allowed is much more liberal and efficient at harvesting salmon in salt water in the Alaska Peninsula and Aleutian Islands areas and if modifications to gear types allowed were needed, those modifications could be addressed through the Alaska Board of Fisheries (BOF).

ADF&G suggests that the BOF process be used to bring subsistence and sport fishery regulations into alignment for all Alaska Peninsula and Aleutian Island salmon systems if subsistence needs are not being met by current regulations. Doing so would prohibit conflicting regulations from being put into effect which would reduce the burden on subsistence users and alleviate conservation and enforcement concerns. This would also reduce confusion among users of the resource since subsistence and sport users are often both FQUs and are the primary harvesters for a food source rather than for recreation. Based on past subsistence salmon concerns that have been raised at KARAC meetings, ADF&G submitted proposals for the 2023 BOF meeting to alleviate these concerns in line with its long history of working with local subsistence users to pass regulations to their benefit in a timely manner.

Background

The Russel Creek drainage that flows into Nurse Lagoon supports pink, chum and coho salmon runs as well as Dolly Varden. The drainage is accessible by road from the community of Cold Bay and supports a large sport fishery and a relatively small subsistence fishery. Coho returns to Russel Creek are known to be large at times and are the primary target, however, in the last 10 years ADF&G has been unable to index escapement of coho as biologists tend to move back to their permanent duty station on Kodiak before the peak of the run occurs.

The freshwater closure for subsistence fishing in the drainage is intended to protect the salmon runs returning to Russel Creek given the harvest potential that would accompany a subsistence fishery using gillnets or beach seines in the river and in Nurse Lagoon, as well as the liberal harvest limits associated with subsistence fisheries in the area. There is significant harvest for coho salmon under ADF&G sport fishing regulations in the drainage by both local residents and visitors to the area, as well as a significant guided fishery. Anglers are allowed to use one line with no more than two hooks and have a combined salmon bag limit of five per day. While sport fishing is open in both the fresh and saltwater of the area, subsistence users must stay further than 500 yards from the mouth of Russel Creek and Nurse Lagoon (depending on if Russel Creek flows into Nurse Lagoon or not) and can use gillnets of up to 50 fathoms or beach seines, with an annual bag limit of up to 250 salmon. Harvest of salmon near the drainage is relatively small and is primarily coho salmon.

There appears to be little to no desire for subsistence fishing in or around Nurse Lagoon. There is no

documented harvest in this system and none of the local subsistence users that were contacted are aware of anyone fishing it in recent years. Federal jurisdiction extends only to the mouth of Russel Creek.

Impact on Subsistence Users

Subsistence salmon fishing on the Alaska Peninsula has historically been managed by the state, even under federal regulations which often require a state subsistence fishing permit. Thus, users are familiar with the state subsistence regulations they have been following for decades. Applying conflicting federal regulations would burden users to know which gear types they would be allowed to legally use, and without clear demarcation of federal boundaries they may unknowingly fish illegally and be subject to prosecution. While this closure has prohibited FQUs from harvesting salmon in these waters under federal regulations they have had the opportunity to harvest salmon under state regulations.

Impact on Other Users

The rescinding of this closure could create conflicts between the users of the Russel Creek drainage as the more liberal gear types and harvest limits of the federal subsistence fishery would be allowed in the drainage where traditionally only fishing under ADF&G sport fishing regulations has occurred. The potential increase in harvest would also reduce returns to the drainage and since FQUs would also be able to use rod and reel gear, there could be confusion created for participants in the fishery given the similar gear types but differing regulations governing the two fisheries.

Opportunity Provided by State

The Alaska Board of Fisheries uses 8 criteria to determine if customary and traditional use of a fish stock exists per AS 16.05.258. If a positive C&T finding exists, Alaska state law requires the BOF to then determine the amount of the harvestable portion of a fish population that is reasonably necessary for customary and traditional uses. This is an ANS. It is a metric used by the BOF as a guide and is not a quota. ANS provides a normally diligent participant a reasonable opportunity for successful harvest for subsistence. The BOF does this by reviewing extensive harvest data and analysis, collected by ADF&G through permit and existing household harvest surveys. ANS provides the BOF with guidelines on typical numbers of fish harvested for customary and traditional uses under normal conditions. Fishing regulations can be re-examined if subsistence harvests consistently fall below ANS. This may be for many reasons: fishing regulations, changes in abundance or distribution, or changes in human use patterns, just to name a few.

The Alaska Board of Fisheries made a positive customary and traditional use finding (C&T) and an amount reasonably necessary for subsistence (ANS) finding for salmon in the Alaska Peninsula Area per the following:

§ 5 AAC 01.416. Customary and traditional subsistence uses of fish stocks and amounts necessary for subsistence uses

(a) The Alaska Board of Fisheries (board) finds that halibut and all other finfish in the Alaska Peninsula Area are customarily and traditionally taken or used for subsistence.

(b) The board finds that (1) 34,000-56,000 salmon are reasonably necessary for subsistence uses in the Alaska Peninsula Area.

Conservation Issues

Rescinding this closure would allow for dramatically increased harvest opportunity by allowing the use of gillnets or beach seines in freshwater as well as greatly increasing harvest limits. Russel Creek is generally only 25-30 yards wide with many areas of low water with pockets of deep pools of fish that are easily accessible. Liberalizing gear types for federal subsistence in these systems will only serve to advertise and encourage the overharvest of salmon which have small runs and/or lack adequate data

justify the additional harvest and liberal gear types. Any increasing harvest on systems that lack good information on escapement is a conservation issue because the harvest levels have been relatively sustainable without restricting sport or subsistence harvest. Depending on a federal in-season manager to make that decision on the appropriate gear type does not give ADF&G the confidence in supporting the rescinding of this closure.

Enforcement Issues

In this region, some subsistence regulations are tied to commercial fishing regulations, which can at times lead to them being challenging for subsistence users to learn and follow. Adding another layer of complexity to existing regulations may lead to additional confusion and have an unintended effect of leading FQUs to unintentionally use the wrong gear type in the wrong place at the wrong time or being unaware of which permit or license they may need or how to get it. New federal regulations would also likely cause users to burden state fisheries managers and Alaska Wildlife Troopers with trying to explain these new federal regulations. As mentioned above, state resources to address this are already spread thin and federal resources are essentially non-existent.

If conflicting federal regulations are put in place, it would likely require signage be put up so users can tell apart state, federal, and tribal lands. Additionally, if an FQU were fishing under a federal permit, or even claiming to, ADF&G staff in these remote locations would have no enforcement authority if violations were to occur. Current federal and state regulations require a state subsistence permit and so links the two subsistence harvests together allowing department peace officers to enforce regulations.


The FSB should request past and current enforcement efforts undertaken by federal law enforcement officers in Cold Bay to ensure adequate enforcement of the federal fisheries in the area.

Appendix 1

Alaska Peninsula area subsistence salmon fishing permit.

ALASKA PENINSULA AREA SUBSISTENCE SALMON FISHING PERMIT

Permit expires October 31, 2020 (5AAC 01.430(c))



This permit is valid in the Southeastern, South Central, Southwestern, Unimak, Northwestern, and Northern Districts.

Name: _____
Address: _____

I hereby certify that I am an Alaska resident, and any salmon taken will be used for subsistence purposes only.

 Permittee signature Date

Additional members of same household to be included on permit (Alaska Residents Only):

Email Address: _____ Renew permit for next year:

The catch report table below must be filled out (even if the permit was not used) and returned to a local Alaska Department of Fish and Game office prior to October 31, 2020. Failure to return the permit could result in future permits being denied (5 AAC 01.015 (C)).

SUBSISTENCE SALMON HARVEST REPORT

Number of salmon by species:

DATE	SPECIFIC LOCATION	KING	SOCKEYE	COHO	PINK	CHUM

- ALL PERSONS MUST HAVE A VALID SUBSISTENCE PERMIT IN POSSESSION WHILE TAKING OR ATTEMPTING TO TAKE SUBSISTENCE SALMON.
- COMPLETE THE SUBSISTENCE HARVEST REPORTS IMMEDIATELY UPON LANDING SALMON. UNSUCCESSFUL TRIPS SHOULD ALSO BE RECORDED.
- NONRESIDENTS CANNOT PARTICIPATE IN SUBSISTENCE FISHING ACTIVITIES.

REFER TO THE CURRENT SUBSISTENCE REGULATION BOOK FOR COMPLETE REGULATIONS

Return permit to: Alaska Department of Fish and Game, Alaska Peninsula Salmon Management, 351 Research Court, Kodiak AK 99615 by October 31, 2020 .

 Department representative Date

(SEE OPPOSITE SIDE FOR SUBSISTENCE REGULATIONS)

SELECTED SUBSISTENCE REGULATIONS

These listed regulations are not inclusive of all the regulations that apply to subsistence salmon fishing in the Alaska Peninsula Area.

5 AAC 01.430. LIMITS TO NUMBER OF SALMON TAKEN: 250 salmon per household, unless otherwise specified by a local representative of the department. Additional household permits are available by request from the local ADF&G representative.

5 AAC 01.420. LIMITS TO GEAR USED TO TAKE SALMON: Salmon may be taken by seine or gillnet. No set gillnet may exceed 100 fathoms in length. No drift gillnet may exceed 200 fathoms in length. In areas open to commercial salmon fishing, salmon can only be taken with gillnets of not more than 50 fathoms in aggregate length.

5 AAC 01.427. IDENTIFICATION OF GILLNET GEAR: A buoy at one end of any gillnet must be plainly and legibly marked with the operator's first initial, last name, and mailing address of the permit holder or the vessel's ADF&G number.

5 AAC 01.410. FISHING SEASONS: Salmon may be taken at any time except as follows:

1. In those districts and sections open to commercial salmon fishing, salmon may not be taken by a commercial salmon fishing permit holder within 24 hours before and within 12 hours following a commercial salmon fishing period.
2. As otherwise specified on a subsistence fishing permit; and
3. In the waters closed to subsistence fishing for salmon specified in 5 AAC 01.425.

Exceptions to this rule are listed under EXCEPTIONS 1 and 2 below or as listed on an amended permit.

5 AAC 01.423. SPECIAL PROVISIONS:

1. Mortensens Lagoon: (Mortensens Lagoon and waters within 500 yards of the Mortensens Lagoon terminus only). Salmon may be taken at any time, however the following restrictions apply:
 - A. Subsistence gear is restricted to gillnets of 15 fathoms or less in length.
 - B. No more than 50 salmon per permit per season may be taken from Mortensens Lagoon or within 500 yards of the lagoon terminus.
2. False Pass vicinity: That portion of Bechevin Bay and Isanotski Strait bounded by the latitude of Morzhovoi Village (54°54.58' N lat.) and the latitude of Whirl Point (54°49.50' N lat.). Salmon may be taken at any time using gillnets of 50 fathoms or less in length.
3. Fresh waters of Bear River: Salmon may be taken at anytime upstream from the confluence of the Milky River, also known as the Mad Sow River (a tributary of the Bear River) with gear specified on the subsistence permit.
4. Fresh waters of Sandy River: Salmon may be taken at anytime upstream from the Sandy River (oil exploration) aircraft landing strip located five (5) miles (upriver) of the stream terminus, with gear specified on the subsistence permit.

5 AAC 01.425. WATERS CLOSED TO SUBSISTENCE SALMON FISHING:

1. Russell Creek and Nurse Lagoon and within 500 yards from the stream terminus of Russell Creek and Nurse Lagoon.
2. Trout Creek and within 500 yards outside its mouth.
3. Inshore of a line from the Trident Seafood's Dock at Sand Point to Black Point (located on the northwestern side of Popof Island), including the inlet and Humboldt Creek.
4. Black Hills Section: all freshwaters and within 500 yards of any anadromous salmon stream terminus.
5. Bear River Section: waters closed to commercial salmon fishing under 5 AAC 09.350 and 5 AAC 39.290 and waters of Frank's Lagoon and King Salmon River, excluding exceptions in Bear and Sandy Rivers listed earlier on this permit.
6. No subsistence fishing is allowed in waters closed to commercial salmon fishing as described under 5 AAC 09.350 or 5 AAC 39.290 during a commercial salmon fishing period. Exceptions to this rule are listed under SPECIAL PROVISIONS 1 and 2 above or as specified on an amended permit.

ADDITIONAL RESTRICTIONS:

1. **No more than half the width of a stream or its mouth may be obstructed by a net.** This restriction includes blocking the stream mouth while "roundhauling."
2. The operator must be in proximity of his or her gear at all times.
3. **Salmon may not be taken by sport fishing methods while taking subsistence salmon with a net and you may not be in possession of sport caught and subsistence caught salmon at the same time.**
4. Subsistence fishing gear may at no time be used within 100 feet of another set gillnet.
5. Definition of subsistence uses: AS 16.05.940(33) subsistence uses means the noncommercial, customary and traditional uses of wild, renewable resources.

Return permit by October 31, 2020 to: Alaska Department of Fish and Game, Alaska Peninsula Salmon Management, 351 Research Court, Kodiak AK 99615. Questions or concerns please contact your local Fish and Game Office: Cold Bay (907) 532-2419; Sand Point (907) 383-2066; Port Moller (907) 375-2716; Kodiak (907) 486-1882.

Appendix 2

Delegation of authority letter to the inseason manager of the Southwest Alaska Area.

Branch Chief - Fisheries
U.S. Fish and Wildlife Service
Anchorage Fish and Wildlife Conservation Office
4700 BLM Road
Anchorage, Alaska 99507

Dear Branch Chief:

This letter delegates specific regulatory authority from the Federal Subsistence Board (Board) to the Branch Chief - Fisheries of the Anchorage Fish and Wildlife Conservation Office (Branch Chief) to issue emergency special actions when necessary to ensure the conservation of a healthy fish population, to continue subsistence uses of fish, for the continued viability of a fish population, or for public safety reasons. This delegation only applies to Federal public waters subject to the Alaska National Interest Lands Conservation Act (ANILCA) Title VIII in the Bristol Bay/Alaska Peninsula/Aleutian Islands/Chignik Areas.

It is the intent of the Board that Federal subsistence fisheries management by Federal officials be coordinated, prior to implementation, with Regional Advisory Council (Council) representatives, the Office of Subsistence Management (OSM), and the Alaska Department of Fish and Game (ADF&G), to the extent possible. The OSM will be used by managers to facilitate communication of actions and to ensure proposed actions are technically and administratively aligned with legal mandates and policies. Federal managers are expected to cooperate with managers from the State and other Federal agencies, the Council Chair(s), and applicable Council members to minimize disruption to resource users and existing agency programs, consistent with the need for emergency special action.

DELEGATION OF AUTHORITY

- 1. Delegation:** The Branch Chief is hereby delegated authority to issue emergency special actions affecting fisheries in Federal public waters as outlined under the **Scope of Delegation** below. Although a public hearing is not required for emergency special actions, if deemed necessary by you, then a public hearing on the emergency special action is recommended. Special actions are governed by regulation at 36 CFR 242.19 and 50 CFR 100.19.
- 2. Authority:** This delegation of authority is established pursuant to 36 CFR 242.10(d)(6) and 50 CFR 100.10(d)(6), which state: "The Board may delegate to agency field officials the authority to set harvest and possession limits, define harvest areas, specify methods or means of harvest, specify permit requirements, and open or close specific fish or wildlife harvest seasons within frameworks established by the Board."
- 3. Scope of Delegation:** The regulatory authority hereby delegated is limited to the issuance of emergency special actions as defined by 36 CFR 242.19(a) and 50 CFR 100.19(a). Such an emergency action may not exceed 60 days, and may not be extended.

This delegation permits you to open or close Federal subsistence fishing periods or areas provided under

codified regulations. It also permits you to specify methods and means; to specify permit requirements; and to set harvest and possession limits for Federal subsistence fisheries.

This delegation also permits you to close and re-open Federal public waters to nonsubsistence fishing, but does not permit you to specify methods and means, permit requirements, or harvest and possession limits for State-managed fisheries. This delegation may be exercised only when it is necessary to conserve healthy populations of fish or to ensure the continuation of subsistence uses.

All other proposed changes to codified regulations, such as customary and traditional use determinations or requests for special actions greater than 60 days, shall be directed to the Board.

The Federal public waters subject to this delegated authority are those within the Bristol Bay/Alaska Peninsula/Aleutian Islands/Chignik Areas (as described in the Subsistence Management Regulations for the Harvest of Fish and Shellfish on Federal Public Lands and Waters in Alaska). You will coordinate all local fishery decisions with all affected Federal land managers.

4. Effective Period: This delegation of authority is effective from the date of this letter and continues until superseded or rescinded.

5. Guidelines for Review of Proposed Special Actions: You will use the following guidelines to determine the appropriate course of action when reviewing proposed special actions.

- a) Does the proposed special action fall within the geographic and regulatory scope of delegation?
- b) Have you communicated with the OSM to ensure the emergency special action is aligned with Federal subsistence regulations and policy?
- c) Does the proposed action need to be implemented immediately as an emergency special action, or can the desired conservation or subsistence use goal be addressed by deferring the issue to the next regulatory cycle?
- d) Does the supporting information in the proposed special action substantiate the need for the action?
- e) Are the assertions in the proposed special action confirmed by available current biological information and/or by affected subsistence users?
- f) Is the proposed special action supported in the context of available historical information on stock status and harvests by affected users?
- g) Is the proposed special action likely to achieve the expected results?
- h) Have the perspectives of the Chair or alternate of the affected Council(s), OSM, and affected State and Federal managers been fully considered in the review of the proposed special action?
- i) Have the potential impacts of the proposed special action on all affected subsistence users and non-Federally qualified users within the drainage been considered?
- j) Can public announcement of the proposed special action be made in a timely manner to

accomplish the management objective?

k) After evaluating all information and weighing the merits of the special action against other actions, including no action, is the proposed emergency special action reasonable, rational, and responsible?

6. Guidelines for Delegation: You will become familiar with the management history of the fisheries in the region, with the current State and Federal regulations and management plans, and be up-to-date on stock and harvest status information.

You will provide subsistence users in the region a local point of contact about Federal subsistence fishery issues and regulations and facilitate a local liaison with State managers and other user groups. For in-season management decisions and special actions, consultation is not always possible, but to the extent practicable, two-way communication will take place before decisions are implemented. You will also establish meaningful and timely opportunities for government-to-government consultation related to pre-season and post-season management actions as established in the Board's Government to Government Tribal Consultation Policy (Federal Subsistence Board Government to Government Tribal Consultation Policy 2012).

You will review emergency special action requests or situations that may require an emergency special action and all supporting information to determine (1) consistency with 36 CFR 242.19 and 50 CFR 100.19, (2) if the request/situation falls within the scope of your delegated authority, (3) if significant conservation problems or subsistence harvest concerns are indicated, and (4) what the consequences of taking an action may be on potentially affected subsistence uses and nonsubsistence uses. Requests not within your delegated authority will be forwarded to the Board for consideration.

You will maintain a record of all special action requests and justification of your decisions. A copy of this record will be provided to the Administrative Records Specialist at OSM no later than sixty days after development of the document.

You will immediately notify the Board through the Assistant Regional Director for the OSM, and coordinate with Chair or alternate of the affected Council(s), local ADF&G managers, and other affected Federal conservation unit managers concerning emergency special actions being considered.

If the timing of a regularly scheduled meeting of the affected Council(s) permits without incurring undue delay, you may seek Council recommendations on the proposed emergency special action.

You will issue decisions in a timely manner. Before the effective date of any decision, reasonable efforts will be made to notify Council representatives, the public, OSM, affected State and Federal managers, and law enforcement personnel. If an action is to supersede a State action not yet in effect, the decision will be communicated to Council representatives, the public, OSM, and State and Federal managers at least 24 hours before the State action would be effective. If a decision to take no action is made, you will notify the proponents of the request immediately.


You may defer an emergency special action request, otherwise covered by the delegation of authority, to the Board in instances when the proposed management action will have a significant impact on a large number of Federal subsistence users or is particularly controversial. These options should be exercised judiciously and only when sufficient time allows. Such deferrals should not be considered when immediate management actions are necessary for conservation purposes. The Board may determine that an emergency special action request may best be handled by the Board, subsequently rescinding the delegated authority for the specific action only.

7. Reporting: You must provide to the Board, through the Assistant Regional Director for the OSM, a report describing the pre-season coordination efforts, local fisheries management decisions, and post-season evaluation activities for the previous fishing season by November 15. A summary of emergency special action requests and your resultant actions must be provided to the coordinator of the appropriate Council(s) at the end of the calendar year for presentation during regularly scheduled Council meetings.

8. Support Services: Administrative support for your local Federal subsistence fisheries management activities will be provided by the Office of Subsistence Management.

Should you have any questions about this delegation of authority, please feel free to contact the Assistant Regional Director for the OSM at toll-free 1-800-478-1456 or (907) 786-3888.

Sincerely,



Anthony Christianson
Chair

Enclosures: Maps of the Bristol Bay, Aleutian Islands, and Alaska Peninsula/Chignik areas

cc: Federal Subsistence Board

Assistant Regional Director, Office of Subsistence Management
Deputy Assistant Regional Director, Office of Subsistence Management
Subsistence Policy Coordinator, Office of Subsistence Management
Fisheries Division Supervisor, Office of Subsistence Management
Chair, Bristol Bay Subsistence Regional Advisory Council
Chair, Kodiak/Aleutians Subsistence Regional Advisory Council
Superintendent, Lake Clark/Katmai National Parks and Preserve
Manager, Togiak National Wildlife Refuge
Manager, Alaska Peninsula/Becharof National Wildlife Refuge Complex
Manager, Izembek National Wildlife Refuge
Manager, Alaska Maritime National Wildlife Refuge
Assistant Regional Director, Law Enforcement, U.S. Fish and Wildlife Service (Region 7)
Commissioner, Alaska Department of Fish and Game
Interagency Staff Committee
Administrative Record

FCR23-13 Executive Summary	
General Description	FCR23-13 is a routine review of a Federal closure to salmon fishing in Trout Creek and within 500 yards outside its mouth in the Alaska Peninsula Area.
Current Regulation	<p>§ ____.27(e)(7) <i>Alaska Peninsula Area</i></p> <p style="text-align: center;">***</p> <p style="text-align: center;"><i>(v) You may not subsistence fish for salmon in the following waters:</i></p> <p style="text-align: center;">***</p> <p style="text-align: center;"><i>(B) Trout Creek and within 500 yards outside its mouth.</i></p>
OSM Conclusion	Rescind
Kodiak/Aleutians Subsistence Regional Advisory Council Recommendation	Rescind
Bristol Bay Subsistence Regional Advisory Council Recommendation	Rescind
Interagency Staff Committee Comments	<p>The Interagency Staff Committee (ISC) acknowledges that this closure is out of compliance with Title VIII of ANILCA by being closed to fishing by federally qualified subsistence users while allowing for sport fishing under State regulations. The Federal Subsistence Board (Board) would need to take action to bring this situation back into compliance with ANILCA. The Board could modify the closure by closing to all uses. The Board could also rescind the closure and provide a priority consumptive use to federally qualified subsistence users.</p> <p>The Regional Advisory Councils have recommended the closure be rescinded, bringing this fishery back into compliance with ANILCA. In the absence of this closure standard, area Federal subsistence regulations would apply which could present conservation concerns. Permanent regulations would be the preferable solution to address</p>

FCR23-13 Executive Summary	
	<p>possible conservation concerns while still providing a meaningful priority to federally qualified subsistence users.</p> <p>Until the Board receives and takes action on regulatory proposals, Federal managers can use their delegated authority if conservation concerns arise. The ISC recognizes that unless modified by the Board, current Fisheries delegation of authority letters limit Federal managers to emergency special actions (actions lasting no longer than 60 days).</p>
ADF&G Comments	Retain status quo where federal government still has jurisdiction and rescind where there is no jurisdiction
Written Public Comments	None

FEDERAL FISHERIES CLOSURE REVIEW
FCR23-13

Issue

FCR23-13 is a routine review of a Federal closure to salmon fishing in Trout Creek and within 500 yards outside its mouth in the Alaska Peninsula Area. It is the Board's policy that Federal public lands and waters should be reopened as soon as practicable once the conditions that originally justified the closure have changed to such an extent that the closure is no longer necessary. The purpose of this closure review is to determine if the closure is still warranted and to ensure the closure does not remain in place longer than necessary.

Closure Location: Trout Creek—Salmon

Current Federal Regulation

§ ____.27(e)(7) *Alaska Peninsula Area*

(v) *You may not subsistence fish for salmon in the following waters:*

(B) *Trout Creek and within 500 yards outside its mouth.*

Relevant Federal Regulations

§ ____.25 *Subsistence taking of fish, wildlife, and shellfish: general regulations.*

(a) *Definitions. The following definitions apply to all regulations contained in this part:*

Subsistence fishing permit means a subsistence harvest permit issued by the Alaska Department of Fish and Game or the Federal Subsistence Board.

§ ____.27 *Subsistence taking of fish*

(b) *Methods, means, and general restrictions.*

(16) *Unless specified otherwise in this section, you may use a rod and reel to take fish without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:*

(i) If you are required to obtain a subsistence fishing permit for an area, that permit is required to take fish for subsistence uses with rod and reel in that area. The harvest and possession limits for taking fish with a rod and reel in those areas are the same as indicated on the permit issued for subsistence fishing with other gear types.

(18) Provisions on ADF&G subsistence fishing permits that are more restrictive or in conflict with the provisions contained in this section do not apply to Federal subsistence users.

§____.27(e)(7) Alaska Peninsula Area

(ii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit.

(iii) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(iv) You may take salmon at any time, except in those districts and sections open to commercial salmon fishing where salmon may not be taken during the 24 hours before and 12 hours following each State open weekly commercial salmon fishing period, or as may be specified on a subsistence fishing permit.

(vi) You may take salmon by seine, gillnet, rod and reel, or with gear specified on a subsistence fishing permit. You may also take salmon without a permit by snagging (by handline or rod and reel), using a spear, bow and arrow, or capturing by bare hand.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may not use a set gillnet exceeding 100 fathoms in length.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on your subsistence fishing permit.

Note: In the Alaska Peninsula Area, you are required to have a State Subsistence Fishing Permit when subsistence fishing for salmon (**Appendix 1**, see 5 AAC 01.420. Subsistence fishing permits)

Closure Dates: Year-round

Current State Regulation

Subsistence Regulations

Alaska Peninsula Area

5 AAC 01.425 Waters closed to subsistence fishing

The following waters are closed to subsistence fishing for salmon:

(2) Trout Creek and within 500 yards outside its mouth;

Relevant State Regulations

Subsistence Regulations

Alaska Peninsula Area

5 AAC 01.420. Lawful gear and gear specifications

(a) Salmon may be taken only by seine and gillnet, or with gear specified on a subsistence fishing permit.

5 AAC 01.430. Subsistence fishing permits

(a) Salmon, trout, and char may only be taken under the authority of a subsistence fishing permit. The department will only issue one permit per household.

(b) No more than 250 salmon may be taken for subsistence purposes, per household, unless otherwise specified by a local representative of the department on the subsistence fishing permit. A permit holder may obtain an additional permit from the department.

(c) A record of subsistence-caught fish must be kept on the permit. The record must be completed immediately upon taking subsistence-caught fish and must be returned to the local representative of the department no later than October 31.

Sport Regulations

Alaska Peninsula and Aleutian Islands Area

5 AAC 65.020. General provisions for seasons and bag, possession, annual, and size limits for the Alaska Peninsula and Aleutian Islands Area

Except as otherwise provided in 5 AAC 65.022, 5 AAC 65.051, or by an emergency order issued under AS 16.05.060, the seasons and bag, possession, annual, and size limits for finfish and shellfish in the Alaska Peninsula and Aleutian Islands Area are as follows:

(1) king salmon:

(A) in fresh waters: may be taken only from January 1 through July 25, except that king salmon may be taken in the Chignik River only from January 1 through August 9, and as follows:

(i) 20 inches or greater in length; bag and possession limit of two fish; annual limit of five fish; a harvest record is required as specified in 5 AAC 75.006;

(ii) less than 20 inches in length; bag and possession limit of 10 fish; no annual limit;

(2) salmon, other than king salmon: may be taken from January 1 through December 31, as follows:

(A) 20 inches or greater in length; bag limit of five fish and a possession limit of 10 fish;

(B) less than 20 inches in length; bag and possession limit of 10 fish;

Regulatory Year Initiated: 1992

Extent of Federal Public Lands/Waters

For purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 36 CFR 242.3 and 50 CFR 100.3. Federal public waters comprise the Trout Creek watershed which is within and adjacent to the exterior boundaries of Izembek and Alaska Peninsula National Wildlife Refuges (**Figure 1**). The marine waters of Cold Bay were at one time considered Federal public waters. The Secretaries of the Interior and Agriculture later determined that some marine waters, including Cold Bay, were added to Federal subsistence regulation erroneously and should be removed (70 Fed. Reg. 247.76407 [December 27, 2005]).



Figure 1. Map showing Trout Creek and Russel Creek salmon closures and areas used by residents of Cold Bay and King Cove to harvest salmon for subsistence: Mortensens Lagoon, Thin Point, and Leonard Harbor.

Customary and Traditional Use Determination

Residents of the Alaska Peninsula Area have a customary and traditional use determination for salmon in the Alaska Peninsula Area.

Regulatory History

In 1992, the Federal Subsistence Management Program promulgated regulations governing the harvest of fish for subsistence uses in waters qualifying as "public lands" under ANILCA. (57 FR 22940). These regulations incorporated many provisions from State of Alaska subsistence fishing regulations that previously applied to those waters. The closure under review in this analysis was incorporated into the Federal regulations in this manner and has not been subsequently modified.

Closure last reviewed

There have been no previous reviews of this closure.

Justification for Original Closure

In 1990, the Federal Subsistence Management Program adopted temporary subsistence management regulations for public lands in Alaska, which included this closure, to minimize disruption to the State's continuing fish and game management, because of the uncertainty over the resumption of State management of subsistence, yet still fulfill the requirements of the Title VIII of ANILCA (55 Fed. Reg. 126; 27125, 27155 [June 29, 1990]).

Council Recommendation for Original Closure

None

State Recommendation for Original Closure

None

Biological Background

Anadromous species present in the Trout Creek drainage are Chum, Coho, Pink and Sockeye salmon (Johnson and Blossom 2021). None of the fish populations are regularly monitored so there is little abundance information available. Aerial surveys of Trout Creek have been conducted opportunistically since 1979. The maximum number of salmon observed during these surveys was 1,000 sockeye, 1,736 coho, 2,300 pink, and 1,200 chum (Burch 2022, pers. comm.). A fish passage assessment conducted in 2015 identified two culverts in the lower Trout Creek drainage that are assumed unsuitable for fish passage (Eisenman and O'Doherty 2018). However, anadromous species were documented at several locations upstream of those culverts in 2005 (Johnson and Blossom 2021).

Community Background

Introduction

Two communities have consistent access to Trout Creek. One, Cold Bay with a population of 50 residents is home to the Izembek National Wildlife Refuge offices (**Table 2**). Cold Bay is located at the western end of the Alaska Peninsula, 634 miles southwest of Anchorage and 180 miles northeast of Unalaska (**Figure 1**). Cold Bay residents can access Trout Creek by road vehicle or by foot. The small watershed is located directly east of the end of the Cold Bay airport runway. Cold Bay School closed in 2015 due to a lack of student enrollment (ADCRA 2022). The other community with consistent access to Trout Creek is King Cove with a population of 807 residents (**Table 2**). King Cove is located across the bay from the Cold Bay community and travel between the communities is limited to boat or plane. An Alaska State ferry arrives in Cold Bay and King Cove monthly from May through October (City of King Cove 2022).

Table 2. The population of Cold Bay and King Cove, 1960–2020 (Source: ADCCED 2022).

Community	1960	1970	1980	1990	2000	2010	2020
Cold Bay	86	256	192	148	88	108	50
King Cove	290	283	460	677*	792	938	757
Total	376	539	652	148	880	1,046	807

*The U.S. Census left out Ram Creek Subdivision in the community total of 451 in 1990 (ADLWFD 1993:82).

Cold Bay

The town began with the airport's construction. Aleut people used the site seasonally because there were more sheltered areas in the region. Fort Randall Army Base built at Cold Bay during WWII had the largest airport west of Anchorage. The base was primarily a refueling stop and an advanced base where squadrons of fighters were stationed and infantrymen awaited transport to the fighting. After the Aleutians were retaken the base was a garrison town. The military had total control of all land in the area, handing off to other authorities over time, and retarding the growth of permanent residents and senses of community throughout the history of Cold Bay. In 1948 Cold Bay became Thornborough Air Force Base. The Air Force Base was activated during the Korean War and again during the Viet Nam War in the 1960s when there was a massive military presence in town. Statehood in 1959 brought Alaska Department of Transportation workers to Cold Bay. In 1960, the Izembek National Wildlife Refuge was formed and increased the presence by the U.S. Fish and Wildlife Service. This removed a large amount of land from the possibility of private purchase (Pettersen et al. 1983).

King Cove

King Cove community sits along a small cove on the south side of the Alaska Peninsula between Belkofski Bay on the east and Cold Bay on the west. The cash economy is dependent on commercial fisheries and seafood processors. A cannery operates year-round, and the boat harbor contains a large number of vessels used for purse seining, trawling, crabbing, and driftnetting. Travel between the

communities of Cold Bay and King Cove is limited to boat or plane. A high priority for local transportation has long been construction of an access road between King Cove and Cold Bay through the Izembek Wilderness Area to provide a more reliable link to the outside world during emergencies. The City of King Cove is again awaiting a decision on a proposed land transfer that would allow the access road to be extended directly to Cold Bay (Risdaal 2022, pers. comm.).

Settled in 1911 by cannery operators and commercial fishermen, the older Aleut community in the area was Belkofski. Belkofski remained a viable community even after the first cannery was built in King Cove in 1911. The cannery provided only seasonal employment. However, in the 1970s the cannery began to process crab and bottom fish and remained open year-round, and one-by-one, Belkofski families began to move to King Cove to secure more steady employment. The last Belkofski family moved to King Cove in the 1980s. Belkofski's former residents retained their own Tribal government. In addition to Belkofski, King Cove drew residents from other settlements in the area, including Thin Point, False Pass, Morzhovoi, Ikatan, Unga, and Sanak (Braun et al. 1986).

King Cove Aleut are within the Aleutians East Borough, the "Eastern Aleut," whose boundaries form a distinct cultural zone both historically and today and occupy six communities (Sand Point, King Cove, Nelson Lagoon, False Pass, Akutan, and Cold Bay). The Agdaagux Tribal Council is the King Cove Tribal Council. Most former residents of Belkofski now live in King Cove and are part of the Belkofski Corporation and Tribal Council (Reedy-Maschner 2010).

In the early days of salmon fishing, canneries owned fish traps and dories and hired their own labor or Aleut labor to move the fish from traps to the plants. Over time, the village struggled to become more independent of the cannery's patronage, a process that is still alive. The cannery blocked attempts to incorporate King Cove as a second-class city for fear of the tax burden. The village successfully petitioned again in 1949. The ability to tax allowed leaders to start infrastructure projects. The cannery has threatened to withhold fuel and other amenities if fishermen strike in protest of low fish prices (Reedy-Maschner 2010). Government recognition and citizenship are recent to Aleuts. Full U.S. citizenship did not come until the passage of the Fur Seal Act by Congress in 1966 (Mercurieff 1997 in Reedy-Maschner 2010).

Salmon for Home Use Removed from Commercial Catches

For the Aleut, commercial fishing is more than a "job" that finances subsistence harvesting. Dr. Katherine Reedy-Maschner collaborated with residents of King Cove to document their involvement in fisheries and wrote a book "Aleut Identities." She describes the catch of salmon for home use:

Although both men and women fish with rod and reel at Ram's Creek, which has a Pink Salmon run in July and August, or fish for a multitude of nonsalmon species off the docks, most fish taken for subsistence are from commercial catches, with the captain and crew using commercial gear. This is in part because Sockeye and Chinook (King) salmon are preferred over Pink and Chum salmon in taste and usage, and are usually stored in greater quantities but can be caught only at sea. Fishermen seldom turn prized King Salmon in to the cannery because the price is often too low to make it worth their while.

And because they would rather eat them. The fishermen catch salmon while out in their boats and send them back to town with the tenders—the large boats that move fish and supplies from the fishing grounds to the cannery—who leave them in metal containers on the fish dock. The tendermen then call or radio those for whom the fish are intended, and someone picks them up and takes them home or delivers them The decisions people make regarding the proportion of fish to remove from the commercial catch are based on knowledge of past distribution, assessment of the current needs of the people to whom that individual distributes, his wife’s or mother’s knowledge of who should get fish and how much, and the price of fish offered by the cannery. The lower the price paid, the more fish people bring home Limited entry restricts the number of boat and permit owners and can greatly affect an individual’s ability to provide subsistence resources to this household or to other households that depend on him. Economic status, age, or other circumstances exclude some households from being able to fish, but extended family or friends often include them in their own activities or share a portion of their catches (Reedy-Maschner 2010:88).

Salmon removed from commercial salmon harvest, “home pack,” is an important source of salmon. This number may be substantial, especially in years when commercial salmon prices are low. (Fall et al. 1993; ADF&G 2022). Non-permitted, non-crewing fishermen set their subsistence nets close to the village.

Community Harvest and Use

The Alaska Department of Fish and Game issues subsistence permits to subsistence fishermen who then must record the numbers of fish taken on the permits and return them. The permits, however, do not generally include salmon retained by commercial fishermen, and the number of permits does not indicate every subsistence harvester (Fall et al. 1993; Brown et al. 2021).

In addition to Mortensen’s Lagoon located about 9 miles southeast of Cold Bay with easy road access, Thin Point Lagoon, situated 12 miles west of King Cove, and Leonard Harbor, situated near the King Cove road system, are some of the primary areas used for obtaining subsistence Sockeye and Coho salmon for King Cove and Cold Bay residents (Johnson and Fox 2015). Most nonlocal residents of Alaska fish at Mortensen’s Lagoon primarily because of easy road access from the Cold Bay airport (Tscherich and Russ 2008; Brown et al. 2021).

The estimated harvest of salmon by residents of King Cove and Cold Bay, based on household surveys, is described in **Table 3**. King Cove residents harvested over 17,000 salmon in 1992 and 2016, which equated to over 50% of the harvest of all wild resources in pounds edible weight. Cold Bay residents harvested 1,141 salmon in 2016, which equated to 64% of the harvest of all wild resources in pounds edible weight. The majority of harvests was comprised of Sockeye Salmon (**Figure 2**).

In 1992, data from household surveys estimated that 51% of the salmon harvested for home use in King Cove and 27% in 2016 were removed from commercial harvests (Fall et al. 1993; ADF&G 2022).

Table 3. The estimated harvest of salmon for subsistence in numbers of fish, the per person harvest of salmon in pounds of edible weight, and the percentage of salmon in the total wild resource harvest, based on households surveys in study years 1992 and 2016 (ADF&G 2022).

Community	Study Year	Estimated harvest (#s of fish)	Lower harvest estimate (#s of fish)	Upper harvest estimate (#s of fish)	Per person harvest (lbs edible weight)	Percentage of total wild resource harvest (lbs edible weight)
King Cove	1992	17,073	10,985	23,161	137	53%
King Cove	2016	17,445	12,245	23,095	192	64%
Cold Bay	2016	1,141	1,191	1,994	148	64%

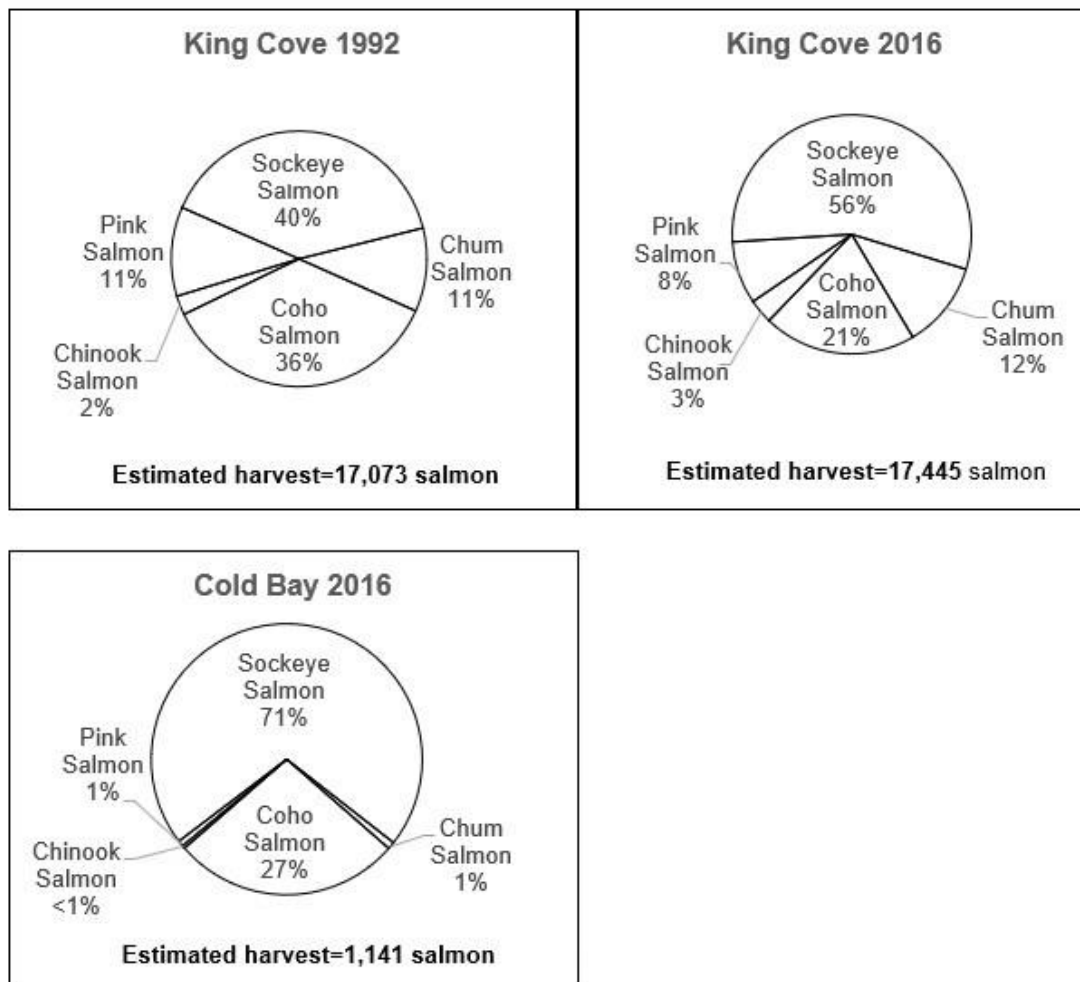


Figure 2. The estimated harvest of salmon by species in 1992 and 2016 at King Cove and Cold Bay (Source: ADF&G 2022).

Although freezing is widely used, residents preserve salmon harvest by salting, smoking, and drying (Pink Salmon). Dried Pink Salmon are call “yukola.” Pickling of salted salmon, canning, and jarring also

occurs. Freezer space is not usually sufficient to freeze all salmon harvested. Most freeze a few Chinook (King) and Sockeye Salmon (Fall et al. 1993).

Harvest History

No subsistence harvest has occurred in the Trout Creek drainage including within 500 yards of its mouth as this area is closed to State and Federal subsistence harvest. Trout Creek is open to harvest under State sport regulations, but harvest is combined and reported with all Area R (Alaska Peninsula) harvest and therefore exact numbers are unavailable (Alaska Sport Fishing Survey Database 2022).

Effects

According to Title VIII, section 804 of the Alaska National Interest Lands Conservation Act (ANILCA), "...the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over taking on such lands of fish and wildlife for other purposes." There are currently nonsubsistence uses permitted in this area making the current situation out of compliance with Title VIII of ANILCA. Rescinding the closure would provide Federal opportunity to harvest salmon in the Trout Creek drainage, thereby providing priority consumptive use to federally qualified subsistence users.

If the closure is rescinded, Federal subsistence regulations for the Alaska Peninsula Area would apply which could lead to overharvest and conservation concerns. To conserve fish populations, the Federal in-season manager could issue emergency special actions for up to 60 days to set provisions for the fishery, such as stipulating gear types such as rod and reel only and setting conservative harvest limits.

OSM CONCLUSION

- Retain the Status Quo
- Rescind the Closure**
- Modify the Closure
- Defer Decision on the Closure or Take No Action

The regulations should read:

§____.27(e)(7) *Alaska Peninsula Area*

(v) *You may not subsistence fish for salmon in the following waters:*

~~(B) Trout Creek and within 500 yards outside its mouth.~~

Justification

The Trout Creek drainage is currently closed to the harvest of salmon by federally qualified subsistence users but remains open to other uses. Federal subsistence opportunity should also be provided to comply

with the rural preference mandated by ANILCA. The Federal in-season manager has been delegated authority to open or close Federal subsistence fishing periods or areas provided under codified regulations and to specify methods and means; to specify permit requirements; and to set harvest and possession limits for Federal subsistence fisheries (**Appendix 2**). The in-season manager can use this authority to manage the fishery in the short term. A proposal outlining desired parameters for this fishery may be submitted during the next fisheries cycle so they can be put into regulation.

If this closure is retained, regulatory language referring to marine waters should be removed, and the word “drainage” should be included after Trout Creek to clarify that this closure applies to the entire Trout Creek drainage.

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SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS

Kodiak Aleutians Subsistence Regional Advisory Council

Rescind the closure on FCR23-13. The Council acknowledges the current lack of priority for federally qualified subsistence users at this location. The Council prefers to provide opportunity for federally qualified subsistence users and to be able to provide a rural preference in times of conservation concern.

Bristol Bay Subsistence Regional Advisory Council

Rescind the closure on FCR23-13. The Council agrees with the recommendations of the Kodiak Aleutians Council and supports following Title VIII of ANILCA when resources are limited.

INTERAGENCY STAFF COMMITTEE COMMENTS

The Interagency Staff Committee (ISC) acknowledges that this closure is out of compliance with Title VIII of ANILCA by being closed to fishing by federally qualified subsistence users while allowing for sport fishing under State regulations. The Federal Subsistence Board (Board) would need to take action to bring this situation back into compliance with ANILCA. The Board could modify the closure by closing to all uses. The Board could also rescind the closure and provide a priority consumptive use to federally qualified subsistence users.

The Regional Advisory Councils have recommended the closure be rescinded, bringing this fishery back into compliance with ANILCA. In the absence of this closure standard, area Federal subsistence regulations would apply which could present conservation concerns. Permanent regulations would be the preferable solution to address possible conservation concerns while still providing a meaningful priority to federally qualified subsistence users.

Until the Board receives and takes action on regulatory proposals, Federal managers can use their delegated authority if conservation concerns arise. The ISC recognizes that unless modified by the Board, current Fisheries delegation of authority letters limit Federal managers to emergency special actions (actions lasting no longer than 60 days).

ALASKA DEPARTMENT OF FISH AND GAME COMMENTS

Fisheries Closure Review FCR23-13

This is a routine review of a federal closure to subsistence salmon fishing in Trout Creek and within 500 yards outside its mouth in the Alaska Peninsula area.

Position

The Alaska Department of Fish and Game (ADF&G) **SUPPORTS** the closure remaining in place at this time where the Federal Subsistence Board (FSB) still has jurisdiction. After the Kodiak/Aleutians Regional Advisory Council (KARAC) meetings ADF&G began looking into the federal records to confirm the FSB's jurisdiction over certain waters in the area. It was found that the Federal Subsistence Board (FSB) does not have the jurisdictional authority anymore over Trout Creek within 500 yards outside its mouth according to 50 CFR 100.27(e)(7)(v)(B). The final rule at 70 FR 76407, Dec. 27, 2005 specifically excluded these waters and other marine waters from FSB regulations. The area in which the FSB does have jurisdiction over should remain closed until such time as it can reconcile the legality of effectively opening a fishery. Congress authorized the FSB to close, but not to open, a fish or wildlife harvest season as set forth in sections 815 and 816 of the Alaska National Interest Lands Conservation Act (ANILCA). Without statutory authorization, the FSB adopted a regulation improperly granting itself authority to open public lands to the taking of fish and wildlife (50 CFR § 100.19).

These areas are currently open to sport fishing; however, historically there has been little to no harvest in them and all federally qualified users (FQU) have been eligible to participate in these fisheries. As a result, there has never been a need to pass sport fish regulatory changes pertaining to them. Additionally, the subsistence gear type allowed is much more liberal and efficient at harvesting salmon in salt water in the Alaska Peninsula and Aleutian Islands areas and if modifications to gear types allowed were needed, those modifications could be addressed through the Alaska Board of Fisheries (BOF).

ADF&G suggests that the BOF process be used to bring subsistence and sport fishery regulations into alignment for all Alaska Peninsula and Aleutian Island salmon systems if subsistence needs are not being met by current regulations. Doing so would prohibit conflicting regulations from being put into effect which would reduce the burden on subsistence users and alleviate conservation and enforcement concerns. This would also reduce confusion among users of the resource since subsistence and sport users are often both FQUs and are the primary harvesters for a food source rather than for recreation. Based on past subsistence salmon concerns that have been raised at KARAC meetings, ADF&G submitted proposals for the 2023 BOF meeting to alleviate these concerns in line with its long history of working with local subsistence users to pass regulations to their benefit in a timely manner.

Background

The Trout Creek drainage supports pink, chum and coho salmon runs as well as Dolly Varden. The drainage is accessible by road from the community of Cold Bay and supports a moderate sport fishery and a relatively small subsistence fishery. Coho returns to Trout Creek are the primary target for anglers and subsistence users. Coho returns to Trout Creek are known to be relatively large at times and are the primary target, however, in the last 10 years ADF&G has been unable to index escapement of coho in this system as biologists tend to move back to their permanent duty station on Kodiak before the peak of the run occurs.

The freshwater closure for subsistence fishing in the drainage is intended to protect the salmon runs returning to Trout Creek given the harvest potential that would accompany a subsistence fishery using gillnets or beach seines in the river, as well as the liberal harvest limits associated with subsistence fisheries in the area. While sport fishing is open in both the fresh and saltwater of the area, subsistence users must stay further than 500 yards from the mouth of Trout Creek and can use gillnets of up to 50 fathoms or beach seines, with an annual bag limit of up to 250 salmon. Anglers can use one line with up to two hooks and retain a combined salmon bag limit of five fish per day. While some sport fishing effort occurs in the nearby saltwater inside the 500-yard closed waters for subsistence fishing, federal jurisdiction extends only to the mouth of Trout Creek.

Impact on Subsistence Users

Subsistence salmon fishing on the Alaska Peninsula has historically been managed by the state, even under federal regulations which often require a state subsistence fishing permit. Thus, users are familiar with the state subsistence regulations they have been following for decades. Applying conflicting federal regulations would burden users to know which gear types they would be allowed to legally use, and without clear demarcation of federal boundaries they may unknowingly fish illegally and be subject to prosecution. While this closure has prohibited FQUs from harvesting salmon in these waters under federal regulations they have had the opportunity to harvest salmon under state regulations.

Impact on Other Users

The rescinding of this closure could create conflicts between the users of the Trout Creek as the more liberal gear types and harvest limits of the federal subsistence fishery would be allowed in the drainage where traditionally only fishing under ADF&G sport fishing regulations has occurred. The potential increase in harvest would also reduce returns to the drainage and since FQUs would also be able to use rod and reel gear, there could be confusion created for participants in the fishery given the similar gear types but differing regulations governing the two fisheries.

Opportunity Provided by State

The Alaska Board of Fisheries uses 8 criteria to determine if customary and traditional use of a fish stock exists per AS 16.05.258. If a positive C&T finding exists, Alaska state law requires the BOF to then determine the amount of the harvestable portion of a fish population that is reasonably necessary for customary and traditional uses. This is an ANS. It is a metric used by the BOF as a guide and is not a quota. ANS provides a normally diligent participant a reasonable opportunity for successful harvest for subsistence. The BOF does this by reviewing extensive harvest data and analysis, collected by ADF&G through permit and existing household harvest surveys. ANS provides the BOF with guidelines on typical numbers of fish harvested for customary and traditional uses under normal conditions. Fishing regulations can be re-examined if subsistence harvests consistently fall below ANS. This may be for many reasons: fishing regulations, changes in abundance or distribution, or changes in human use patterns, just to name a few.

The Alaska Board of Fisheries made a positive customary and traditional use finding (C&T) and an amount reasonably necessary for subsistence (ANS) finding for salmon in the Alaska Peninsula Area per the following:

§ 5 AAC 01.416. Customary and traditional subsistence uses of fish stocks and amounts necessary for subsistence uses

- (a) The Alaska Board of Fisheries (board) finds that halibut and all other finfish in the Alaska Peninsula Area are customarily and traditionally taken or used for subsistence.
- (b) The board finds that
 - (1) 34,000 - 56,000 salmon are reasonably necessary for subsistence uses in the Alaska Peninsula Area

Conservation Issues

Rescinding this closure would allow for dramatically increased harvest opportunity by allowing the use of gillnets or beach seines as well as greatly increased harvest limits in the drainage. While the coho salmon run is thought to be healthy, this stock is mostly unmonitored, and it is unknown if it would be able to sustain increased fishing pressure. The federal public waters of Trout Creek are only 15-80 yards wide with many areas of low water and pockets of deep but accessible pools of fish. If gillnets or seines were allowed to be used in the freshwater of this part of the system, they would rapidly harvest large amounts of fish. Depending on a federal in-season manager to make that decision on the appropriate gear type does not give ADF&G the confidence in supporting the rescinding of this closure.

Enforcement Issues

In this region, some subsistence regulations are tied to commercial fishing regulations, which can at times lead to them being challenging for subsistence users to learn and follow. Adding another layer of complexity to existing regulations may lead to additional confusion and have an unintended effect of leading FQUs to unintentionally use the wrong gear type in the wrong place at the wrong time or being unaware of which permit or license they may need or how to get it. New federal regulations would also likely cause users to burden state fisheries managers and AWTs with trying to explain these new federal regulations. As mentioned above, state resources to address this are already spread thin and federal resources are essentially non-existent.

If conflicting federal regulations are put in place, it would likely require signage be put up so users can tell apart state, federal, and tribal lands. Additionally, if an FQU were fishing under a federal permit, or even claiming to, ADF&G staff in these remote locations would have no enforcement authority if violations were to occur. Current federal and state regulations require a state subsistence permit and so links the two subsistence harvests together allowing department peace officers to enforce regulations.

The FSB should request past and current enforcement efforts undertaken by federal law enforcement officers in Cold Bay to ensure adequate enforcement of the federal fisheries in the area.

SELECTED SUBSISTENCE REGULATIONS

These listed regulations are not inclusive of all the regulations that apply to subsistence salmon fishing in the Alaska Peninsula Area.

5 AAC 01.430. LIMITS TO NUMBER OF SALMON TAKEN: 250 salmon per household, unless otherwise specified by a local representative of the department. Additional household permits are available by request from the local ADF&G representative.

5 AAC 01.420. LIMITS TO GEAR USED TO TAKE SALMON: Salmon may be taken by seine or gillnet. No set gillnet may exceed 100 fathoms in length. No drift gillnet may exceed 200 fathoms in length. In areas open to commercial salmon fishing, salmon can only be taken with gillnets of not more than 50 fathoms in aggregate length.

5 AAC 01.427. IDENTIFICATION OF GILLNET GEAR: A buoy at one end of any gillnet must be plainly and legibly marked with the operator's first initial, last name, and mailing address of the permit holder or the vessel's ADF&G number.

5 AAC 01.410. FISHING SEASONS: Salmon may be taken at any time except as follows:

1. In those districts and sections open to commercial salmon fishing, salmon may not be taken by a commercial salmon fishing permit holder within 24 hours before and within 12 hours following a commercial salmon fishing period.
2. As otherwise specified on a subsistence fishing permit; and
3. In the waters closed to subsistence fishing for salmon specified in 5 AAC 01.425.

Exceptions to this rule are listed under EXCEPTIONS 1 and 2 below or as listed on an amended permit.

5 AAC 01.423. SPECIAL PROVISIONS:

1. Mortensens Lagoon: (Mortensens Lagoon and waters within 500 yards of the Mortensens Lagoon terminus only). Salmon may be taken at any time, however the following restrictions apply:
 - A. Subsistence gear is restricted to gillnets of 15 fathoms or less in length.
 - B. No more than 50 salmon per permit per season may be taken from Mortensens Lagoon or within 500 yards of the lagoon terminus.
2. False Pass vicinity: That portion of Bechevin Bay and Isanotski Strait bounded by the latitude of Morzhovoi Village (54°54.58' N lat.) and the latitude of Whirl Point (54°49.50' N lat.). Salmon may be taken at any time using gillnets of 50 fathoms or less in length.
3. Fresh waters of Bear River: Salmon may be taken at anytime upstream from the confluence of the Milky River, also known as the Mad Sow River (a tributary of the Bear River) with gear specified on the subsistence permit.
4. Fresh waters of Sandy River: Salmon may be taken at anytime upstream from the Sandy River (oil exploration) aircraft landing strip located five (5) miles (upriver) of the stream terminus, with gear specified on the subsistence permit.

5 AAC 01.425. WATERS CLOSED TO SUBSISTENCE SALMON FISHING:

1. Russell Creek and Nurse Lagoon and within 500 yards from the stream terminus of Russell Creek and Nurse Lagoon.
2. Trout Creek and within 500 yards outside its mouth.
3. Inshore of a line from the Trident Seafood's Dock at Sand Point to Black Point (located on the northwestern side of Popof Island), including the inlet and Humboldt Creek.
4. Black Hills Section: all freshwaters and within 500 yards of any anadromous salmon stream terminus.
5. Bear River Section: waters closed to commercial salmon fishing under 5 AAC 09.350 and 5 AAC 39.290 and waters of Frank's Lagoon and King Salmon River, excluding exceptions in Bear and Sandy Rivers listed earlier on this permit.
6. No subsistence fishing is allowed in waters closed to commercial salmon fishing as described under 5 AAC 09.350 or 5 AAC 39.290 during a commercial salmon fishing period. Exceptions to this rule are listed under SPECIAL PROVISIONS 1 and 2 above or as specified on an amended permit.

ADDITIONAL RESTRICTIONS:

1. **No more than half the width of a stream or its mouth may be obstructed by a net.** This restriction includes blocking the stream mouth while "roundhauling."
2. The operator must be in proximity of his or her gear at all times.
3. **Salmon may not be taken by sport fishing methods while taking subsistence salmon with a net and you may not be in possession of sport caught and subsistence caught salmon at the same time.**
4. Subsistence fishing gear may at no time be used within 100 feet of another set gillnet.
5. Definition of subsistence uses: AS 16.05.940(33) subsistence uses means the noncommercial, customary and traditional uses of wild, renewable resources.

Return permit by October 31, 2020 to: Alaska Department of Fish and Game, Alaska Peninsula Salmon Management, 351 Research Court, Kodiak AK 99615. Questions or concerns please contact your local Fish and Game Office: Cold Bay (907) 532-2419; Sand Point (907) 383-2066; Port Moller (907) 375-2716; Kodiak (907) 486-1882.

Appendix 2

Delegation of authority letter to the in-season manager of the Southwest Alaska Area.

Branch Chief - Fisheries
U.S. Fish and Wildlife Service
Anchorage Fish and Wildlife Conservation Office
4700 BLM Road
Anchorage, Alaska 99507

Dear Branch Chief:

This letter delegates specific regulatory authority from the Federal Subsistence Board (Board) to the Branch Chief - Fisheries of the Anchorage Fish and Wildlife Conservation Office (Branch Chief) to issue emergency special actions when necessary to ensure the conservation of a healthy fish population, to continue subsistence uses of fish, for the continued viability of a fish population, or for public safety reasons. This delegation only applies to Federal public waters subject to the Alaska National Interest Lands Conservation Act (ANILCA) Title VIII in the Bristol Bay/Alaska Peninsula/Aleutian Islands/Chignik Areas.

It is the intent of the Board that Federal subsistence fisheries management by Federal officials be coordinated, prior to implementation, with Regional Advisory Council (Council) representatives, the Office of Subsistence Management (OSM), and the Alaska Department of Fish and Game (ADF&G), to the extent possible. The OSM will be used by managers to facilitate communication of actions and to ensure proposed actions are technically and administratively aligned with legal mandates and policies. Federal managers are expected to cooperate with managers from the State and other Federal agencies, the Council Chair(s), and applicable Council members to minimize disruption to resource users and existing agency programs, consistent with the need for emergency special action.

DELEGATION OF AUTHORITY

1. **Delegation:** The Branch Chief is hereby delegated authority to issue emergency special actions affecting fisheries in Federal public waters as outlined under the **Scope of Delegation** below. Although a public hearing is not required for emergency special actions, if deemed necessary by you, then a public hearing on the emergency special action is recommended. Special actions are governed by regulation at 36 CFR 242.19 and 50 CFR 100.19.
2. **Authority:** This delegation of authority is established pursuant to 36 CFR 242.10(d)(6) and 50 CFR 100.10(d)(6), which state: “The Board may delegate to agency field officials the authority to set harvest and possession limits, define harvest areas, specify methods or means of harvest, specify permit requirements, and open or close specific fish or wildlife harvest seasons within frameworks established by the Board.”
3. **Scope of Delegation:** The regulatory authority hereby delegated is limited to the issuance of emergency special actions as defined by 36 CFR 242.19(a) and 50 CFR 100.19(a). Such an emergency action may not exceed 60 days, and may not be extended.

This delegation permits you to open or close Federal subsistence fishing periods or areas provided under codified regulations. It also permits you to specify methods and means; to specify permit requirements; and to set harvest and possession limits for Federal subsistence fisheries.

This delegation also permits you to close and re-open Federal public waters to nonsubsistence fishing, but does not permit you to specify methods and means, permit requirements, or harvest and possession limits for State-managed fisheries. This delegation may be exercised only when it is necessary to conserve healthy populations of fish or to ensure the continuation of subsistence uses.

All other proposed changes to codified regulations, such as customary and traditional use determinations or requests for special actions greater than 60 days, shall be directed to the Board.

The Federal public waters subject to this delegated authority are those within the Bristol Bay/Alaska Peninsula/Aleutian Islands/Chignik Areas (as described in the Subsistence Management Regulations for the Harvest of Fish and Shellfish on Federal Public Lands and Waters in Alaska). You will coordinate all local fishery decisions with all affected Federal land managers.

4. Effective Period: This delegation of authority is effective from the date of this letter and continues until superseded or rescinded.

5. Guidelines for Review of Proposed Special Actions: You will use the following guidelines to determine the appropriate course of action when reviewing proposed special actions.

- a) Does the proposed special action fall within the geographic and regulatory scope of delegation?
- b) Have you communicated with the OSM to ensure the emergency special action is aligned with Federal subsistence regulations and policy?
- c) Does the proposed action need to be implemented immediately as an emergency special action, or can the desired conservation or subsistence use goal be addressed by deferring the issue to the next regulatory cycle?
- d) Does the supporting information in the proposed special action substantiate the need for the action?
- e) Are the assertions in the proposed special action confirmed by available current biological information and/or by affected subsistence users?
- f) Is the proposed special action supported in the context of available historical information on stock status and harvests by affected users?
- g) Is the proposed special action likely to achieve the expected results?
- h) Have the perspectives of the Chair or alternate of the affected Council(s), OSM, and affected State and Federal managers been fully considered in the review of the proposed special action?
- i) Have the potential impacts of the proposed special action on all affected subsistence users and non-Federally qualified users within the drainage been considered?

- j) Can public announcement of the proposed special action be made in a timely manner to accomplish the management objective?
- k) After evaluating all information and weighing the merits of the special action against other actions, including no action, is the proposed emergency special action reasonable, rational, and responsible?

6. Guidelines for Delegation: You will become familiar with the management history of the fisheries in the region, with the current State and Federal regulations and management plans, and be up-to-date on stock and harvest status information.

You will provide subsistence users in the region a local point of contact about Federal subsistence fishery issues and regulations and facilitate a local liaison with State managers and other user groups. For in-season management decisions and special actions, consultation is not always possible, but to the extent practicable, two-way communication will take place before decisions are implemented. You will also establish meaningful and timely opportunities for government-to-government consultation related to pre-season and post-season management actions as established in the Board's Government to Government Tribal Consultation Policy (Federal Subsistence Board Government to Government Tribal Consultation Policy 2012).

You will review emergency special action requests or situations that may require an emergency special action and all supporting information to determine (1) consistency with 36 CFR 242.19 and 50 CFR 100.19, (2) if the request/situation falls within the scope of your delegated authority, (3) if significant conservation problems or subsistence harvest concerns are indicated, and (4) what the consequences of taking an action may be on potentially affected subsistence uses and nonsubsistence uses. Requests not within your delegated authority will be forwarded to the Board for consideration.

You will maintain a record of all special action requests and justification of your decisions. A copy of this record will be provided to the Administrative Records Specialist at OSM no later than sixty days after development of the document.

You will immediately notify the Board through the Assistant Regional Director for the OSM, and coordinate with Chair or alternate of the affected Council(s), local ADF&G managers, and other affected Federal conservation unit managers concerning emergency special actions being considered.

If the timing of a regularly scheduled meeting of the affected Council(s) permits without incurring undue delay, you may seek Council recommendations on the proposed emergency special action.

You will issue decisions in a timely manner. Before the effective date of any decision, reasonable efforts will be made to notify Council representatives, the public, OSM, affected State and Federal managers, and law enforcement personnel. If an action is to supersede a State action not yet in effect, the decision will be communicated to Council representatives, the public, OSM, and State and Federal managers at least 24 hours before the State action would be effective. If a decision to take no action is made, you will notify the proponents of the request immediately.

You may defer an emergency special action request, otherwise covered by the delegation of authority, to the Board in instances when the proposed management action will have a significant impact on a large number of Federal subsistence users or is particularly controversial. These options should be exercised judiciously and only when sufficient time allows. Such deferrals should not be considered when immediate management actions are necessary for conservation purposes. The Board may determine that

an emergency special action request may best be handled by the Board, subsequently rescinding the delegated authority for the specific action only.

7. Reporting: You must provide to the Board, through the Assistant Regional Director for the OSM, a report describing the pre-season coordination efforts, local fisheries management decisions, and post-season evaluation activities for the previous fishing season by November 15. A summary of emergency special action requests and your resultant actions must be provided to the coordinator of the appropriate Council(s) at the end of the calendar year for presentation during regularly scheduled Council meetings.

8. Support Services: Administrative support for your local Federal subsistence fisheries management activities will be provided by the Office of Subsistence Management.

Should you have any questions about this delegation of authority, please feel free to contact the Assistant Regional Director for the OSM at toll-free 1-800-478-1456 or (907) 786-3888.

Sincerely,



Anthony Christianson
Chair

Enclosures: Maps of the Bristol Bay, Aleutian Islands, and Alaska Peninsula/Chignik areas

cc: Federal Subsistence Board

Assistant Regional Director, Office of Subsistence Management
Deputy Assistant Regional Director, Office of Subsistence Management
Subsistence Policy Coordinator, Office of Subsistence Management
Fisheries Division Supervisor, Office of Subsistence Management
Chair, Bristol Bay Subsistence Regional Advisory Council
Chair, Kodiak/Aleutians Subsistence Regional Advisory Council
Superintendent, Lake Clark/Katmai National Parks and Preserve
Manager, Togiak National Wildlife Refuge
Manager, Alaska Peninsula/Becharof National Wildlife Refuge Complex
Manager, Izembek National Wildlife Refuge
Manager, Alaska Maritime National Wildlife Refuge
Assistant Regional Director, Law Enforcement, U.S. Fish and Wildlife Service (Region 7)
Commissioner, Alaska Department of Fish and Game
Interagency Staff Committee
Administrative Record

FP23-06a Executive Summary	
General Description	Fisheries Proposal FP23-06a requests to rescind the closure to harvest salmon by federally qualified subsistence users in the closed marine waters of Women’s Bay and implement a new rod and reel fishery that matches current State sport fish regulations.
Proposed Regulation	<p>Kodiak Area—Salmon</p> <p>§ __.27(e)(9)</p> <p><i>(iii) You may not subsistence fish for salmon in the following locations:</i></p> <p><i>(A) Womens Bay closed waters—All waters inside a line from the tip of the Nyman Peninsula (57°43.23'North latitude, 152°31.51' West longitude), to the northeastern tip of Mary's Island (57°42.40' North latitude, 152°32.00' West longitude), to the southeastern shore of Womens Bay at 57°41.95' North latitude, 152°31.50'West longitude. However, you may take salmon for subsistence purposes by rod and reel only.</i></p> <p><i>(1) King salmon: bag and possession limit of two fish; no size limit; no annual limit.</i></p> <p><i>(2) salmon, other than king salmon:</i></p> <p><i>(i) 20 inches or greater in length; bag and possession limit of five fish, of which only two may be coho salmon and only two may be sockeye salmon;</i></p> <p><i>(ii) less than 20 inches in length; bag and possession limit of 10 fish</i></p> <p><i>(iii) From September 16 - December 31, the bag and possession limit for coho salmon, 20 inches or greater in length, is one fish.</i></p> <p><i>(v) The annual limit for a subsistence salmon fishing permit holder is as follows:</i></p> <p><i>(B) In the remainder of the Kodiak Area not described in paragraphs (e)(9)(iii)(A) and (e)(9)(v)(B) of this section, there is no annual harvest limit for a subsistence salmon fishing permit holder.yui</i></p>

FP23-06a Executive Summary	
OSM Conclusion	Support
Kodiak/Aleutians Subsistence Regional Advisory Council Recommendation	Support
Interagency Staff Committee Comments	The Interagency Staff Committee found the staff analysis to be a thorough and accurate evaluation of the proposal and that it provides sufficient basis for the Regional Advisory Council recommendation and Federal Subsistence Board action on the proposal.
ADF&G Comments	Opposed
Written Public Comments	None

STAFF ANALYSIS
FP23-06a

ISSUES

Fisheries proposal FP23-06a, which is a parallel proposal to a fisheries closure review FCR23-15, was submitted by Rebecca Skinner and requests that the closed Federal public waters of Women's Bay be rescinded and the regulations modified to allow the use of rod and reel to harvest salmon. Harvest limits would match State sport fishing regulations.

DISCUSSION

The proponent states that currently federally qualified subsistence users are prohibited from harvesting fish in an area that already allows sport fishing harvest under state regulations in the closed waters of Women's Bay. The proponent further states that this change would provide a priority for federally qualified subsistence users and align regulations so there is less confusion on who can participate in the fishery.

Existing Federal Regulation**Kodiak Area—Salmon****§ __.27(e)(9)**

(iii) You may not subsistence fish for salmon in the following locations:

(A) Womens Bay closed waters—All waters inside a line from the tip of the Nyman Peninsula (57°43.23' North latitude, 152°31.51' West longitude), to the northeastern tip of Mary's Island (57°42.40' North latitude, 152°32.00' West longitude), to the southeastern shore of Womens Bay at 57°41.95' North latitude, 152°31.50' West longitude.

Proposed Federal Regulation**Kodiak Area—Salmon****§ __.27(e)(9)**

(iii) You may not subsistence fish for salmon in the following locations:

(A) *Womens Bay closed waters*—All waters inside a line from the tip of the Nyman Peninsula (57°43.23' North latitude, 152°31.51' West longitude), to the northeastern tip of Mary's Island (57°42.40' North latitude, 152°32.00' West longitude), to the southeastern shore of Womens Bay at 57°41.95' North latitude, 152°31.50' West longitude. **However, you may take salmon for subsistence purposes by rod and reel only.**

(1) King salmon: bag and possession limit of two fish; no size limit; no annual limit

(2) salmon, other than king salmon:

(i) 20 inches or greater in length; bag and possession limit of five fish, of which only two may be coho salmon and only two may be sockeye salmon;

(ii) less than 20 inches in length; bag and possession limit of 10 fish

(iii) From September 16 - December 31, the bag and possession limit for coho salmon, 20 inches or greater in length, is one fish

(v) *The annual limit for a subsistence salmon fishing permit holder is as follows:*

(B) *In the remainder of the Kodiak Area not described in paragraphs (e)(9)(iii)(A) and (e)(9)(v)(B) of this section, there is no annual harvest limit for a subsistence salmon fishing permit holder.*

Existing State Subsistence Regulation

5 AAC 01.525

The following waters are closed to the subsistence taking of salmon;

(1) all waters of Near Island Channel that are bounded by a line from a point on Kodiak Island near Delarov Street at 57_ 47.62' N. lat., 152_ 22.78' W. long., to the northernmost point of Holiday Island at 57_ 47.27' N. lat., 152_ 22.60' W. long., to a point at the northernmost tip of Near Island at 57_ 47.30' N. lat., 152_ 23.16' W. long., to a point at the northernmost end of Uski Island south of the Dog Bay small boat harbor entrance at 57_ 46.92' N. lat., 152_ 24.56' W. long., and north to a point at the tip of the breakwater on Kodiak Island at 57_ 47.08' N. lat., 152_ 24.60' W. long; in addition, from August 7 through September 30, all waters of Mill Bay and those waters bounded by a line from a point at Spruce Cape at 57_ 49.33' N. lat., 152_ 19.48' W. long., to the northernmost point of Woody Island at 57_ 47.91' N. lat., 152_ 19.85' W. long., to

a point at the northernmost point of Holiday Island at 57_47.27' N. lat., 152_22.60' W. long., and to a point on Kodiak Island near Delarov Street at 57_47.62' N. lat., 152_22.78' W. long.;

Existing State Sport Fish Regulation

5 AAC 64.022

(a) Unless otherwise specified in this section, 5 AAC 64.051, or 5 AAC 64.060, or by an emergency order issued under AS 16.05.060, the following are the bag, possession, annual, and size limits, and special provisions for finfish and shellfish in the waters of the Kodiak Area:

(1) king salmon: may be taken from January 1 - December 31, as follows:

(A) in fresh waters:

(i) 20 inches or greater in length; bag and possession limit of two fish; annual limit of five king salmon; a harvest record is required as specified in 5 AAC 75.006;

(ii) less than 20 inches in length; bag and possession limit of 10 fish; king salmon less than 20 inches in length caught in fresh water do not count toward the annual limit;

(B) in salt waters: bag and possession limit of two fish; no size limit; no annual limit; a harvest record is not required;

(2) salmon, other than king salmon: may be taken from January 1 - December 31, as follows:

(A) 20 inches or greater in length; bag and possession limit of five fish, of which only two may be coho salmon and only two may be sockeye salmon;

(B) less than 20 inches in length; bag and possession limit of 10 fish

(8) in the Kodiak Road Zone, from September 16 - December 31, the bag and possession limit for coho salmon, 20 inches or greater in length, is one fish, except that in the following stocked waters the bag and possession limit for coho salmon, 20 inches or greater in length, is two fish:

Extent of Federal Public Lands/Waters

For the purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 36 CFR 242.3 and 50 CFR 100.3 This proposal pertains to Federal marine waters of the Pacific Ocean enclosed by the boundaries of Women’s Bay (Figure 1).

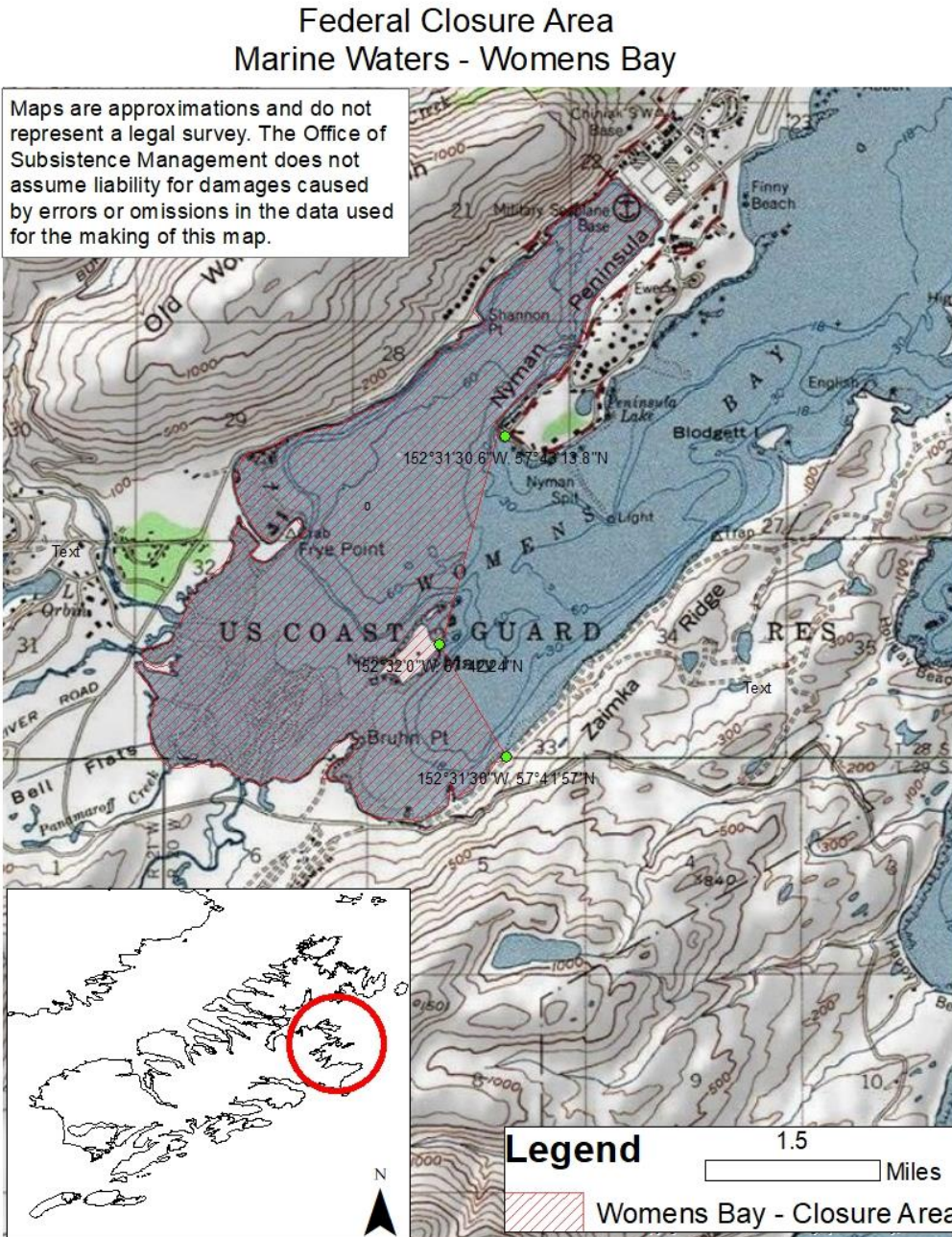


Figure 1. Closed Federal marine public waters in Women’s Bay, Kodiak Island.

Customary and Traditional Use Determinations

Rural residents of Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base have a customary and traditional use determination for salmon for the Kodiak Area except the Mainland District.

Regulatory History

In 1992, the Federal Subsistence Management Program promulgated regulations governing the harvest of fish for subsistence uses in waters qualifying as "public lands" under ANILCA. (57 FR 22940). These regulations incorporated many provisions from State subsistence fishing regulations which previously applied to those waters. The closure under review in this analysis was incorporated into the Federal regulations in this manner and has not been subsequently modified.

Fisheries emergency special actions were implemented for Women's Bay and Buskin River in recent history due to poor returns of salmon to the Buskin River drainage. This includes Emergency Special Action 9-SS-01-22 in 2022 that closed the take of Sockeye Salmon (*Oncorhynchus nerka*) by all users in the open marine water area, which was later rescinded under Emergency Special Action 9-RS-02-22. Emergency Special Action 9-RS-01-21 in 2021, which closed the take of Sockeye Salmon to all users in the Federal public waters of Women's Bay, and 9-SS-02-19 in 2019, which closed all Federal public waters at the mouth of the Buskin River in the Kodiak District to the take of Coho Salmon (*Oncorhynchus kisutch*).

Current Events Involving the Species

Fisheries closure review FCR23-15, for the same Womens Bay closure area under consideration in this proposal, is also under review during this regulatory cycle.

Biological Background

There are currently no abundance estimates for salmon returning to Women's Bay. The Buskin River is a nearby river that monitors adult salmon. Annual Sockeye Salmon escapement returning to the Buskin River is estimated through a weir from May through July. The majority of fish returning to the system pass through a weir located at the outlet of Buskin Lake and the Catherine-Louise Lake weir is no longer in operation. Buskin Lake has a Sockeye Salmon escapement goal of 5,000 to 8,000 fish (Anderson et al. 2019). The Buskin River has seen both very strong and relatively weak Sockeye and Coho salmon runs over the past 10 years (**Table 1**). The 2021 escapement of 2,330 Sockeye Salmon was the lowest return of Sockeye Salmon in the past 10-year period (2012 – 2021). During 2013, one of the highest passages was recorded (16,178 fish) for that same 10-year period. In the most recent 5-year period, two years did not meet escapement for Sockeye Salmon (2018 and 2021).

The Buskin River supports one of the historically most productive Coho Salmon stocks in the Kodiak Management Area (Polum et al. 2019). Coho Salmon typically start returning in early to mid-August and continue into the fall. The escapement is monitored by a weir about a mile above the river mouth. The Buskin River has a Coho Salmon escapement goal of 4,700-9,600 fish. From 2012 to 2021, weir counts of

Coho Salmon ranged from a high of 8,413 fish in 2014 to a low of 630 fish in 2020 (**Table 1**). During the 2020 season, the low count of 630 fish was considered a partial count due to weir being inoperable during mid-season. Other years such as 2015 were considered only partial weir counts due to a similar situation. These weir counts are not the total escapements and some years do not include the harvest data. The average annual weir count was 4,776 fish during this 10-year period.

Table 1. Annual weir counts of Sockeye and Coho salmon in the Buskin River from 2012 to 2021 with 10-year averages.

Year	Sockeye	Coho
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Cultural Knowledge and Traditional Practices

The subsistence practices of the rural residents of the Kodiak Area reflect the cultural traditions of the Alutiiq/Sugpiaq; the Koniag/Qikertarmiut; and Eastern European, Asian, and American settlers. Indigenous populations have lived in the area for at least 7000 years, with subsistence economies largely based on the harvesting of maritime resources (Clark 1998). Key among these subsistence resources have been marine animals, shellfish, near-shore fisheries, sea or littoral birds and their eggs, and salmon harvested primarily in spawning areas (Clark 1998: 176). Salmon remain one of the primary components of subsistence diets for rural residents in this region (Wolf and Walker 1987, Fall and Walker 1993, Marchioni et al. 2016). Historically, some of the most-utilized harvest areas for subsistence salmon in the Kodiak archipelago have been the Buskin and Pasagshak Rivers located on the northern end of Kodiak Island and the southeast side of Afognak Island at Litnik (Anderson et al. 2016, Brown et al. 2021).

Today, the Kodiak Island Borough has a population of 13,383 residents (US Census Bureau 2020). The most recent population estimate for Women’s Bay CDP is 743 residents (US Census 2020). Residents throughout the Kodiak Islands currently harvest salmon using subsistence gillnets and seines, rod and reel, and removal of salmon from commercial catch for home use (Marchioni et al. 2016). Access for salmon harvesting is often obtained through social networks, and salmon harvests are regularly shared between community members (Marchioni et al. 2016). Harvested salmon are typically dried, smoked, or canned to preserve the resource for use out of season (Marchioni et al. 2016). These subsistence practices form a key basis of cultural identity, family life, and community well-being in the area (Fall 1999). When salmon are scarce, area residents must rely upon secondary subsistence resources and/or turn to expensive

store-bought foods (Marchioni et al. 2016). According to the most recent Alaska subsistence and personal use fisheries report (Brown et al. 2021: 168), “The total reported subsistence salmon harvest for the Kodiak Area in 2018 was 17,459 fish, less than the reported 2017 harvest and well below the recent 5-year (2013–2017) and 10-year (2008–2017) averages of 26,390 salmon and 28,364 salmon, respectively.” The significant reductions in salmon stock available for subsistence harvest in recent years have caused increasing concerns about food security and the maintenance of rural lifestyles in the region (KARAC 2021).

Harvest History

Federal and State subsistence users primarily harvest Sockeye and Coho salmon in marine waters near the mouth of the Buskin River. However, the marine waters adjacent to the mouth of the Buskin River are closed under both Federal and State subsistence regulation to protect salmon as they migrate through the estuary. The Buskin River supports the main runs of Sockeye and Coho salmon in Women’s Bay. Large subsistence and sport fish harvests occur on these returning stocks. Historically, the marine waters beyond the closure are the single largest source of subsistence salmon harvested in Federal waters within the Kodiak-Aleutians Region (Witteveen et al. 2020). The Buskin River is also one of the most popular sport fishing locations because of road access and proximity to the City of Kodiak. Both Sockeye and Coho salmon are targeted in the sport fishery. In addition, commercial fisheries in the marine waters surrounding Kodiak Island also harvest a small number of Buskin River salmon (Anderson et al. 2019). Fish harvests from the Buskin River generally fluctuate with the escapement, but due to its proximity to the City of Kodiak, the Buskin River continues to support both subsistence and sport fishing even in years with small returns. The Sockeye Salmon fisheries occurs primarily in June due to the early run timing.

Subsistence Harvest of Coho and Sockeye Salmon

Between 2016 and 2020, the annual subsistence harvests for Sockeye Salmon have ranged from a low in 2018 of 473 to 4,916 in 2017, with an annual average of 3,891. Coho Salmon harvest varies drastically from year to year with a low harvest of 300 fish (6% of total harvest) and a high of 1,107 fish (69% of total harvest) (**Table 2**). Total number of permits issued for subsistence harvest has declined from 2016 to 2020.

Table 2. Buskin River drainage reported subsistence harvest by species 2016-2020 (Witteveen et al. 2020). Additional harvest of Chinook, Pink and Chum salmon occur and are not shown in this table. Sockeye and Coho salmon makeup 95% of the total harvest.

Year	# of	Sockeye	Sockeye	Coho	Coho
Year	Permits	# Fish	% Total	# Fish	% Total
2016	255	4,743	89%	496	9%
2017	242	4,916	93%	300	6%
2018	108	473	29%	1,107	69%
2019	111	836	62%	340	25%
2020	163	1,620	64%	760	30%
Average	281	3,891	67%	865	28%

Sport Fish Harvest of Coho Salmon

Between 2010 and 2018, the annual sport harvest of Coho Salmon in the Buskin River have ranged from 1,793 to 5,388 with an average annual harvest of 3,293 fish (**Table 3**).

Table 3. Buskin River Coho Salmon sport fishery harvest 2010-2018 (Polum et al. 2019).

Year	Sport Harvest
2010	2,847
2011	3,640
2012	1,926
2013	4,926
2014	5,388
2015	4,889
2016	1,895
2017	2,337
2018	1,793
Average	3,293

Effects of the Proposal

If fisheries proposal FP23-06a is adopted, the closure would be rescinded and federally qualified subsistence users would have additional opportunity to harvest fish closer to town in the nearshore marine waters of Women's Bay. It is unlikely that harvest rates would increase if this closure were rescinded. Rural residents of Kodiak are already harvesting salmon under State sport fish regulations and this change would allow Kodiak residents to choose which fishery they would like to participate in.

If fisheries proposal FP23-06a is not adopted, the closure would remain and there would be continued inconsistency between State sport, State subsistence, and Federal subsistence regulations. Federally qualified subsistence users would not be eligible for priority consumptive use in times of resource restrictions.

OSM CONCLUSION

Support Proposal FP23-06a

Justification

Section 802(2) of ANILCA requires that subsistence uses by rural residents of Alaska shall by “the priority consumption uses of all such resources on the public lands of Alaska”. Currently, federally qualified subsistence users are not allowed to harvest salmon under Federal subsistence regulations in the same Federal public waters where State sport fish harvest is allowed. Aligning State and Federal regulations would prevent Federal subsistence regulations from being more restrictive than State sport fishing regulations, and harvests levels would likely remain unaffected as federally qualified users already participate in the State sport fishery.

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SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS

Kodiak/Aleutians Subsistence Regional Advisory Council

Support FP23-06a. In support of the Federal subsistence priority, this fishery would allow for subsistence harvest while also ensuring that conservation concerns are taken into consideration through the limited gear type.

INTERAGENCY STAFF COMMITTEE COMMENTS

The Interagency Staff Committee found the staff analysis to be a thorough and accurate evaluation of the proposal and that it provides sufficient basis for the Regional Advisory Council recommendation and Federal Subsistence Board action on the proposal.

ALASKA DEPARTMENT OF FISH AND GAME COMMENTS

Fisheries Proposal FP23-06a

This proposal would rescind the closure to federal subsistence fishing and allow for a federal subsistence fishery using rod and reel in the currently closed waters of Women's Bay. The regulations would mirror existing sport fishing regulations in the area.

Position

The Alaska Department of Fish & Game (ADF&G) is **OPPOSED** to this proposal. Foremost, Congress authorized the FSB to close, but not to open, a fish or wildlife harvest season as set forth in sections 815 and 816 of the Alaska National Interest Lands Conservation Act (ANILCA). Without statutory authorization, the FSB adopted a regulation improperly granting itself authority to open public lands to the taking of fish and wildlife (50 CFR § 100.19).

It would unnecessarily add regulatory complexity and create a considerable enforcement challenge. Federally qualified users (FQU) have already been eligible and have historically participated in state fisheries in the area to help meet their subsistence needs.

Background

The closed waters of Women's Bay are intended to provide a buffer zone where the liberal gear types and harvest limits in both state and federal subsistence fisheries are not allowed in the areas closest to the river mouths of Women's Bay where fish tend to congregate. This area has a number of anadromous streams that support pink, chum, coho and introduced Chinook salmon, as well as Dolly Varden. While fishing is allowed under ADF&G sport fishing regulations in the closed area, conservative methods and means and bag limits are in place. Gear is limited to a single line with no more than 2 hooks and a daily bag limit of 5 salmon per day, of which, no more than 2 can be coho through September 15 and from September 16 through the end of the year, only 1 can be a coho salmon. Outside of the closed waters of Women's Bay, both federal and state subsistence users can use gillnets of up to 50 fathoms and have a bag limit of 25 salmon per family member per household.

Three significant drainages flow into Women's Bay: Sargent, Russian and Salonie creeks, while several smaller drainages also contribute to the overall salmon populations and fisheries of the area. Monitoring of the three larger drainages consists of aerial surveys timed with peak pink salmon escapement and foot surveys during coho salmon spawning. The vast majority of fishing effort and harvest in the Women's Bay area occurs in the freshwaters of these three drainages outside of federal jurisdiction and in areas that

are closed to both federal and state subsistence. Even though the closed area of Women's Bay is open to sport fishing, there is very little effort in this area. Many participants in the freshwater sport fishery are also FQUs, particularly those living in the Bell's Flats community. All FQUs are able to participate in both the fresh and saltwater sport fisheries in the area under ADF&G sport fishing regulations. A small subsistence fishery occurs in Women's Bay with occasional effort targeting coho salmon from Nyman's Peninsula.

Impact on Subsistence Users

This proposal would add regulatory complexity to an existing fishery without providing additional opportunity or addressing a conservation concern. FQUs would be able to use identical gear and have the exact same bag limits to the sport fishery, however, would only be able to fish in the saltwater of Women's Bay, whereas anglers fishing under sport fishing regulations would be able to fish in freshwaters as well. FQUs would also need to be cognizant of the boundaries in which they could use rod and reel under federal regulations and where they would cross over into the area in which state regulations would apply requiring them to carry a sport fishing license.

Impact on Other Users

This proposal could cause confusion among the other user groups as it layers on a new fishery on top of the pre-existing state sport fishery with different participating criteria.

Opportunity Provided by State

State customary and traditional use findings: The Alaska Board of Fisheries (BOF) has made positive customary and traditional use findings for salmon and finfish other than salmon, except steelhead and rainbow trout, in the Kodiak Area, except that portion described in 5 AAC 18.200(g), are customarily and traditionally taken or used for subsistence. (§ 5 AAC 01.536.(a))

Amounts Reasonably Necessary for Subsistence: Alaska state law requires the BOF to determine the amount of the harvestable portion of a fish population that is reasonably necessary for customary and traditional uses. This is an ANS. The BOF does this by reviewing extensive harvest data from all Alaskans, collected either by ADF&G or from other sources.

ANS provides the BOF with guidelines on typical numbers of fish harvested for customary and traditional uses under normal conditions. Fishing regulations can be re-examined if harvests for customary and traditional uses consistently fall below ANS. This may be for many reasons: fishing regulations, changes in abundance or distribution, or changes in human use patterns, just to name a few.

The ANS for salmon and other finfish in the Kodiak Area:

- (1) 26,800 - 44,700 salmon;
- (2) 21,000 - 35,000 rockfish;
- (3) 3,300 - 5,600 lingcod;
- (4) 550,000 - 900,000 usable pounds of finfish, other than salmon, rockfish, and lingcod (§ 5 AAC 01.536.(b)).

Conservation Issues

By limiting the gear type in which FQUs could fish to match the current state regulations in addition to the low level of known FQU participation in the state regulated fisheries there are no anticipated conservation issues.

Enforcement Issues

This proposal will create overlapping federal and state enforcement requirements that would likely lead to enforcement issues. There has not previously been a federal enforcement presence in this area, and it is unknown how a federal subsistence fishery would be monitored for compliance. The proposal also does not specify if a federal subsistence permit would be needed to participate in this fishery. In addition, the closed area of Women's Bay is dominated by tidal flats and the continual changing of the shoreline would necessitate boundary markers or other demarcations to show where federal boundaries begin.

FCR23-15 Executive Summary	
General Description	FCR23-15 is a routine review of the closure to harvest of salmon by federally qualified subsistence users in the closed marine waters of Women’s Bay.
Current Regulation	<p><i>Kodiak Area – Salmon</i></p> <p>§ __.27(e)(9)</p> <p>***</p> <p><i>(iii) You may not subsistence fish for salmon in the following locations:</i></p> <p style="padding-left: 40px;"><i>(A) Womens Bay closed waters—All waters inside a line from the tip of the Nyman Peninsula (57°43.23'North latitude, 152°31.51' West longitude), to the northeastern tip of Mary's Island (57°42.40' North latitude, 152°32.00' West longitude), to the southeastern shore of Womens Bay at 57°41.95' North latitude, 152°31.50'West longitude.</i></p>
OSM Conclusion	Rescind
Kodiak/Aleutians Subsistence Regional Advisory Council Recommendation	Rescind following Council recommendation on FP23-06a to rescind the closure.
Interagency Staff Committee Comments	The Interagency Staff Committee found the staff analysis to be a thorough and accurate evaluation of the proposal and that it provides sufficient basis for the Regional Advisory Council recommendation and Federal Subsistence Board action on the proposal.
ADF&G Comments	Retain status quo
Written Public Comments	None

FEDERAL FISHERIES CLOSURE REVIEW
FCR23-15

Issue

FCR23-15 is a standard review of a Federal fishery closure to salmon fishing in Women's Bay. It is the Federal Subsistence Board's (Board) policy that Federal public lands and waters should be reopened as soon as practicable once the conditions that originally justified the closure have changed to such an extent that the closure is no longer necessary. The purpose of this closure review is to determine if the closure is still warranted and to ensure the closure does not remain in place longer than necessary. Parallel proposal FP23-06a was submitted by Kodiak resident, Rebecca Skinner to rescind the closure and to implement a new rod and reel fishery that would match the State sport fish regulations.

Closure Location: Kodiak Area – Salmon

Current Federal Regulation*Kodiak Area – Salmon*

§ __.27(e)(9)

(iii) *You may not subsistence fish for salmon in the following locations:*

(A) *Womens Bay closed waters—All waters inside a line from the tip of the Nyman Peninsula (57°43.23' North latitude, 152°31.51' West longitude), to the northeastern tip of Mary's Island (57°42.40' North latitude, 152°32.00' West longitude), to the southeastern shore of Womens Bay at 57°41.95' North latitude, 152°31.50' West longitude.*

Closure Dates: Year-round

Current State Subsistence Regulation*Kodiak Area – Salmon*

5 AAC 01.525

The following waters are closed to the subsistence taking of salmon;

(1) *all waters of Near Island Channel that are bounded by a line from a point on Kodiak Island near Delarov Street at 57_ 47.62' N. lat., 152_ 22.78' W. long., to the northernmost point of Holiday Island at 57_ 47.27' N. lat., 152_ 22.60' W. long., to a point at the northernmost tip of Near Island at 57_ 47.30' N. lat., 152_ 23.16' W. long., to a point at the northernmost end of Uski Island south of the Dog Bay small boat harbor entrance at 57_ 46.92' N. lat., 152_ 24.56' W.*

long., and north to a point at the tip of the breakwater on Kodiak Island at 57_ 47.08' N. lat., 152_ 24.60' W. long; in addition, from August 7 through September 30, all waters of Mill Bay and those waters bounded by a line from a point at Spruce Cape at 57_ 49.33' N. lat., 152_ 19.48' W. long., to the northernmost point of Woody Island at 57_ 47.91' N. lat., 152_ 19.85' W. long., to a point at the northernmost point of Holiday Island at 57_ 47.27' N. lat., 152_ 22.60' W. long., and to a point on Kodiak Island near Delarov Street at 57_ 47.62' N. lat., 152_ 22.78' W. long.;

Current State Sport Fish Regulations

Kodiak Area – Salmon

5 AAC 64.022

(a) Unless otherwise specified in this section, 5 AAC 64.051, or 5 AAC 64.060, or by an emergency order issued under AS 16.05.060, the following are the bag, possession, annual, and size limits, and special provisions for finfish and shellfish in the waters of the Kodiak Area:

(1) king salmon: may be taken from January 1 - December 31, as follows:

(A) in fresh waters:

(i) 20 inches or greater in length; bag and possession limit of two fish; annual limit of five king salmon; a harvest record is required as specified in 5 AAC 75.006;

(ii) less than 20 inches in length; bag and possession limit of 10 fish; king salmon less than 20 inches in length caught in fresh water do not count toward the annual limit;

(B) in salt waters: bag and possession limit of two fish; no size limit; no annual limit; a harvest record is not required;

(2) salmon, other than king salmon: may be taken from January 1 - December 31, as follows:

(A) 20 inches or greater in length; bag and possession limit of five fish, of which only two may be coho salmon and only two may be sockeye salmon;

(B) less than 20 inches in length; bag and possession limit of 10 fish

(8) in the Kodiak Road Zone, from September 16 - December 31, the bag and possession limit for coho salmon, 20 inches or greater in length, is one fish, except that in the

following stocked waters the bag and possession limit for coho salmon, 20 inches or greater in length, is two fish:

Regulatory Year Initiated: 1992

Extent of Federal Public Lands/Waters

For the purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 36 CFR 242.3 and 50 CFR 100.3 This proposal pertains to Federal marine waters inside a line from the tip of the Nyman Peninsula (57°43.23' North latitude, 152°31.51' West longitude), to the northeastern tip of Mary's Island (57°42.40' North latitude, 152°32.00' West longitude), to the southeastern shore of Women's Bay at 57°41.95' North latitude, 152°31.50' West longitude. (**Figure 1**).

Federal Closure Area Marine Waters - Womens Bay

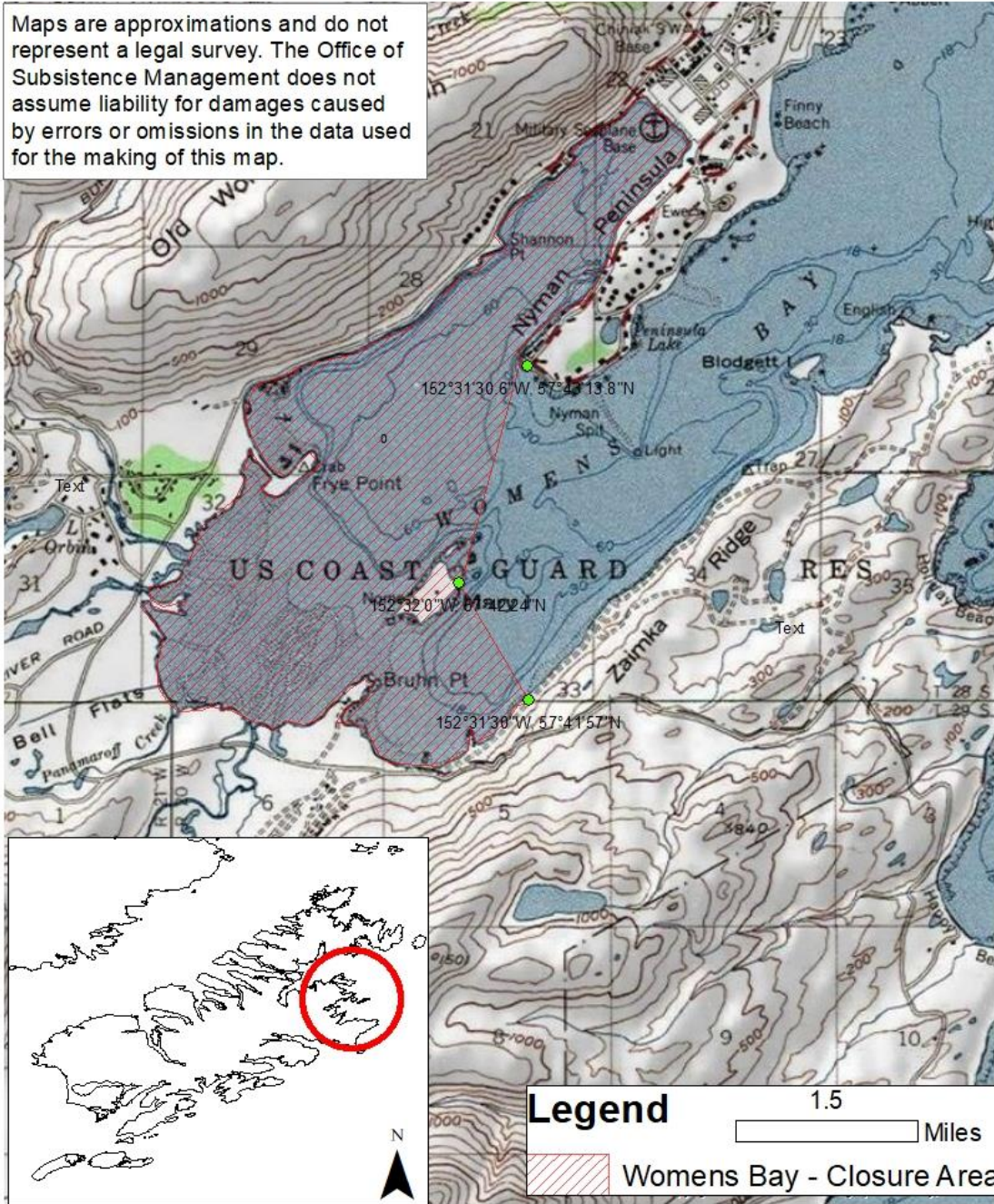


Figure 1. Closed Federal marine public waters in Women’s Bay, Kodiak Island.

Customary and Traditional Use Determination

Rural residents of Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base have a customary and traditional use determination for salmon for the Kodiak Area except the Mainland District.

Regulatory History

In 1992, the Federal Subsistence Management Program promulgated regulations governing the harvest of fish for subsistence uses in waters qualifying as "public lands" under ANILCA. (57 FR 22940). These regulations incorporated many provisions from State subsistence fishing regulations which previously applied to those waters. The closure under review in this analysis was incorporated into the Federal regulations in this manner, and has not been subsequently modified.

Current Events Involving the Species

A parallel fisheries proposal FP23-06a was submitted by Kodiak resident Rebecca Skinner that seeks to rescind the Buskin River closure and modify the regulations to allow the use of rod and reel to harvest salmon. Harvest limits would remain the same as State sport fish regulations.

Fisheries emergency special actions were implemented for Women's Bay and Buskin River in recent history due to poor returns of salmon to the Buskin River drainage. This includes 9-SS-01-22 in 2022 and 9-RS-01-21 in 2021, which closed the take of Sockeye Salmon (*Oncorhynchus nerka*) to all users in the Federal public waters of Women's Bay, and 9-SS-02-19 in 2019, which closed all Federal public waters at the mouth of the Buskin River in the Kodiak Area to the take of Coho Salmon (*Oncorhynchus kisutch*).

Closure last reviewed

There have been no previous reviews of this closure.

Justification for Original Closure

There is no Board justification for the original closure as it was incorporated from the State subsistence fishing regulations.

Council Recommendation for Original Closure

N/A

State Recommendation for Original Closure

N/A

Biological Background

There are no current annual estimates of total salmon populations to Women's Bay; however, annual Sockeye Salmon escapement returning to the nearby Buskin River is estimated through a weir from May through July. The majority of fish returning to the system pass through a weir located at the outlet of Buskin Lake. The Catherine-Louise Lake weir is no longer in operation. The Buskin Lake system has a Sockeye Salmon escapement goal of 5,000 to 8,000 fish (Anderson et al. 2019). The Buskin River has seen both very strong and relatively weak Sockeye and Coho salmon runs over the past 10 years (**Table**

1). The 2021 escapement of 2,330 Sockeye Salmon was the lowest return of Sockeye Salmon in the past 10-year period (2012 – 2021). During 2013, one of the highest passages was recorded (16,178 fish) for that same 10-year period. In the most recent 5-year period, two years did not meet escapement for Sockeye Salmon (2018 and 2021).

The Buskin River supports one of the historically most productive Coho Salmon stocks in the Kodiak Management Area (Polum et al. 2019). Coho Salmon typically start returning in early to mid-August and continue into the fall. The escapement is monitored by a weir about a mile above the river mouth. The Buskin River has a Coho Salmon escapement goal of 4,700-9,600 fish. From 2012 to 2021, weir counts of Coho Salmon ranged from a high of 8,413 fish in 2014 to a low of 630 fish in 2020 (**Table 1**). During the 2020 season, the low count of 630 fish was considered a partial count due to weir being inoperable during mid-season. Other years such as 2015 were considered only partial weir counts due to a similar situation. These weir counts are not the total escapements and some years do not include the harvest data. 2021 escapement is incomplete as weir counts do not have sport harvest added yet. The average annual weir count was 4,776 fish during this 10-year period.

Table 1. Annual weir counts of Sockeye and Coho salmon in the Buskin River from 2012 to 2021 with 10-year averages.

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Today, the Kodiak Island Borough has a population of 13,383 residents (US Census Bureau 2020). The most recent population estimate for Women’s Bay CDP is 743 residents (US Census Bureau 2020). Residents throughout the Kodiak Islands currently harvest salmon using subsistence gillnets and seines, rod and reel, and removal of salmon from commercial catch for home use (Marchioni et al. 2016). Access for salmon harvesting is often obtained through social networks, and salmon harvests are regularly shared between community members (Marchioni et al. 2016). Harvested salmon are typically dried, smoked, or canned to preserve the resource for use out of season (Marchioni et al. 2016). These subsistence practices form a key basis of cultural identity, family life, and community well-being in the area (Fall 1999). When salmon are scarce, area residents must rely upon secondary subsistence resources and/or turn to expensive store-bought foods (Marchioni et al. 2016). According to the most recent Alaska subsistence and personal use fisheries report (Brown et al. 2021: 168), “The total reported subsistence salmon harvest for the Kodiak Area in 2018 was 17,459 fish, less than the reported 2017 harvest and well below the recent 5-year (2013–2017) and 10-year (2008–2017) averages of 26,390 salmon and 28,364 salmon, respectively.” The significant reductions in salmon stock available for subsistence harvest in recent years have caused increasing concerns about food security and the maintenance of rural lifestyles in the region (KARAC 2021).

Harvest History

Both Federal and State subsistence users harvest primarily Sockeye and Coho salmon in marine waters near the mouth of the Buskin River. However, the marine waters adjacent to the mouth of the Buskin River are closed under both Federal and State subsistence regulation to protect salmon as they migrate through the estuary. The Buskin River supports the primary runs of Sockeye and Coho salmon to Women’s Bay. Large subsistence and sport fish harvests occur on these returning stocks of the Buskin River. Historically, the marine waters beyond the closure are the single largest source of subsistence salmon harvested in Federal waters within the Kodiak-Aleutians Region (Witteveen et al. 2020). The Buskin River is also one of the most popular sport fishing locations because of road access and proximity to the City of Kodiak. Both Sockeye and Coho salmon are targeted in the sport fishery. In addition, commercial fisheries in the marine waters surrounding Kodiak Island also harvest a small number of Buskin River salmon (Anderson et al. 2019). Fish harvests from the Buskin River generally fluctuate with the escapement, but due to its proximity to the City of Kodiak, the Buskin River continues to support both subsistence and sport fishing even in years with small returns. The Sockeye Salmon fisheries occurs primarily in June due to the early run timing.

Subsistence Harvest of Coho and Sockeye Salmon

Between 2016 and 2020, the annual subsistence harvests for Sockeye Salmon have ranged from 473 to 4,916, with a low subsistence harvest of 473 fish in 2018, and an annual average of 3,891. Coho Salmon harvest varies drastically from year to year with a low harvest of 300 fish (6% of total harvest) and a high of 1,107 fish (69% of total harvest) (**Table 2**). Total number of permits issued for subsistence harvest has declined from 2016 to 2020.

Table 2. Buskin River drainage reported subsistence harvest by species 2016-2020 (Witteveen et al. 2020). Additional harvest of Chinook, Pink and Chum salmon occur and are not shown in this table. Sockeye and Coho salmon makeup 95% of the total harvest.

Year	# of	Sockeye	Sockeye	Coho	Coho
Year	Permits	# Fish	% Total	# Fish	% Total
2016	255	4,743	89%	496	9%
2017	242	4,916	93%	300	6%
2018	108	473	29%	1,107	69%
2019	111	836	62%	340	25%
2020	163	1,620	64%	760	30%
Average	281	3,891	67%	865	28%

Sport Fish Harvest of Coho Salmon

Between 2010 and 2018, the annual sport harvest of Coho Salmon in the Buskin River have ranged from 1,793 to 5,388 with an average annual harvest of 3,293 fish (**Table 3**).

Table 3. Buskin River Coho Salmon sport fishery harvest 2010-2018 (Polum et al. 2019).

Year	Sport Harvest
2010	2,847
2011	3,640
2012	1,926
2013	4,926
2014	5,388
2015	4,889
2016	1,895
2017	2,337
2018	1,793
Average	3,293

Effects

If the closure is rescinded, federally qualified subsistence users would have additional opportunity to harvest fish closer to town in the nearshore marine waters. This additional opportunity could result in slightly higher harvests rates given the area wide regulations allowing the use of gillnet, seine and rod and reel, particularly during days of inclement weather where the nearshore waters are slightly more protected and allow for harvesting fish when the outer gulf waters are too windy. To conserve fish populations, the Federal in-season manager could issue a special action for up to 60 days to set provisions for the fishery, such as stipulating gear types and setting conservative harvest limits.

If the closure is retained, sport of salmon would continue while federally qualified subsistence users would be prohibited from harvesting salmon under Federal subsistence regulations in this location. There is opportunity for harvest outside of these closed waters.

OSM CONCLUSION

- Retain the Status Quo
- Rescind the Closure
- Modify the Closure
- Defer Decision on the Closure or Take No Action

The modified regulation should read:

Kodiak Area – Salmon

§ __.27(e)(9)

(iii) You may not subsistence fish for salmon in the following locations:

~~(A) Womens Bay closed waters—All waters inside a line from the tip of the Nyman–Peninsula (57°43.23' North latitude, 152°31.51' West longitude), to the northeastern tip of Mary's Island (57°42.40' North latitude, 152°32.00' West longitude), to the southeastern shore of Womens Bay at 57°41.95' North latitude, 152°31.50' West longitude.~~

Justification

The marine Federal public waters of Womens Bay are currently closed to the harvest of salmon by federally qualified subsistence users but remain open to other uses. Section 802(2) of ANILCA requires that subsistence uses by rural residents of Alaska shall by “the priority consumption uses of all such resources on the public lands of Alaska”. Federal subsistence opportunity should also be provided to comply with the rural preference mandated by ANILCA. The Federal in-season manager has been delegated authority to open or close Federal subsistence fishing periods or areas provided under codified regulations and to specify methods and means; to specify permit requirements; and to set harvest and possession limits for Federal subsistence fisheries. The in-season manager can use this authority to manage the fishery in the short term. Harvests levels would likely remain unaffected as federally qualified subsistence users already participate in the State sport fishery.

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SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS

Kodiak/Aleutians Subsistence Regional Advisory Council

No action taken on FCR23-15. No action taken due to the Council's action on FP23-06a to rescind the closure and allow the use of rod and reel to harvest salmon in Womens Bay.

INTERAGENCY STAFF COMMITTEE COMMENTS

The Interagency Staff Committee found the staff analysis to be a thorough and accurate evaluation of the closure review and that it provides sufficient basis for the Regional Advisory Council recommendation and Federal Subsistence Board action on the proposal.

ALASKA DEPARTMENT OF FISH AND GAME COMMENTS

Fisheries Closure Review FCR23-15

This is a routine closure review to determine if the current federal subsistence fisheries closure to salmon fishing in the marine waters of Womens Bay is still warranted.

Position

The Alaska Department of Fish & Game (ADF&G) **SUPPORTS** the closure remaining in place until such time as the Federal Subsistence Board (FSB) can reconcile the legality of effectively opening a fishery. Congress authorized the FSB to close, but not to open, a fish or wildlife harvest season as set forth in sections 815 and 816 of the Alaska National Interest Lands Conservation Act (ANILCA). Without statutory authorization, the FSB adopted a regulation improperly granting itself authority to open public lands to the taking of fish and wildlife (50 CFR § 100.19).

These areas are currently open to sport fishing; however, historically there has been little to no harvest in them and all federally qualified users (FQU) have been eligible to participate in these fisheries. As a result, there has never been a need to pass sport fish regulatory changes pertaining to them. Rescinding the closure and potentially replacing it with a rod and reel fishery under federal subsistence regulations (FP23-06a) would unnecessarily add regulatory complexity and create a considerable enforcement challenge. FQUs would no longer need a sportfish license and would be using identical gear and have identical limits to the sport fishery in the area.

Background

The closed waters of Women's Bay are intended to provide a buffer zone where the liberal gear types and harvest limits in both state and federal subsistence fisheries are not allowed in the areas closest to the river mouths of Women's Bay where fish tend to congregate. This area has a number of anadromous streams that support pink, chum, coho and introduced Chinook salmon, as well as Dolly Varden. While fishing is allowed under ADF&G sport fishing regulations in the closed area, conservative methods and means and bag limits are in place. Gear is limited to a single line with no more than 2 hooks and a daily bag limit of 5 salmon per day, of which, no more than 2 can be coho through September 15 and from September 16 through the end of the year, only 1 can be a coho salmon. Outside of the closed waters of Women's Bay,

both federal and state subsistence users can use gillnets of up to 50 fathoms and have a bag limit of 25 salmon per family member per household.

Three significant drainages flow into Women's Bay: Sargent, Russian and Salonie creeks; while several smaller drainages also contribute to the overall salmon populations and fisheries of the area. Monitoring of the three larger drainages consists of aerial surveys timed with peak pink salmon escapement and foot surveys during coho salmon spawning. The vast majority of fishing effort and harvest in the Women's Bay area occurs in the freshwaters of these three drainages outside of federal jurisdiction and in areas that are closed to both federal and state subsistence. Even though the closed area of Women's Bay is open to sport fishing, there is very little effort in this area. Many participants in the freshwater sport fishery are also FQUs, particularly those living in the Bell's Flats community. All FQUs are able to participate in both the fresh and saltwater sport fisheries in the area under ADF&G sport fishing regulations. A small subsistence fishery occurs in Women's Bay with occasional effort targeting coho salmon from Nyman's Peninsula.

Impact on Subsistence Users

If this closure is rescinded it would add regulatory complexity to an existing fishery without providing additional opportunity or addressing a conservation concern. Subsistence salmon fishing around the Kodiak area has historically been managed by ADF&G, even under federal regulations which often require a state subsistence fishing permit. Thus, users are familiar with state subsistence regulations as they have been following them for decades. Applying conflicting federal regulations would burden users in having to know which gear types they would be allowed to legally use, and without clear demarcation of federal boundaries they may unknowingly fish illegally and be subject to prosecution.

Impact on Other Users

Impacts to other users such as commercial and sport would be minimal except that in years of low abundance when managers may be more conservative.

Opportunity Provided by State

State customary and traditional use findings:

5 AAC 01.536. Customary and traditional subsistence uses of fish stocks and amounts necessary for subsistence uses

The Alaska Board of Fisheries finds that salmon and finfish other than salmon, except steelhead and rainbow trout, in the Kodiak Area, except that portion described in 5 AAC 18.200(g), are customarily and traditionally taken or used for subsistence.

The board finds that the following amounts of salmon and other finfish are reasonably necessary for subsistence uses in the Kodiak Area:

- (1) 26,800 - 44,700 salmon;
- (2) 21,000 - 35,000 rockfish;
- (3) 3,300 - 5,600 lingcod;
- (4) 550,000 - 900,000 usable pounds of finfish, other than salmon, rockfish, and lingcod.

Amounts Reasonably Necessary for Subsistence: Alaska state law requires the BOF to determine the amount of the harvestable portion of a fish population that is reasonably necessary for customary and traditional uses. This is an ANS. The BOF does this by reviewing extensive harvest data from all Alaskans, collected either by ADF&G or from other sources.

ANS provides the BOF with guidelines on typical numbers of fish harvested for customary and traditional uses under normal conditions. Fishing regulations can be re-examined if harvests for customary and traditional uses consistently fall below ANS. This may be for many reasons: fishing regulations, changes in abundance or distribution, or changes in human use patterns, just to name a few.

Conservation Issues

Rescinding this closure would allow for the overharvest of salmon by allowing the use of much more liberal and efficient gear types with greatly increased harvest limits. Depending on a federal in-season manager who may make the decision on the appropriate gear type does not give ADF&G the confidence to support rescinding this closure.

Enforcement Issues

Applying conflicting federal regulations would burden users to know which gear types they would be allowed to legally use, and without clear demarcation of federal boundaries they may unknowingly fish illegally and be subject to prosecution. There has not previously been a federal enforcement presence in this area, and it is unknown if a federal subsistence fishery would be monitored for compliance.

FP23-06b Executive Summary	
General Description	Fisheries Proposal FP23-06b requests to rescind the closure to harvest salmon by federally qualified subsistence users in the closed marine waters of Buskin River and implement a new rod and reel fishery that matches current State sport fish regulations.
Proposed Regulation	<p>Kodiak Area—Salmon</p> <p>§ __.27(e)(9)</p> <p><i>(iii) You may not subsistence fish for salmon in the following locations:</i></p> <p><i>(B) Buskin River closed waters—All waters inside of a line running from a marker on the bluff north of the mouth of the Buskin River at approximately 57°45.80' North latitude, 152°28.38' West longitude, to a point offshore at 57°45.35' North latitude, 152°28.15' West longitude, to a marker located onshore south of the river mouth at approximately 57°45.15' North latitude, 152°28.65' West longitude. However, you may take salmon for subsistence purposes, by rod and reel only. Season dates and harvest limits shall be the same as for taking fish under State of Alaska sport fishing regulations.</i></p> <p><i>(v) The annual limit for a subsistence salmon fishing permit is as follows:</i></p> <p>(B) In the remainder of the Kodiak Area not described in paragraphs (e)(9)(iii)(A) and (e)(9)(v)(B) of this section, there is no annual harvest limit for a subsistence salmon fishing permit holder.</p>
OSM Conclusion	Support
Kodiak/Aleutians Subsistence Regional Advisory Council Recommendation	Support with modification to allow rod and reel and remove reference to season dates and harvest limits shall be the same as taking fish under State of Alaska sport fishing regulations.
Interagency Staff Committee Comments	The Interagency Staff Committee found the staff analysis to be a thorough and accurate evaluation of the proposal and that it provides sufficient basis for the Regional Advisory Council recommendation and Federal Subsistence Board action on the proposal.
ADF&G Comments	Oppose

FP23-06b Executive Summary

Written Public Comments	None
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STAFF ANALYSIS
FP23-06b

ISSUES

Fisheries proposal FP23-06b, which is a parallel proposal to a fisheries closure review FCR21-16, was submitted by Rebecca Skinner and requests that the closed Federal public marine waters of Buskin River be rescinded and the regulations modified to allow the use of rod and reel to harvest salmon. Harvest limits would match State sport fishing regulations.

DISCUSSION

The proponent states that currently federally qualified subsistence users are prohibited from harvesting fish in an area that already allows State sport fish harvest in the closed marine waters of Buskin River. They further say that this change would provide a priority for federally qualified subsistence users and align regulations so there is less confusion on who can participate in the fishery.

Existing Federal Regulation

Kodiak Area—Salmon

§ __.27(e)(9)

(iii) You may not subsistence fish for salmon in the following locations:

(B) Buskin River closed waters—All waters inside of a line running from a marker on the bluff north of the mouth of the Buskin River at approximately 57°45.80' North latitude, 152°28.38' West longitude, to a point offshore at 57°45.35' North latitude, 152°28.15' West longitude, to a marker located onshore south of the river mouth at approximately 57°45.15' North latitude, 152°28.65' West longitude.

Proposed Federal Regulation

Kodiak Area—Salmon

§ __.27(e)(9)

(iii) You may not subsistence fish for salmon in the following locations:

*(B) Buskin River closed waters—All waters inside of a line running from a marker on the bluff north of the mouth of the Buskin River at approximately 57°45.80' North latitude, 152°28.38' West longitude, to a point offshore at 57°45.35' North latitude, 152°28.15' West longitude, to a marker located onshore south of the river mouth at approximately 57°45.15' North latitude, 152°28.65' West longitude. **However, you may take salmon for subsistence purposes, by rod and reel only. Season dates and harvest limits shall be the same as for taking fish under State of Alaska sport fishing regulations.***

(v) The annual limit for a subsistence salmon fishing permit is as follows:

(B) In the remainder of the Kodiak Area not described in paragraphs (e)(9)(iii)(A) and (e)(9)(v)(B) of this section, there is no annual harvest limit for a subsistence salmon fishing permit holder.

Existing State Subsistence Regulation

5 AAC 01.525

The following waters are closed to the subsistence taking of salmon;

(1) all waters of Near Island Channel that are bounded by a line from a point on Kodiak Island near Delarov Street at 57_ 47.62' N. lat., 152_ 22.78' W. long., to the northernmost point of Holiday Island at 57_ 47.27' N. lat., 152_ 22.60' W. long., to a point at the northernmost tip of Near Island at 57_ 47.30' N. lat., 152_ 23.16' W. long., to a point at the northernmost end of Uski Island south of the Dog Bay small boat harbor entrance at 57_ 46.92' N. lat., 152_ 24.56' W. long., and north to a point at the tip of the breakwater on Kodiak Island at 57_ 47.08' N. lat., 152_ 24.60' W. long.; in addition, from August 7 through September 30, all waters of Mill Bay and those waters bounded by a line from a point at Spruce Cape at 57_ 49.33' N. lat., 152_ 19.48' W. long., to the northernmost point of Woody Island at 57_ 47.91' N. lat., 152_ 19.85' W. long., to a point at the northernmost point of Holiday Island at 57_ 47.27' N. lat., 152_ 22.60' W. long., and to a point on Kodiak Island near Delarov Street at 57_ 47.62' N. lat., 152_ 22.78' W. long.;

Existing State Sport Fish Regulation

5 AAC 64.022

(a) Unless otherwise specified in this section, 5 AAC 64.051, or 5 AAC 64.060, or by an emergency order issued under AS 16.05.060, the following are the bag, possession, annual, and size limits, and special provisions for finfish and shellfish in the waters of the Kodiak Area:

(1) king salmon: may be taken from January 1 - December 31, as follows:

(A) in fresh waters:

(i) 20 inches or greater in length; bag and possession limit of two fish; annual limit of five king salmon; a harvest record is required as specified in 5 AAC 75.006;

(ii) less than 20 inches in length; bag and possession limit of 10 fish; king salmon less than 20 inches in length caught in fresh water do not count toward the annual limit;

(B) in salt waters: bag and possession limit of two fish; no size limit; no annual limit; a harvest record is not required;

(2) salmon, other than king salmon: may be taken from January 1 - December 31, as follows:

(A) 20 inches or greater in length; bag and possession limit of five fish, of which only two may be coho salmon and only two may be sockeye salmon;

(B) less than 20 inches in length; bag and possession limit of 10 fish

(8) in the Kodiak Road Zone, from September 16 - December 31, the bag and possession limit for coho salmon, 20 inches or greater in length, is one fish, except that in the following stocked waters the bag and possession limit for coho salmon, 20 inches or greater in length, is two fish:

Extent of Federal Public Lands/Waters

For the purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 36 CFR 242.3 and 50 CFR 100.3. All waters inside of a line running from a marker on a bluff north of the mouth of the Buskin River at approximately 57°45.80' North latitude, 152°28.38' West longitude, to a point offshore at 57°45.35' North latitude, 152°28.15' West longitude, to a marker located

onshore south of the river mouth at approximately 57°45.15' North latitude, 152°28.65' West longitude (Figure 1).

Federal Closure Area Marine Waters - Buskin River

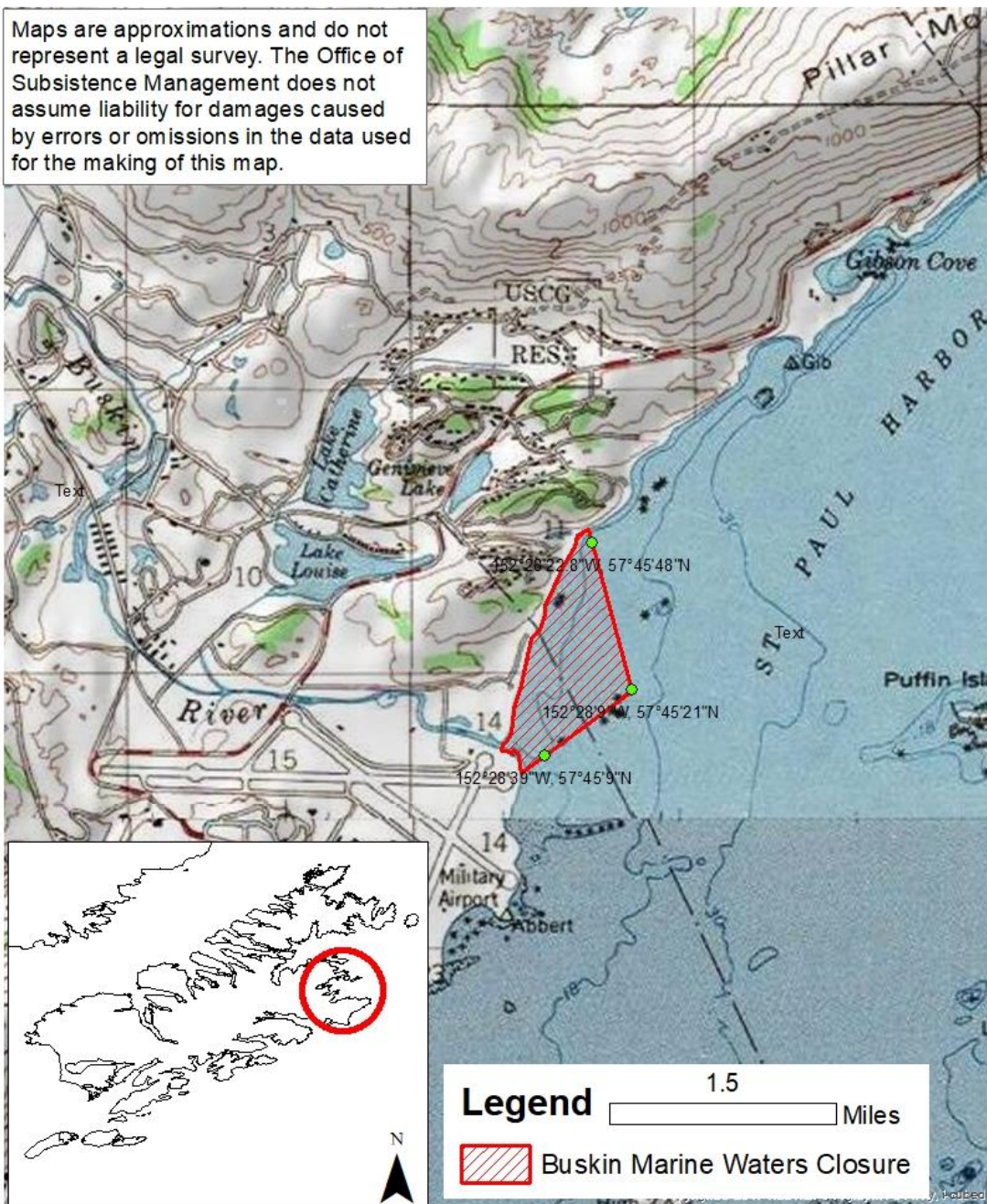


Figure 1. Marine Federal public waters closed to subsistence near the mouth of the Buskin River.

Customary and Traditional Use Determinations

Rural residents of Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base have a customary and traditional use determination for salmon for the Kodiak Area except the Mainland District.

Regulatory History

In 1992, the Federal Subsistence Management Program promulgated regulations governing the harvest of fish for subsistence uses in waters qualifying as "public lands" under ANILCA. (57 FR 22940). These regulations incorporated many provisions from State subsistence fishing regulations which previously applied to those waters. The closure under review in this analysis was incorporated into the Federal regulations in this manner, and has not been subsequently modified.

Fisheries emergency special actions were implemented for Womens Bay and Buskin River in recent history due to poor returns of salmon to the Buskin River drainage. This includes Emergency Special Action 9-SS-01-22 in 2022 that closed the take of Sockeye Salmon (*Oncorhynchus nerka*) by all users in the open marine water area, which was later rescinded under Emergency Special Action 9-RS-02-22. Emergency Special Action 9-RS-01-21 in 2021, which closed the take of Sockeye Salmon to all users in the Federal public waters of Womens Bay, and 9-SS-02-19 in 2019, which closed all Federal public waters at the mouth of the Buskin River in the Kodiak District to the take of Coho Salmon (*Oncorhynchus kisutch*).

Current Events Involving the Species

Fisheries closure review FCR21-16, for the same Buskin River mouth closure area under consideration in this proposal, is also under review during this regulatory cycle.

Biological Background

Annual Sockeye Salmon escapement returning to the Buskin River is estimated through a weir from May through July. The majority of fish returning to the system pass through a weir located at the outlet of Buskin Lake and the Catherine-Louise Lake weir is no longer in operation. Buskin Lake has a Sockeye Salmon escapement goal of 5,000 to 8,000 fish (Anderson et al. 2019). The Buskin River has seen both very strong and relatively weak Sockeye and Coho salmon runs over the past 10 years (**Table 1**). The 2021 escapement of 2,330 Sockeye Salmon was the lowest return of Sockeye Salmon in the past 10-year period (2012 – 2021). During 2013, one of the highest passages was recorded (16,178 fish) for that same 10-year period. In the most recent 5-year period, two years did not meet escapement for Sockeye Salmon (2018 and 2021).

The Buskin River supports one of the historically most productive Coho Salmon stocks in the Kodiak Management Area (Polum et al. 2019). Coho Salmon typically start returning in early to mid-August and continue into the fall. The escapement is monitored by a weir about a mile above the river mouth. The Buskin River has a Coho Salmon escapement goal of 4,700-9,600 fish. From 2012 to 2021, weir counts of Coho Salmon ranged from a high of 8,413 fish in 2014 to a low of 630 fish in 2020 (**Table 1**). During the

2020 season, the low count of 630 fish was considered a partial count due to weir being inoperable during mid-season. Other years such as 2015 were considered only partial weir counts due to a similar situation. These weir counts are not the total escapements and some years do not include the harvest data. The average annual weir count was 4,776 fish during this 10-year period.

Table 1. Annual weir counts of Sockeye and Coho salmon in the Buskin River from 2012 to 2021 with 10-year averages.

Year	Sockeye	Coho
2012	8,565	4,295
2013	16,178	5,765
2014	13,976	8,413
2015	8,719	4,271
2016	11,584	2,488
2017	7,222	5,559
2018	4,284	2,883
2019	12,297	5,537
2020	7,741	630
2021	2,330	7,914
Average	9,290	4,776

Cultural Knowledge and Traditional Practices

The subsistence practices of the rural residents of the Kodiak Area reflect the cultural traditions of the Alutiiq/Sugpiaq; the Koniag/Qikertarmut; and Eastern European, Asian, and American settlers. Indigenous populations have lived in the area for at least 7000 years, with subsistence economies largely based on the harvesting of maritime resources (Clark 1998). Key among these subsistence resources have been marine animals, shellfish, near-shore fisheries, sea or littoral birds and their eggs, and salmon harvested primarily from spawning areas (Clark 1998: 176). Salmon remain one of the primary components of subsistence diets for rural residents in this region (Wolf and Walker 1987, Fall and Walker 1993, Marchioni et al. 2016). Historically, some of the most-utilized harvest areas for subsistence salmon in the Kodiak archipelago have been the Buskin and Pasagshak Rivers located on the northern end of Kodiak Island and the southeast side of Afognak Island at Litnik (Anderson et al. 2016; Brown et al. 2021).

Today, the Kodiak Island Borough has a population of 13,383 residents (US Census Bureau 2020). 1,789 of these residents live at Kodiak Station, along the Buskin River (US Census 2020). Residents throughout the Kodiak Islands currently harvest salmon using subsistence gillnets and seines, rod and reel, and removal of salmon from commercial catch for home use (Marchioni et al. 2016). Access for salmon harvesting is often obtained through social networks, and salmon harvests are regularly shared between community members (Marchioni et al. 2016). Harvested salmon are typically dried, smoked, or canned to preserve the resource for use out of season (Marchioni et al. 2016). These subsistence practices form a key basis of cultural identity, family life, and community well-being in the area (Fall 1999). When salmon are scarce, area residents must rely upon secondary subsistence resources and/or turn to expensive store-

bought foods (Marchioni et al. 2016). According to the most recent Alaska subsistence and personal use fisheries report (Brown et al. 2021: 168):

The total reported subsistence salmon harvest for the Kodiak Area in 2018 was 17,459 fish, less than the reported 2017 harvest and well below the recent 5-year (2013–2017) and 10-year (2008–2017) averages of 26,390 salmon and 28,364 salmon, respectively. The lower reported harvest numbers correspond with the abnormally low return of sockeye salmon to the Buskin River system in 2018 (Polum et al. 2019: 37).

The significant reductions in salmon stock available for subsistence harvest in recent years have caused increasing concerns about food security and the maintenance of subsistence lifestyles in the region (KARAC 2021).

Harvest History

Both Federal and State subsistence users harvest primarily Sockeye and Coho salmon in marine waters near the mouth of the Buskin River. However, the marine waters adjacent to the mouth of the Buskin River are closed under both Federal and State subsistence regulation to protect salmon as they migrate through the estuary. The Buskin River supports the primary runs of Sockeye and Coho salmon to Women's Bay. Large subsistence and sport fish harvests occur on these returning stocks of the Buskin River. Historically, the marine waters beyond the closure are the single largest source of subsistence salmon harvested in Federal waters within the Kodiak-Aleutians Region (Witteveen et al. 2020). The Buskin River is also one of the most popular sport fishing locations because of road access and proximity to the City of Kodiak. Both Sockeye and Coho salmon are targeted in the sport fishery. In addition, commercial fisheries in the marine waters surrounding Kodiak Island also harvest a small number of Buskin River salmon (Anderson et al. 2019). Fish harvests from the Buskin River generally fluctuate with the escapement, but due to its proximity to the City of Kodiak, the Buskin River continues to support both subsistence and sport fishing even in years with small returns. The Sockeye Salmon fisheries occurs primarily in June due to the early run timing.

Subsistence Harvest of Coho and Sockeye Salmon

Between 2016 and 2020, the annual subsistence harvests for Sockeye Salmon have ranged from a low of 473 in 2018 to a high of 4,916 in 2017, with an annual average harvest of 3,891. Coho Salmon harvest varies drastically from year to year with a low harvest of 300 fish (6% of total harvest) and a high of 1,107 fish (69% of total harvest) (**Table 2**). Total number of permits issued for subsistence harvest has declined from 2016 to 2020.

Table 2. Buskin River drainage reported subsistence harvest by species 2016-2020 (Witteveen et al. 2020). Additional harvests of Chinook, Pink and Chum salmon occur and are not show in this table. Sockeye and Coho salmon makeup 95% of the total harvest.

Year	# of Permits	Sockeye # Fish	Sockeye % Total	Coho # Fish	Coho % Total
2016	255	4,743	89%	496	9%
2017	242	4,916	93%	300	6%
2018	108	473	29%	1,107	69%
2019	111	836	62%	340	25%
2020	163	1,620	64%	760	30%
Average	281	3,891	67%	865	28%

Sport Fish Harvest of Coho Salmon

Between 2010 and 2018, the annual sport harvest of Coho Salmon in the Buskin River has ranged from 1,793 to 5,388 with an average annual harvest of 3,293 fish (**Table 3**).

Table 3. Buskin River Coho Salmon sport fishery harvest 2010-2018 (Polum et al. 2019).

Year	Sport Harvest
2010	2,847
2011	3,640
2012	1,926
2013	4,926
2014	5,388
2015	4,889
2016	1,895
2017	2,337
2018	1,793
Average	3,293

Effects of the Proposal

If fisheries proposal FP23-06b is adopted, federally qualified subsistence users would have additional opportunity to harvest fish closer to town in the nearshore marine waters. It is unlikely that harvest rates would increase if this closure were rescinded. Rural residents of Kodiak are already harvesting salmon under State sport fish regulations and this change would allow Kodiak residents to choose which fishery they would like to participate in.

If FP23-06b is not adopted, there would be continued inconsistency between State sport, State subsistence and Federal subsistence regulations. Federally qualified subsistence users would not be eligible for priority consumptive use in times of resource restrictions.

OSM CONCLUSION

Support Proposal FP23-06b

Justification

Section 802(2) of ANILCA requires that subsistence uses by rural residents of Alaska shall by “the priority consumption uses of all such resources on the public lands of Alaska”. Currently, federally qualified subsistence users are not allowed to harvest salmon under Federal subsistence regulations in the same Federal public waters where the State sport fish harvest is allowed. Aligning State and Federal regulations would prevent Federal subsistence regulations from being more restrictive than State sport fishing regulations, and overall harvests levels would likely remain unaffected as federally qualified users are already harvesting in the State sport fishery.

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SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS

Kodiak/Aleutians Subsistence Regional Advisory Council

Support with modification of FP23-06b. In support of the Federal subsistence priority, this fishery would allow for subsistence harvest while also ensuring that conservation concerns are taken into consideration through the limited gear type.

The modified regulation should read:

§ __.27(e)(9)

(iii) *You may not subsistence fish for salmon in the following locations:*

*(B) Buskin River closed waters—All waters inside of a line running from a marker on the bluff north of the mouth of the Buskin River at approximately 57°45.80' North latitude, 152°28.38' West longitude, to a point offshore at 57°45.35' North latitude, 152°28.15' West longitude, to a marker located onshore south of the river mouth at approximately 57°45.15' North latitude, 152°28.65' West longitude. **However, you may take salmon for subsistence purposes, by rod and reel only. ~~Season dates and harvest limits shall be the same as for taking fish under State of Alaska sport fishing regulations.~~***

(v) *The annual limit for a subsistence salmon fishing permit is as follows:*

(B) In the remainder of the Kodiak Area not described in paragraphs (e)(9)(iii)(A) and (e)(9)(v)(B) of this section, there is no annual harvest limit for a subsistence salmon fishing permit holder.

INTERAGENCY STAFF COMMITTEE COMMENTS

The Interagency Staff Committee found the staff analysis to be a thorough and accurate evaluation of the proposal and that it provides sufficient basis for the Regional Advisory Council recommendation and Federal Subsistence Board action on the proposal.

ALASKA DEPARTMENT OF FISH AND GAME COMMENTS

Fisheries Proposal FP23-06b

This proposal would rescind the closure to federal subsistence fishing and allow for a federal subsistence fishery using rod and reel in the currently closed waters in front of the Buskin River. The regulations would mirror existing sport fishing regulations in the area.

Position

The Alaska Department of Fish & Game (ADF&G) is **OPPOSED** to this proposal. Foremost, Congress authorized the FSB to close, but not to open, a fish or wildlife harvest season as set forth in sections 815 and 816 of the Alaska National Interest Lands Conservation Act (ANILCA). Without statutory authorization, the FSB adopted a regulation improperly granting itself authority to open public lands to the taking of fish and wildlife (50 CFR § 100.19).

It would unnecessarily add regulatory complexity and create a considerable enforcement challenge. Federally qualified users (FQU) have already been eligible and have historically participated in state fisheries in the area to help meet their subsistence needs.

Background

The closed waters in front of the Buskin River are intended to protect the salmon runs returning to the Buskin River by creating a buffer zone where the liberal gear types and harvest limits allowed in federal and state subsistence fisheries are not allowed in the areas closest to the river mouth where fish tend to congregate. The Buskin River supports runs of sockeye, coho, pink and chum salmon as well as Dolly Varden, rainbow trout and steelhead and is one of the most important areas for subsistence fishing to the community of Kodiak.

While sport fishing is allowed in the closed area, conservative methods and means and bag limits are in place and sport fisheries are managed by emergency order similarly to the subsistence fishery. Sportfishing gear is limited to a single line with no more than 2 hooks and a daily bag limit of 5 salmon per day, of which, no more than 2 can be coho or sockeye through September 15 and from September 16 through the end of the year, only 1 can be a coho salmon. Outside of the closed waters of the Buskin River, both federal and state subsistence users can use gillnets of up to 50 fathoms and have a bag limit of 25 salmon per family member per household.

Monitoring of salmon runs to the Buskin River is conducted through a weir at the outlet of Buskin Lake that primarily counts returning sockeye salmon from mid-May through early August. This is an ADF&G project funded through the Office of Subsistence Management Fisheries Resource Monitoring Program. ADF&G uses weir counts from this project to refine and evaluate the Biological Escapement Goal for the drainage as well as make in season restrictions or liberalizations to both sport and subsistence fisheries. Similarly, from early August through the end of September, a weir is in place about 1 mile from the river mouth to monitor coho salmon returns with similar management practices and evaluation of the Sustainable Escapement Goal for the run.

The Buskin River supports both the largest subsistence and sport fishery in the Kodiak Area in terms of participation and often is one of the largest sources of harvest for both coho and sockeye salmon in the area for both fisheries and is vitally important to the Kodiak community. While sportfishing is allowed in the closed area in front of the Buskin River, the vast majority of sport fishing effort occurs in the freshwaters of the drainage outside of federal jurisdiction. In addition, FQUs are eligible to participate in the sport fishery and would be able to fish in the closed area with a sport fishing license. There is, however, very little sportfishing effort that occurs in the closed area relative to the significant subsistence fishery in the areas that are open just offshore and the significant sport fishery in the Buskin River.

Impact on Subsistence Users

This proposal would add regulatory complexity to an existing fishery without providing additional opportunity or addressing a conservation concern. FQUs would be able to use identical gear and have the exact same bag limits to the sport fishery. FQUs would also need to be cognizant of the boundaries in which they could use rod and reel under federal regulations and where they would cross over into the area in which state regulations would apply requiring them to carry a sport fishing license.

Impact on Other Users

This proposal could cause confusion among the other user groups as it layers on a new fishery on top of the pre-existing state sport fishery with different participating criteria.

Opportunity Provided by State

State customary and traditional use findings: The Alaska Board of Fisheries (BOF) has made positive customary and traditional use findings for salmon and finfish other than salmon, except steelhead and rainbow trout, in the Kodiak Area, except that portion described in 5 AAC 18.200(g), are customarily and traditionally taken or used for subsistence. (§ 5 AAC 01.536.(a))

Amounts Reasonably Necessary for Subsistence: Alaska state law requires the BOF to determine the amount of the harvestable portion of a fish population that is reasonably necessary for customary and traditional uses. This is an ANS. The BOF does this by reviewing extensive harvest data from all Alaskans, collected either by ADF&G or from other sources.

ANS provides the BOF with guidelines on typical numbers of fish harvested for customary and traditional uses under normal conditions. Fishing regulations can be re-examined if harvests for customary and traditional uses consistently fall below ANS. This may be for many reasons: fishing regulations, changes in abundance or distribution, or changes in human use patterns, just to name a few.

The ANS for salmon and other finfish in the Kodiak Area (§ 5 AAC 01.536.(b)):

- 1) 26,800 - 44,700 salmon;
- 2) 21,000 - 35,000 rockfish;
- 3) 3,300 - 5,600 lingcod;
- 4) 550,000 - 900,000 usable pounds of finfish, other than salmon, rockfish, and lingcod.

Conservation Issues

There are no known conservation issues in this area and the Buskin River is annually monitored by ADF&G and managed through existing regulations and emergency orders.

Enforcement Issues

If adopted, this proposal will create overlapping federal and state enforcement requirements that would lead to potential enforcement problems. There has not previously been a federal enforcement presence in this area, and it is unknown how a federal subsistence fishery would be monitored for compliance. The proposal also does not specify if a federal subsistence permit would be needed to participate in this fishery. In addition, the closed area near the Buskin River does not currently have demarcated federal jurisdiction boundaries and this proposal would create confusion as to which areas would be open for federal subsistence fisheries and which would require a sport fishing license.

FCR21-16 Executive Summary	
General Description	FCR21-16 is a routine review of the closure to harvest of salmon by federally qualified subsistence users in the closed marine waters of the Buskin River.
Current Regulation	<p>Kodiak Area – Salmon § __.27(e)(9) *** <i>(iii) You may not subsistence fish for salmon in the following locations:</i> ***</p> <p><i>(B) Buskin River closed waters—All waters inside of a line running from a marker on the bluff north of the mouth of the Buskin River at approximately 57°45.80' North latitude, 152°28.38' West longitude, to a point offshore at 57°45.35' North latitude, 152°28.15' West longitude, to a marker located onshore south of the river mouth at approximately 57°45.15' North latitude, 152°28.65' West longitude.</i></p>
OSM Conclusion	Rescind
Kodiak/Aleutians Subsistence Regional Advisory Council Recommendation	Take no action
Interagency Staff Committee Comments	The Interagency Staff Committee found the staff analysis to be a thorough and accurate evaluation of the proposal and that it provides sufficient basis for the Regional Council recommendation and Federal Subsistence Board action on the proposal.
ADF&G Comments	Retain status quo
Written Public Comments	None

**FEDERAL FISHERIES CLOSURE REVIEW
FCR21-16**

Issue

FCR21-16 is a standard review of a Federal fishery closure to salmon fishing in the marine waters near Buskin River. It is the Federal Subsistence Board's (Board) policy that Federal public lands and waters should be reopened as soon as practicable once the conditions that originally justified the closure have changed to such an extent that the closure is no longer necessary. The purpose of this closure review is to determine if the closure is still warranted and to ensure the closure does not remain in place longer than necessary. A parallel proposal FP23-06b was submitted by Kodiak resident, Rebecca Skinner to rescind this closure and implement a new rod and reel fishery that would match the State sport fish regulations.

Closure Location: Kodiak Area, Buskin River—Salmon

Current Federal Regulation

Kodiak Area – Salmon

§ __.27(e)(9)

(iii) You may not subsistence fish for salmon in the following locations:

(B) Buskin River closed waters—All waters inside of a line running from a marker on the bluff north of the mouth of the Buskin River at approximately 57°45.80' North latitude, 152°28.38' West longitude, to a point offshore at 57°45.35' North latitude, 152°28.15' West longitude, to a marker located onshore south of the river mouth at approximately 57°45.15' North latitude, 152°28.65' West longitude.

Current State Subsistence Regulation

Kodiak Area – Salmon

5 AAC 01.525

The following waters are closed to the subsistence taking of salmon;

(1) all waters of Near Island Channel that are bounded by a line from a point on Kodiak Island near Delarov Street at 57_ 47.62' N. lat., 152_ 22.78' W. long., to the northernmost point of Holiday Island at 57_ 47.27' N. lat., 152_ 22.60' W. long., to a point at the northernmost tip of

Near Island at 57_ 47.30' N. lat., 152_ 23.16' W. long., to a point at the northernmost end of Uski Island south of the Dog Bay small boat harbor entrance at 57_ 46.92' N. lat., 152_ 24.56' W. long., and north to a point at the tip of the breakwater on Kodiak Island at 57_ 47.08' N. lat., 152_ 24.60' W. long.; in addition, from August 7 through September 30, all waters of Mill Bay and those waters bounded by a line from a point at Spruce Cape at 57_ 49.33' N. lat., 152_ 19.48' W. long., to the northernmost point of Woody Island at 57_ 47.91' N. lat., 152_ 19.85' W. long., to a point at the northernmost point of Holiday Island at 57_ 47.27' N. lat., 152_ 22.60' W. long., and to a point on Kodiak Island near Delarov Street at 57_ 47.62' N. lat., 152_ 22.78' W. long.;

Current State Sport Fish Regulations

Kodiak Area – Salmon

5 AAC 64.022

(a) Unless otherwise specified in this section, 5 AAC 64.051, or 5 AAC 64.060, or by an emergency order issued under AS 16.05.060, the following are the bag, possession, annual, and size limits, and special provisions for finfish and shellfish in the waters of the Kodiak Area:

(1) king salmon: may be taken from January 1 - December 31, as follows:

(A) in fresh waters:

(i) 20 inches or greater in length; bag and possession limit of two fish; annual limit of five king salmon; a harvest record is required as specified in 5 AAC 75.006;

(ii) less than 20 inches in length; bag and possession limit of 10 fish; king salmon less than 20 inches in length caught in fresh water do not count toward the annual limit;

(B) in salt waters: bag and possession limit of two fish; no size limit; no annual limit; a harvest record is not required;

(2) salmon, other than king salmon: may be taken from January 1 - December 31, as follows:

(A) 20 inches or greater in length; bag and possession limit of five fish, of which only two may be coho salmon and only two may be sockeye salmon;

(B) less than 20 inches in length; bag and possession limit of 10 fish

(8) in the Kodiak Road Zone, from September 16 - December 31, the bag and possession limit for coho salmon, 20 inches or greater in length, is one fish, except that in the following stocked waters the bag and possession limit for coho salmon, 20 inches or greater in length, is two fish:

Regulatory Year Initiated: 1992

Extent of Federal Public Lands/Waters

Buskin River closed waters - All waters inside of a line running from a marker on the bluff north of the mouth of the Buskin River at approximately 57°45.80' North latitude, 152°28.38' West longitude, to a point offshore at 57°45.35' North latitude, 152°28.15' West longitude, to a marker located onshore south of the river mouth at approximately 57°45.15' North latitude, 152°28.65' West longitude. (Figure 1).

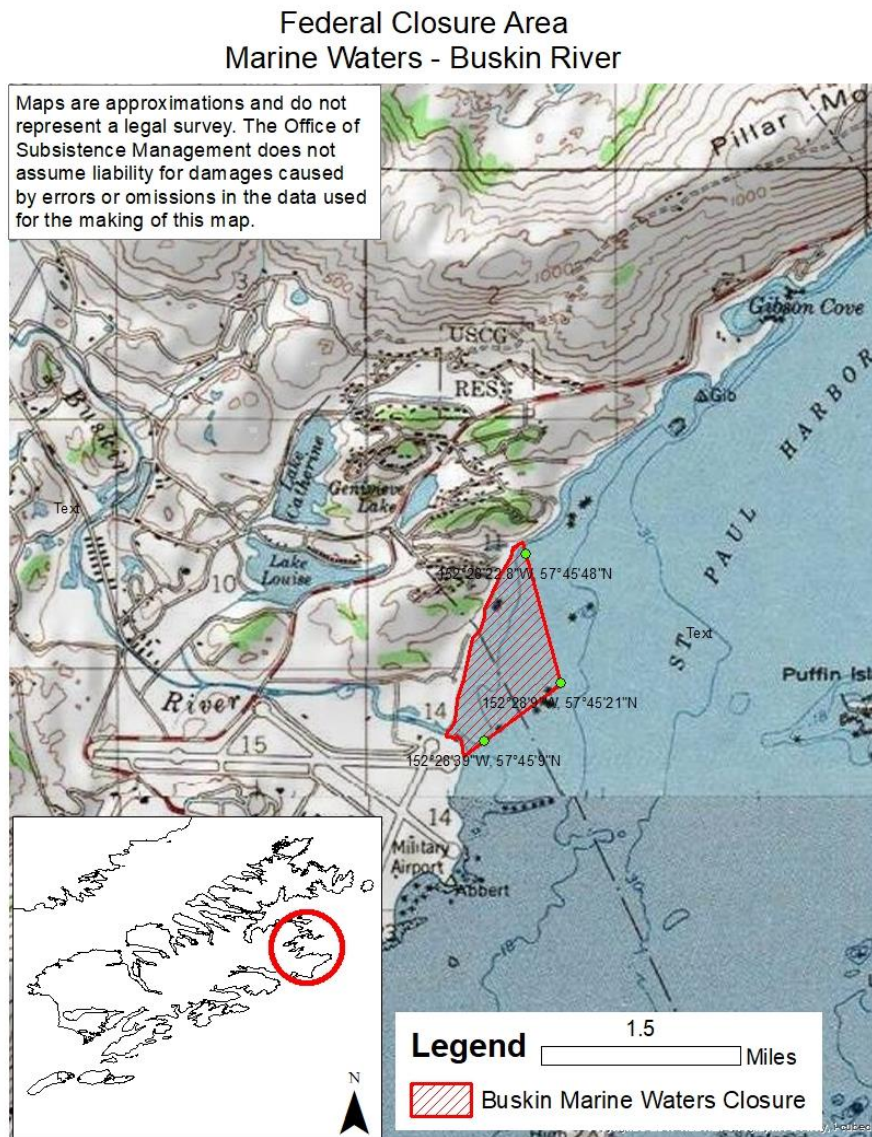


Figure 1. Federal closed marine waters adjacent to the Buskin River mouth.

Customary and Traditional Use Determination

Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base have a customary and traditional use determination for salmon for the Kodiak Area.

Regulatory History

In 1992, the Federal Subsistence Management Program promulgated regulations governing the harvest of fish for subsistence uses in waters qualifying as "public lands" under ANILCA. (57 FR 22940). These regulations incorporated many provisions from State of Alaska subsistence fishing regulations which previously applied to those waters. The closure under review in this analysis was incorporated into the Federal regulations in this manner, and has not been subsequently modified.

Fisheries emergency special actions were implemented for Women's Bay and Buskin River in recent history due to poor returns of salmon to the Buskin River drainage. This includes Emergency Special Action 9-SS-01-22 in 2022 and was rescinded under Emergency Special Action 9-RS-02-22 to allow the harvest of Sockeye Salmon in the marine waters. Emergency Special Action 9-RS-01-21 in 2021, which closed the take of Sockeye Salmon (*Oncorhynchus nerka*) to all users in the Federal public waters of Women's Bay, and 9-SS-02-19 in 2019, which closed all Federal public waters at the mouth of the Buskin River in the Kodiak District to the take of Coho Salmon (*Oncorhynchus kisutch*).

Current Events Involving the Species

A parallel fisheries proposal FP23-06b was submitted by Kodiak resident Rebecca Skinner that would rescind the Buskin River closure and modify the regulations to allow the use of rod and reel to harvest salmon. Harvest limits would remain the same as State sport fish regulations.

Closure last reviewed

A review was initiated during the 2021 fish proposal cycle and was recommended to be deferred by the Kodiak Aleutian Subsistence Regional Advisory Council to allow for additional feedback from the rural public in affected communities. The Board subsequently deferred the review until the 2023 fisheries regulatory cycle.

Justification for Original Closure

There is no Board justification for the original closure as it was incorporated from the State subsistence fishing regulations.

Council Recommendation for Original Closure:

N/A

State Recommendation for Original Closure:

N/A

Biological Background

Annual Sockeye Salmon escapement returning to the Buskin River is estimated through a weir from May through July. The majority of fish returning to the system pass through a weir located at the outlet of Buskin Lake and the Catherine-Louise Lake weir is no longer in operation. Buskin Lake has a Sockeye Salmon escapement goal of 5,000 to 8,000 fish (Anderson et al. 2019). The Buskin River has seen both very strong and relatively weak Sockeye and Coho salmon runs over the past 10 years (**Table 1**). The 2021 escapement of 2,330 Sockeye Salmon was the lowest return of Sockeye Salmon in the past 10-year period (2012 – 2021). During 2013, one of the highest passages was recorded (16,178 fish) for that same 10-year period. In the most recent 5-year period, two years did not meet escapement for Sockeye Salmon (2018 and 2021).

The Buskin River supports one of the historically most productive Coho Salmon stocks in the Kodiak Management Area (Polum et al. 2019). Coho Salmon typically start returning in early to mid-August and continue into the fall. The escapement is monitored by a weir about a mile above the river mouth. The Buskin River has a Coho Salmon escapement goal of 4,700-9,600 fish. From 2012 to 2021, weir counts of Coho Salmon ranged from a high of 8,413 fish in 2014 to a low of 630 fish in 2020 (**Table 1**). During the 2020 season, the low count of 630 fish was considered a partial count due to weir being inoperable during mid-season. Other years such as 2015 were considered only partial weir counts due to a similar situation. These weir counts are not the total escapements and some years do not include the harvest data. The average annual weir count was 4,776 fish during this 10-year period.

Table 1. Annual weir counts of Sockeye and Coho salmon in the Buskin River from 2012 to 2021 with 10-year averages.

Year	Sockeye	Coho
2012	8,565	4,295
2013	16,178	5,765
2014	13,976	8,413
2015	8,719	4,271
2016	11,584	2,488
2017	7,222	5,559
2018	4,284	2,883
2019	12,297	5,537
2020	7,741	630
2021	2,330	7,914
Average	9,290	4,776

Cultural Knowledge and Traditional Practices

The subsistence practices of the rural residents of the Kodiak Area reflect the cultural traditions of the Alutiiq/Sugpiaq, the Koniag/Qikertarmiut, and Eastern European and American settlers. Indigenous populations have lived in the area for at least 7000 years, with subsistence economies largely based on the harvesting of maritime resources (Clark 1998). Key among these subsistence resources have been marine animals, shellfish, near-shore fisheries, sea or littoral birds and their eggs, and salmon harvested primarily from spawning streams (Clark 1998: 176). Salmon remain one of the primary components of subsistence diets for rural residents in this region (Fall and Walker 1993; Marchioni et al. 2016; Wolfe and Walker 1987). Historically, some of the most-utilized harvest areas for subsistence salmon in the Kodiak archipelago have been the Buskin and Pasagshak Rivers located on the northern end of Kodiak Island and the southeast side of Afognak Island at Litnik (Anderson et al. 2016; Brown et al. 2021).

Today, the Kodiak Island Borough has a population of 13,383 residents (US Census Bureau 2020). 1,789 of these residents live at Kodiak Station, along the Buskin River (US Census 2020). Residents throughout the Kodiak Area currently harvest salmon using subsistence gillnets and seines, rod and reel, and removal of salmon from commercial catch for home use (Marchioni et al. 2016). Access for salmon harvesting is often obtained through social networks, and salmon harvests are regularly shared between community members (Marchioni et al. 2016). Harvested salmon are typically dried, smoked, or canned to preserve the resource for use out of season (Marchioni et al. 2016). These subsistence practices form a key basis of cultural identity, family life, and community well-being in the area (Fall 1999). When salmon are scarce, area residents must rely upon secondary subsistence resources and/or turn to expensive store-bought foods (Marchioni et al. 2016). The significant reductions in salmon stock available for subsistence harvest in recent years have caused increasing concerns about food security in the region (KARAC 2021). According to the most recent Alaska subsistence and personal use fisheries report (Brown et al. 2021: 168):

The total reported subsistence salmon harvest for the Kodiak Area in 2018 was 17,459 fish, less than the reported 2017 harvest and well below the recent 5-year (2013–2017) and 10-year (2008–2017) averages of 26,390 salmon and 28,364 salmon, respectively. The lower reported harvest numbers correspond with the abnormally low return of Sockeye Salmon to the Buskin River system in 2018 (Polum et al. 2019: 37).

Harvest History

Both Federal and State subsistence users harvest primarily Sockeye and Coho salmon in marine waters near the mouth of the Buskin River. However, the marine waters adjacent to the mouth of the Buskin River are closed under both Federal and State subsistence regulation to protect salmon as they migrate through the estuary. The Buskin River supports the primary runs of Sockeye and Coho salmon to Women's Bay. Large subsistence and sport fish harvests occur on these returning stocks of the Buskin River. Historically, the marine waters beyond the closure are the single largest source of subsistence salmon harvested in Federal waters within the Kodiak-Aleutians Region (Witteveen et al. 2020). The

Buskin River is also one of the most popular sport fishing locations because of road access and proximity to the City of Kodiak. Both Sockeye and Coho salmon are targeted in the sport fishery. In addition, commercial fisheries in the marine waters surrounding Kodiak Island also harvest a small number of Buskin River salmon (Anderson et al. 2019). Fish harvests from the Buskin River generally fluctuate with the escapement, but due to its proximity to the City of Kodiak, the Buskin River continues to support both subsistence and sport fishing even in years with small returns. The Sockeye Salmon fisheries occurs primarily in June due to the early run timing.

Subsistence Harvest of Coho and Sockeye Salmon

Between 2016 and 2020, the annual subsistence harvests for Sockeye Salmon have ranged from the low in 2018 with 473 to the high in 2017 with 4,916, with an annual average of 3,891. Coho Salmon harvest varies drastically from year to year with a low harvest of 300 fish (6% of total harvest) and a high of 1,107 fish (69% of total harvest) (Table 2). Total number of permits issued for subsistence harvest has declined from 2016 to 2020.

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Sport Fish Harvest of Coho Salmon

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Table 3. Buskin River Coho Salmon sport fishery harvest 2010-2018 (Polum et al. 2019).

Year	Sport Harvest
2010	2,847
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2012	1,926
2013	4,926
2014	5,388
2015	4,889
2016	1,895
2017	2,337
2018	1,793
Average	3,293

Effects

Currently, harvest of Sockeye and Coho salmon is allowed under State sport fish regulation in this area while harvest is prohibited by federally qualified subsistence users. If the closure were rescinded, federally qualified subsistence users would be allowed to use all of the gear types currently listed on the permit stipulations which would include the use of nets. Because salmon congregate at the mouth of the river and have in recent history shown years of periodic low abundance, this could cause a conservation concern considering the harvest would take place in the marine waters, below the weir. To conserve fish populations, the Federal in-season manager could issue an emergency special action for up to 60 days to set provisions for the fishery, such as stipulating gear types like rod and reel only and setting conservative harvest limits.

If the closure were retained, sport harvest of salmon would continue while federally qualified subsistence users would be prohibited from harvesting salmon under Federal subsistence regulations in this location. There is opportunity for harvest outside of these closed waters.

If the closure were rescinded and the regulation modified to mirror State sport fish methods and harvest limits as suggested by FP23-06a, this would provide a new opportunity for subsistence harvest in an area that already allows sport harvest. Harvest would likely remain near the same level because rural residents are already harvesting fish under State sport fishing regulations. This would cause regulatory complexity, while providing a rural priority for subsistence use and during times of low abundance by limiting the fishery to federally qualified subsistence users only.

OSM CONCLUSION:

- Retain the Status Quo
- Rescind the Closure
- Modify the Closure
- Defer Decision on the Closure or Take No Action

The modified regulation should read:

Kodiak Area – Salmon

§ __.27(e)(9)

(iii) *You may not subsistence fish for salmon in the following locations:*

(B) Buskin River closed waters—All waters inside of a line running from a marker on the bluff north of the mouth of the Buskin River at approximately 57°45.80' North latitude, 152°28.38' West longitude, to a point offshore at 57°45.35' North latitude, 152°28.15' West longitude, to a marker located onshore south of the river mouth at approximately 57°45.15' North latitude, 152°28.65' West longitude.

Justification

This relatively small area of marine water at the mouth of the Buskin River under Federal jurisdiction is currently closed to the harvest of salmon by federally qualified subsistence users but remains open to other uses. Federal subsistence opportunity should also be provided to comply with the rural preference mandated by ANILCA. The Federal in-season manager has been delegated authority to open or close Federal subsistence fishing periods or areas provided under codified regulations and to specify methods and means; to specify permit requirements; and to set harvest and possession limits for Federal subsistence fisheries. The in-season manager can use this authority to manage the fishery in the short term. It is unlikely the harvest level would rise considering a majority of the federally qualified subsistence users are already harvesting fish under the State sport fish regulations in these waters. By rescinding the closure, the Council could take action on the modification that was submitted for FP23-06b. Recent years have had periodically poor runs of Sockeye Salmon, however the weir data provides in-season information regarding the run strength to provide timely management actions to protect the fishery if needed, or limit the fishery to federally qualified subsistence users only.

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SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS

Kodiak/Aleutians Subsistence Regional Advisory Council

No action taken on FCR21-16. Due to the Council's action on FP23-06b to rescind the closure and allow the use of rod and reel to harvest salmon in the marine waters near the Buskin River mouth, the Council took no action on this closure review.

INTERAGENCY STAFF COMMITTEE COMMENTS

The Interagency Staff Committee found the staff analysis to be a thorough and accurate evaluation of the proposal and that it provides sufficient basis for the Regional Council recommendation and Federal Subsistence Board action on the proposal.

ALASKA DEPARTMENT OF FISH AND GAME COMMENTS

Fisheries Closure Review FCR21-16

This is a routine review of a federal closure to subsistence salmon fishing in the marine waters near the mouth of the Buskin River.

Position

The Alaska Department of Fish & Game (ADF&G) SUPPORTS the closure remaining in place until such time as the Federal Subsistence Board (FSB) can reconcile the legality of effectively opening a federal fishery. Congress authorized the FSB to close, but not to open, a fish or wildlife harvest season as set forth in sections 815 and 816 of the Alaska National Interest Lands Conservation Act (ANILCA). Without statutory authorization, the FSB adopted a regulation improperly granting itself authority to open public lands to the taking of fish and wildlife (50 CFR § 100.19).

These areas are currently open under state regulations; however, historically there has been little to no harvest in them and all federally qualified users (FQU) have been eligible to participate in these fisheries. Rescinding the closure and replacing it with a rod and reel fishery under federal subsistence regulations would unnecessarily add regulatory complexity and create considerable enforcement challenges.

Background

The closed waters in front of the Buskin River are intended to protect the salmon runs returning to the Buskin River by creating a buffer zone where the liberal gear types and harvest limits allowed in federal and state subsistence fisheries are not allowed in the areas closest to the river mouth where fish tend to congregate. The Buskin River supports runs of sockeye, coho, pink and chum salmon as well as Dolly

Varden, rainbow trout and steelhead and is one of the most important areas for subsistence fishing to the community of Kodiak.

While fishing is allowed under ADF&G sportfishing regulations in the closed area, conservative methods and means and bag limits are in place and sport fisheries are managed by emergency order similarly to the subsistence fishery. Sportfishing gear is limited to a single line with no more than 2 hooks and a daily bag limit of 5 salmon per day, of which, no more than 2 can be coho or sockeye through September 15 and from September 16 through the end of the year, only 1 can be a coho salmon. Outside of the closed waters of the Buskin River, both federal and state subsistence users can use gillnets of up to 50 fathoms and have a bag limit of 25 salmon per family member per household.

Monitoring of salmon runs to the Buskin River is conducted through a weir at the outlet of Buskin Lake that primarily counts returning sockeye salmon from mid-May through early August. This is an ADF&G project funded through the Office of Subsistence Management Fisheries Resource Monitoring Program. ADF&G uses weir counts from this project to refine and evaluate the Biological Escapement Goal for the drainage as well as make in season restrictions or liberalizations to both sport and subsistence fisheries. Similarly, from early August through the end of September, a weir is in place about one mile from the river mouth to monitor coho salmon returns with similar management practices and evaluation of the Sustainable Escapement Goal for the run.

The Buskin River supports both the largest subsistence and sport fishery in the Kodiak area in terms of participation and often is one of the largest sources of harvest for both coho and sockeye salmon in the area for both fisheries and is vitally important to the Kodiak community. The vast majority of sportfishing effort occurs in the freshwaters of the drainage outside of federal jurisdiction. In addition, FQUs have been eligible to participate in the sport fishery and have been able to fish in the closed area. There is, however, very little sportfishing effort that occurs in the closed area relative to the significant subsistence fishery in the areas that are open just offshore and the significant sport fishery in the Buskin River.

Impact on Subsistence Users

This proposal would add regulatory complexity which would only serve to confuse subsistence users without providing any additional opportunity. FQUs would be able to use identical gear and have the exact same bag limits as they had if they were historically fishing under state regulations; however, they would be only able to lawfully fish under federal subsistence regulations in the marine waters around the Buskin River. They would have to be cognizant of the boundaries where federal regulations stop applying and state regulations apply where they would have to carry a sport fishing license in order to fish with rod and reel.

Impact on Other Users

There would be minimal impact on other users as any FQUs that would start fishing under federal regulations would have been historically fishing under state regulations so no additional fishing effort is expected. Despite this minimal impact for those who do take advantage of fishing in this area, there is a possibility of confusion between the regulations and boundaries.

Opportunity Provided by State

State customary and traditional use findings:

5 AAC 01.536. Customary and traditional subsistence uses of fish stocks and amounts necessary for subsistence uses

The Alaska Board of Fisheries finds that salmon and finfish other than salmon, except steelhead and rainbow trout, in the Kodiak Area, except that portion described in 5 AAC 18.200(g), are customarily and traditionally taken or used for subsistence.

The board finds that the following amounts of salmon and other finfish are reasonably necessary for subsistence uses in the Kodiak Area:

(1) 26,800 - 44,700 salmon;

Conservation Issues

There are no known conservation issues in this area and the Buskin River is annually monitored by ADF&G and managed through existing regulations and emergency orders.

Enforcement Issues

This proposal will create overlapping federal and state enforcement requirements that would likely lead to enforcement issues. It is unknown how a federal subsistence fishery would be monitored, if at all, for compliance. Also, clear boundary markers or other demarcations would be needed to show where federal boundaries begin and end.

FCR21-18 Executive Summary	
General Description	FCR21-18 is a routine review of the closure to harvest of salmon by federally qualified subsistence users in the closed marine waters of Afognak Bay.
Current Regulation	<p>Kodiak Area-Salmon</p> <p>§__.27(e)(9) Kodiak Area</p> <p>***</p> <p><i>(iii) You may not subsistence fish for salmon in the following locations:</i></p> <p style="text-align: center;"><i>(D) In Afognak Bay north and west of a line from the tip of Last Point to the tip of River Mouth Point.</i></p>
OSM Conclusion	Rescind
Kodiak/Aleutians Subsistence Regional Advisory Council Recommendation	Rescind
Interagency Staff Committee Comments	<p>The Interagency Staff Committee (ISC) acknowledges that this closure is out of compliance with Title VIII of ANILCA by being closed to fishing by federally qualified subsistence users while allowing for sport fishing under State regulations. The Federal Subsistence Board (Board) would need to take action to bring this situation back into compliance with ANILCA. The Board could modify the closure by closing to all uses. The Board could also rescind the closure and provide a priority consumptive use to federally qualified subsistence users.</p> <p>The Regional Advisory Council has recommended the closure be rescinded, bringing this fishery back into compliance with ANILCA. In the absence of this closure standard, area Federal subsistence regulations would apply which could present conservation concerns. Permanent regulations would be the preferable solution to address possible conservation concerns while still providing a meaningful priority to federally qualified subsistence users.</p> <p>Until the Board receive and takes action on regulatory proposals, federal managers can use their delegated authority if conservation concerns arise. The ISC recognizes that unless modified by the Board,</p>

FCR21-18 Executive Summary	
	current Fisheries delegation of authority letters limit Federal managers to emergency special actions (actions lasting no longer than 60 days).
ADF&G Comments	Retain status quo
Written Public Comments	None

FEDERAL FISHERIES CLOSURE REVIEW
FCR21-18

Issue

FCR21-18 is a standard review of a Federal fishery closure to salmon fishing in the marine waters adjacent to the mouth of the Afognak River in Afognak Bay. It is the Federal Subsistence Board's (Board) policy that Federal public lands and waters should be reopened as soon as practicable once the conditions that originally justified the closure have changed to such an extent that the closure is no longer necessary. The purpose of this closure review is to determine if the closure is still warranted and to ensure the closure does not remain in place longer than necessary.

Closure Location: Afognak Bay—Salmon

Current Federal Regulation**Kodiak Area—Salmon**

§__.27(e)(9)

(iii) You may not subsistence fish for salmon in the following locations:

(D) In Afognak Bay north and west of a line from the tip of Last Point to the tip of River Mouth Point.

Closure Dates: Year-round

Current State Regulation**Kodiak Area – Salmon**

5 AAC 01.525

The following waters are closed to the subsistence taking of salmon:

(4) all waters closed to commercial salmon fishing in the Barabara Cove, Chiniak Bay, Saltery Cove, Pasagshak Bay, Monashka Bay and Anton Larsen Bay as described in 5 AAC 18.350, and all waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay

Creek and north and west of a line from the tip of Last Point to the tip of River Mouth Point in Afognak Bay;

Current State Sport Fish Regulation

Kodiak Area-Salmon

5 AAC 64.022

(a) Unless otherwise specified in this section, 5 AAC 64.051, or 5 AAC 64.060, or by an emergency order issued under AS 16.05.060, the following are the bag, possession, annual, and size limits, and special provisions for finfish and shellfish in the waters of the Kodiak Area:

(1) king salmon: may be taken from January 1 - December 31, as follows:

(A) in fresh waters:

(i) 20 inches or greater in length; bag and possession limit of two fish; annual limit of five king salmon; a harvest record is required as specified in 5 AAC 75.006;

(ii) less than 20 inches in length; bag and possession limit of 10 fish; king salmon less than 20 inches in length caught in fresh water do not count toward the annual limit;

(B) in salt waters: bag and possession limit of two fish; no size limit; no annual limit; a harvest record is not required;

(2) salmon, other than king salmon: may be taken from January 1 - December 31, as follows:

(A) 20 inches or greater in length; bag and possession limit of five fish, of which only two may be coho salmon and only two may be sockeye salmon;

(B) less than 20 inches in length; bag and possession limit of 10 fish

(c) In the Kodiak Remote Zone, the following bag and possession limits apply to salmon, other than king salmon:

(1) for salmon, other than king salmon, 20 inches or greater in length, the bag limit is five fish and 10 fish in possession;

(2) for salmon, other than king salmon, less than 20 inches in length, the bag and possession limit is 10 fish.

Regulatory Year Initiated: 1992

Extent of Federal Public Lands/Waters

For the purposes of this discussion, the phrase "Federal public waters" is defined as those waters described under 36 CFR 242.3 and 50 CFR 100.3 This proposal will pertain to Federal marine waters of the Pacific Ocean enclosed by the boundaries of Womens Bay, Gibson Cove, an area defined on either side of the mouth of the Karluk River extending seaward 3,000 feet from shoreline, and all waters within three nautical miles of Afognak Island (Figure 1).

Federal Closure Area
Afognak Bay - Last Point to Rivermouth Point

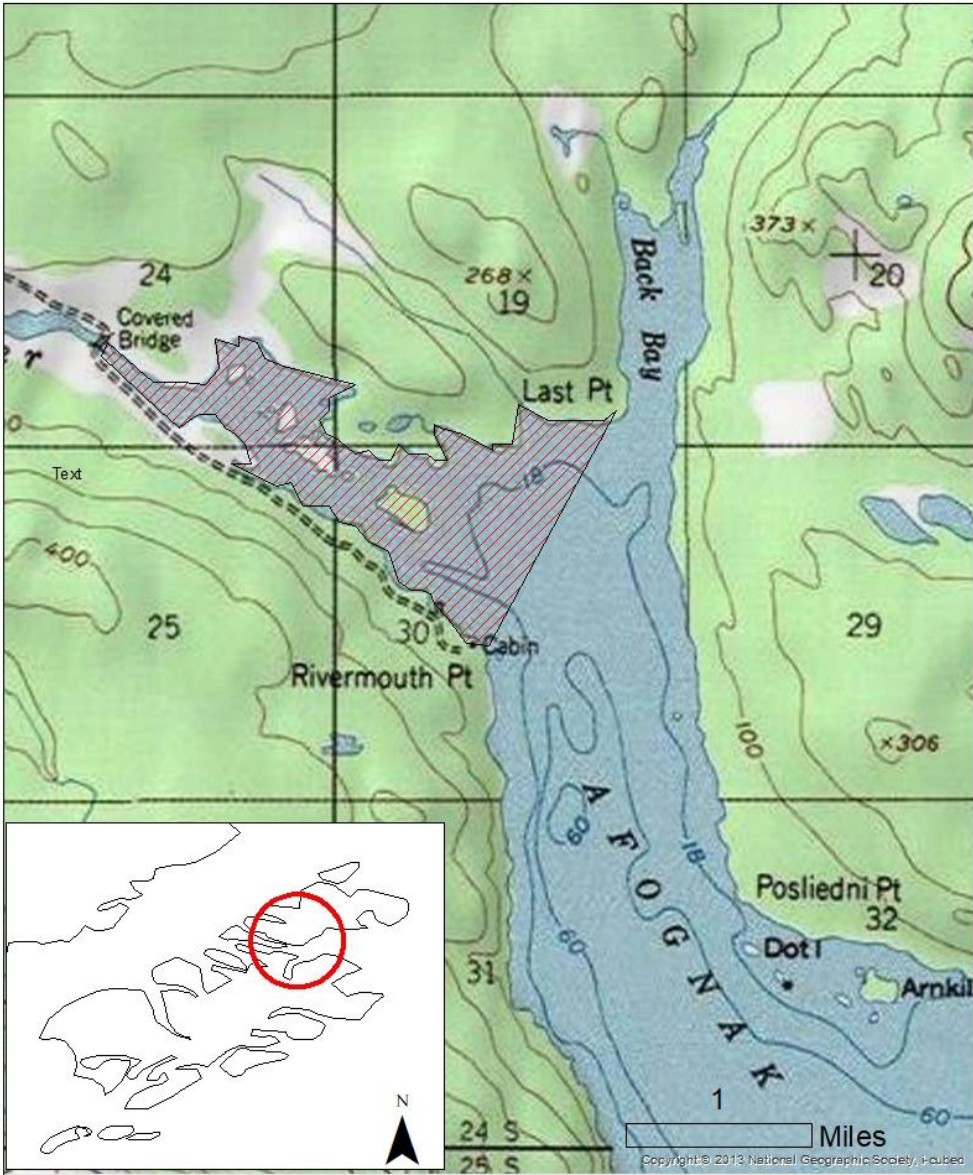


Figure 1. Federal closure area in Afognak Bay, Afognak Island.

Customary and Traditional Use Determination

Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base have a customary and traditional use determination for salmon for the Kodiak Area.

Regulatory History

In 1992, the Federal Subsistence Management Program promulgated regulations governing the harvest of fish for subsistence uses in waters qualifying as "public lands" under ANILCA. (57 FR 22940). These regulations incorporated many provisions from State subsistence fishing regulations, which previously applied to those waters. The closure under review in this analysis was incorporated into the Federal regulations in this manner and has not been subsequently modified.

Closure Last Reviewed

A review was initiated during the 2021 fish proposal cycle and was recommended to be deferred by the Kodiak Aleutian Subsistence Regional Advisory Council to allow for additional feedback from the rural public in affected communities. The Board subsequently deferred the review until the 2023 fisheries regulatory cycle.

Justification for Original Closure

There is no Federal Subsistence Board justification for the original closure as it was incorporated from the State subsistence fishing regulations.

Council Recommendation for Original Closure

N/A

State Recommendation for Original Closure

N/A

Biological Background

The Afognak (known locally as Litnik) Lake watershed is located on the southeast side of Afognak Island and supports Sockeye Salmon (*Oncorhynchus nerka*), Coho Salmon (*O. kisutch*) and Pink Salmon (*O. gorbuscha*) runs. Afognak Lake drains through Afognak River which flows into Afognak Bay (**Figure 1**). Afognak Bay is part of the Alaska Maritime National Wildlife Refuge and is where most localized subsistence Sockeye Salmon fishing occurs (Ruhl 2017). The marine waters adjacent to the mouth of the Afognak River are closed under both Federal and State subsistence regulation to protect salmon as they migrate through the estuary.

The Afognak River weir is located approximately 0.8 km above the outlet of the Afognak River and operates from mid-May to mid-August. Currently, the Afognak River has an escapement goal of 20,000-

50,000 Sockeye Salmon. The Afognak River has seen relatively weak Sockeye Salmon returns in recent years (**Table 1**). Between 2010 and 2021, the annual Sockeye Salmon escapement ranged from 17,601 to 51,821 fish, with a 12-year average escapement of 34,124 fish. Sockeye Salmon returns have been below average since 2016, with the lowest return of 17,601 fish occurring in 2018. Monitoring of adult Coho Salmon through the weir into Afognak Lake has been secondary to monitoring Sockeye Salmon escapement (Ruhl 2017). Because of budgetary constraints, the weir is often removed before the Coho run is complete. Coho Salmon escapement estimates are often incomplete and dependent on run timing. There is no escapement goal for Coho or Pink Salmon returning to Afognak Lake.

Table 1. Afognak (Litnik) River Escapement Count for Sockeye, Coho and Pink salmon 2010-2021. (ADF&G 2021 Fish Counts). No average is provided for Coho or Pink salmon because they are partial counts.

Year	Sockeye Salmon	Coho Salmon*	Pink Salmon*
2010	51821	10288	62237
2011	48588	2700	4241
2012	41146	5701	111928
2013	40888	13090	17400
2014	35704	3224	18408
2015	36780	181	3203
2016	32459	4	
2017	21411	107	3074
2018	17601	2494	11400
2019	26817	18	460
2020	24284	388	1569
2021	31997	35	197
12-year average	34,124		

Cultural Knowledge and Traditional Practices

The subsistence practices of the rural residents of the Kodiak Area reflect the cultural traditions of the Alutiiq/Sugpiaq; the Koniag/Qikertarmiut; and Eastern European, Asian, and American settlers. Indigenous populations have lived in the area for at least 7000 years, with subsistence economies largely based on the harvesting of maritime resources (Clark 1998). Key among these subsistence resources have been marine animals, shellfish, near-shore fisheries, sea or littoral birds and their eggs, and salmon harvested primarily in spawning areas (Clark 1998: 176). Salmon remain one of the primary components of subsistence diets for rural residents in this region (Fall and Walker 1993; Marchioni et al. 2016; Wolf and Walker 1987). Historically, some of the most-utilized harvest areas for subsistence salmon in the Kodiak archipelago have been the Buskin and Pasagshak Rivers located on the northern end of Kodiak Island and the southeast side of Afognak Island at Litnik (Anderson et al. 2016; Brown et al. 2021).

Today, the Kodiak Island Borough has a population of 13,383 residents (US Census Bureau 2020). Residents throughout the Kodiak Area currently harvest salmon using subsistence gillnets and seines, rod

and reel, and removal of salmon from commercial catch for home use (Marchioni et al. 2016). Access for salmon harvesting is often obtained through social networks, and salmon harvests are regularly shared between community members (Marchioni et al. 2016). Harvested salmon are typically dried, smoked, or canned to preserve the resource for use out of season (Marchioni et al. 2016). These subsistence practices form a key basis of cultural identity, family life, and community well-being in the area (Fall 1999). When salmon are scarce, area residents must rely upon secondary subsistence resources and/or turn to expensive store-bought foods (Marchioni et al. 2016). According to the most recent Alaska subsistence and personal use fisheries report (Brown et al. 2021: 168), “the total reported subsistence salmon harvest for the Kodiak Area in 2018 was 17,459 fish, less than the reported 2017 harvest and well below the recent 5-year (2013–2017) and 10-year (2008–2017) averages of 26,390 salmon and 28,364 salmon, respectively.” The significant reductions in salmon stock available for subsistence harvest in recent years have caused increasing concerns about food security and the ability to maintain subsistence lifestyles in the region (KARAC 2021).

Harvest History

Subsistence harvest for salmon is open throughout the year in most Federal public waters of the Kodiak management area with a subsistence fishing permit. Historically, the most utilized subsistence fishery areas under Federal regulations are the marine waters in proximity to the Buskin River on the north end of Kodiak Island and the marine waters of Afognak Bay on the southeast side of Afognak Island. Both areas are part of the Alaska Maritime National Wildlife Refuge (Fall. 2020). Sockeye Salmon are the primary species harvested by federally qualified subsistence users with a 3-year average harvest of 216 fish (Table 1) Coho Salmon are the second most frequently harvested fish with a 3-year average harvest of 48 fish. Fish harvested under State sport fish regulation in the Kodiak management area are estimated through the Alaska Sport Fishing Harvest Survey. Because of low response rates, there are no estimates of Sockeye or Coho Salmon harvests in the fresh water streams of Afognak Island (Dye, 2020).

Table 1. Federal Subsistence Salmon harvest in the Kodiak Area (Fall 2020).

Year	Permits Issued	Permits Returned	Chinook Salmon	Sockeye Salmon	Coho Salmon	Chum Salmon	Pink Salmon	Total
2015	19	19	0	53	10	0	0	63
2016	51	42	13	168	65	0	0	246
2017	55	29	0	428	68	0	12	508
Average	42	30	4	216	48	0	4	272

Effects

According to Title VIII, section 804 of the Alaska National Interest Lands Conservation Act (ANILCA), “...the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over taking on such lands of fish and wildlife for other purposes.” There are currently nonsubsistence uses permitted in this area making the current situation out of compliance with Title VIII of ANILCA. Rescinding the closure would provide Federal opportunity to harvest salmon in the Russell Creek drainage, thereby providing priority consumptive use to federally qualified subsistence users.

If the closure is rescinded, federally qualified subsistence users would be allowed to harvest salmon using the methods described on the Federal permit which allows the use of nets and a more liberal harvest than sport harvest. To conserve fish populations, the Federal in-season manager could issue an emergency special action for up to 60 days to set provisions for the fishery, such as stipulating gear types like rod and reel only and setting conservative harvest limits. If the inseason manager chose to mirror State sport fish regulations, harvest would likely remain near the same level because rural residents are already harvesting fish under State sport fishing regulations. This would cause regulatory complexity, while providing a rural priority for subsistence use and during times of low abundance by limiting the fishery to federally qualified subsistence users only.

OSM CONCLUSION

- Retain the Status Quo**
- Rescind the Closure**
- Modify the Closure**
- Defer Decision on the Closure or Take No Action**

The modified regulation should read:

Kodiak Area–Salmon

§__.27(e)(9) Kodiak Area

(iii) You may not subsistence fish for salmon in the following locations:

~~(D) In Afognak Bay north and west of a line from the tip of Last Point to the tip of River Mouth Point.~~

Justification

This portion of Afognak Bay is currently closed to the harvest of salmon by federally qualified subsistence users but remains open to other uses. Section 802(2) of ANILCA requires that subsistence uses by rural residents of Alaska shall by “the priority consumption uses of all such resources on the public lands of Alaska”. Federal subsistence opportunity should also be provided to comply with the rural preference mandated by ANILCA. The Federal in-season manager has been delegated authority to open or close Federal subsistence fishing periods or areas provided under codified regulations and to specify methods and means; to specify permit requirements; and to set harvest and possession limits for Federal subsistence fisheries. The in-season manager can use this authority to manage the fishery in the short term. Harvests levels would likely remain unaffected as federally qualified users already participate in the State sport fishery. A proposal outlining specific parameters can be submitted during a future fisheries regulatory cycle if desired.

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SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS

Kodiak/Aleutians Subsistence Regional Advisory Council

Rescind the closure on FCR21-18. The Council recommends rescinding the closure because it would bring the Federal subsistence regulations in compliance with the rural subsistence consumptive priority set forth in Title VIII of ANILCA.

INTERAGENCY STAFF COMMITTEE COMMENTS

The Interagency Staff Committee (ISC) acknowledges that this closure is out of compliance with Title VIII of ANILCA by being closed to fishing by federally qualified subsistence users while allowing for sport fishing under State regulations. The Federal Subsistence Board (Board) would need to take action to bring this situation back into compliance with ANILCA. The Board could modify the closure by closing to all uses. The Board could also rescind the closure and provide a priority consumptive use to federally qualified subsistence users.

The Council has recommended the closure be rescinded, bringing this fishery back into compliance with ANILCA. In the absence of this closure, standard area Federal subsistence regulations would apply which could present conservation concerns. Permanent regulations would be the preferable solution to address possible conservation concerns while still providing a meaningful priority to federally qualified subsistence users.

Until the Board takes action on regulatory proposals, Federal managers can use their delegated authority if conservation concerns arise. The ISC recognizes that unless modified by the Board, current Fisheries delegation of authority letters limit Federal managers to emergency special actions (actions lasting no longer 60 days).

ALASKA DEPARTMENT OF FISH AND GAME COMMENTS

Fisheries Closure Review FC21-18

This is a routine closure review to determine if the current federal subsistence fisheries closure in the marine waters of Afognak Bay is still warranted.

Position

The Alaska Department of Fish & Game (ADF&G) **SUPPORTS** the closure remaining in place until such time as the Federal Subsistence Board (FSB) can reconcile the legality of effectively opening a fishery. Congress authorized the FSB to close, but not to open, a fish or wildlife harvest season as set forth in sections 815 and 816 of the Alaska National Interest Lands Conservation Act (ANILCA).

Without statutory authorization, the FSB adopted a regulation improperly granting itself authority to open public lands to the taking of fish and wildlife (50 CFR § 100.19).

These areas are currently open to sport fishing; however, historically there has been little to no harvest in them and all federally qualified users (FQU) have been eligible to participate in these fisheries. As a result, there has never been a need to pass sport fish regulatory changes pertaining to them. Additionally, the subsistence gear types that would be allowed are much more liberal and efficient at harvesting salmon in salt water in the Alaska Peninsula and Aleutian Islands areas and if modifications to gear types allowed were needed, those modifications could be addressed through the Alaska Board of Fisheries (BOF).

ADF&G suggests that the BOF process be used to bring subsistence and sport fishery regulations into alignment for Kodiak salmon systems if subsistence needs are not being met by current regulations. Doing so would prohibit conflicting regulations from being put into effect which would reduce the burden on subsistence users and alleviate conservation and enforcement concerns. This would also reduce confusion among users of the resource since subsistence and sport users are often both FQUs and are the primary harvesters for a food source rather than for recreation. Based on past subsistence salmon concerns that have been raised at Kodiak/Aleutians Regional Advisory Council (KARAC) meetings, ADF&G submitted proposals for the 2023 Board of Fish meeting to alleviate these concerns in line with its long history of working with local subsistence users to pass regulations to their benefit in a timely manner.

Background

The Afognak (known locally as Litnik) Lake watershed is located on the southeast side of Afognak Island and supports Sockeye Salmon (*Oncorhynchus nerka*), Coho Salmon (*O. kisutch*) and Pink Salmon (*O. gorbuscha*) runs. Afognak Lake drains through Afognak River which flows into Afognak Bay (Figure 1). Afognak Bay is part of the Alaska Maritime National Wildlife Refuge and is where most localized subsistence Sockeye Salmon fishing occurs (Ruhl 2017). The marine waters adjacent to the mouth of the Afognak River are closed under both Federal and State subsistence regulation to protect salmon as they migrate through the estuary.

The Afognak River weir is located approximately 0.8 km above the outlet of the Afognak River and operates from mid-May to mid-August. Currently, the Afognak River has an escapement goal of 20,000-50,000 Sockeye Salmon. The Afognak River has seen relatively weak Sockeye Salmon returns in recent years (Table 1). Between 2010 and 2021, the annual Sockeye Salmon escapement ranged from 17,601 to 51,821 fish, with a 12-year average escapement of 34,124 fish. Sockeye Salmon returns have been below average since 2016, with the lowest return of 17,601 fish occurring in 2018. Monitoring of adult Coho Salmon through the weir into Afognak Lake has been secondary to monitoring Sockeye Salmon escapement (Ruhl 2017). Because of budgetary constraints, the weir is often removed before the Coho run is complete. Coho Salmon escapement estimates are often incomplete and dependent on run timing. There is no escapement goal for Coho or Pink Salmon returning to Afognak Lake.

Table 1. Afognak (Litnik) River Escapement Count for Sockeye, Coho and Pink Salmon 2010-2021. (ADF&G 2021 Fish Counts).

Year	Sockeye Salmon	Coho Salmon*	Pink Salmon*
2010	51821	10288	62237
2011	48588	2700	4241
2012	41146	5701	111928
2013	40888	13090	17400
2014	35704	3224	18408
2015	36780	181	3203
2016	32459	4	
2017	21411	107	3074
2018	17601	2494	11400
2019	26817	18	460
2020	24284	388	1569
2021	31997	35	197

12-year
average

*no average is provided for Coho Salmon or Pink Salmon because they are partial counts.

Impact on Subsistence Users

Subsistence salmon fishing around the Kodiak area has historically been managed by ADF&G, even under federal regulations which often require a state subsistence fishing permit. Thus, users are familiar with state subsistence regulations as they have been following them for decades. Applying conflicting federal regulations would burden users in having to know which gear types they would be allowed to legally use, and without clear demarcation of federal boundaries they may unknowingly fish illegally and be subject to prosecution.

Impact on Other Users

There would be minimal impact on any other users since there are a very small number of people fishing in this area who are not FQUs. Despite this minimal impact for those who do take advantage of fishing in this area, there is a possibility of confusion between the regulations and boundaries.

Opportunity Provided by State

5 AAC 01.536. Customary and traditional subsistence uses of fish stocks and amounts necessary for subsistence uses

The Alaska Board of Fisheries finds that salmon and finfish other than salmon, except steelhead and rainbow trout, in the Kodiak Area, except that portion described in 5 AAC 18.200(g), are customarily and traditionally taken or used for subsistence.

The board finds that the following amounts of salmon and other finfish are reasonably necessary for subsistence uses in the Kodiak Area:

- (1) 26,800 - 44,700 salmon;
- (2) 21,000 - 35,000 rockfish;
- (3) 3,300 - 5,600 lingcod;
- (4) 550,000 - 900,000 usable pounds of finfish, other than salmon, rockfish, and lingcod.

Conservation Issues

Rescinding this closure would allow for dramatically increased harvest opportunity by allowing the use of gillnets or beach seines in freshwater as well as greatly increased harvest limits. Depending on a federal in-season manager who may make the decision on the appropriate gear type does not give ADF&G the confidence in supporting the rescinding of this closure.

Enforcement Issues

If this closure is rescinded, it will only add another layer of complexity to existing regulations which may lead to additional confusion and have an unintended effect of leading subsistence users to unintentionally using the wrong gear type in the wrong place at the wrong time or being unaware of which permit or license they may need or how to get it. New regulations would also likely cause users to spend more time contacting fisheries managers and wildlife troopers to be educated on new regulations.

FCR21-19 Executive Summary	
General Description	FCR21-19 is a routine review of the closure to harvest of salmon by federally qualified subsistence users in the closed freshwater systems of Afognak Island.
Current Regulation	<p>Kodiak Area – Salmon</p> <p>50 CFR 100.27(e)(9) Kodiak Area.</p> <p>***</p> <p><i>(iii) You may not subsistence fish for salmon in the following locations:</i></p> <p>***</p> <p><i>(F) All fresh water systems of Afognak Island.</i></p>
OSM Conclusion	Rescind
Kodiak/Aleutians Subsistence Regional Advisory Council Recommendation	Rescind
Interagency Staff Committee Comments	<p>The Interagency Staff Committee (ISC) acknowledges that this closure is out of compliance with Title VIII of ANILCA by being closed to fishing by federally qualified subsistence users while allowing for sport fishing under State regulations. The Federal Subsistence Board (Board) would need to take action to bring this situation back into compliance with ANILCA. The Board could modify the closure by closing to all uses. The Board could also rescind the closure and provide a priority consumptive use to federally qualified subsistence users.</p> <p>The Regional Advisory Council has recommended the closure be rescinded, bringing this fishery back into compliance with ANILCA. In the absence of this closure standard, area Federal subsistence regulations would apply which could present conservation concerns. Permanent regulations would be the preferable solution to address possible conservation concerns while still providing a meaningful priority to federally qualified subsistence users.</p> <p>Until the Board receives and takes action on regulatory proposals, Federal managers can use their delegated authority if conservation concerns arise. The ISC recognizes that unless modified by the</p>

FCR21-19 Executive Summary	
	Board, current Fisheries delegation of authority letters limit Federal managers to emergency special actions (actions lasting no longer 60 days).
ADF&G Comments	Retain status quo
Written Public Comments	None

FEDERAL FISHERIES CLOSURE REVIEW
FCR21-19

Issue

FCR21-19 is a standard review of a Federal fishery closure to salmon fishing within the freshwater systems of Kodiak National Wildlife Refuge on Afognak Island. It is the Federal Subsistence Board's (Board) policy that Federal public lands and waters should be reopened as soon as practicable once the conditions that originally justified the closure have changed to such an extent that the closure is no longer necessary. The purpose of this closure review is to determine if the closure is still warranted and to ensure the closure does not remain in place longer than necessary.

Closure Location: Afognak Island, freshwater systems—Salmon

Current Federal Regulation**Kodiak Area – Salmon****50 CFR 100.27(e)(9) Kodiak Area.**

(iii) You may not subsistence fish for salmon in the following locations:

(F) All fresh water systems of Afognak Island.

Closure Dates: Year-round

Current State Regulation**Kodiak Area – Salmon****5 AAC 01.525**

The following waters are closed to the subsistence taking of salmon:

(8) all freshwater systems of Afognak Island;

Current State Sport Fish Regulation

Kodiak Area-Salmon

5 AAC 64.022

(a) Unless otherwise specified in this section, 5 AAC 64.051, or 5 AAC 64.060, or by an emergency order issued under AS 16.05.060, the following are the bag, possession, annual, and size limits, and special provisions for finfish and shellfish in the waters of the Kodiak Area:

(1) king salmon: may be taken from January 1 - December 31, as follows:

(A) in fresh waters:

(i) 20 inches or greater in length; bag and possession limit of two fish; annual limit of five king salmon; a harvest record is required as specified in 5 AAC 75.006;

(ii) less than 20 inches in length; bag and possession limit of 10 fish; king salmon less than 20 inches in length caught in fresh water do not count toward the annual limit;

(B) in salt waters: bag and possession limit of two fish; no size limit; no annual limit; a harvest record is not required;

(2) salmon, other than king salmon: may be taken from January 1 - December 31, as follows:

(A) 20 inches or greater in length; bag and possession limit of five fish, of which only two may be coho salmon and only two may be sockeye salmon;

(B) less than 20 inches in length; bag and possession limit of 10 fish

(c) In the Kodiak Remote Zone, the following bag and possession limits apply to salmon, other than king salmon:

(1) for salmon, other than king salmon, 20 inches or greater in length, the bag limit is five fish and 10 fish in possession;

(2) for salmon, other than king salmon, less than 20 inches in length, the bag and possession limit is 10 fish.

Regulatory Year Initiated: 1992

Extent of Federal Public Lands/Waters

For the purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 36 CFR 242.3 and 50 CFR 100.3 This proposal will pertain to Federal public freshwaters found on Afognak Island – Kodiak National Wildlife Refuge (**Figure 1**).

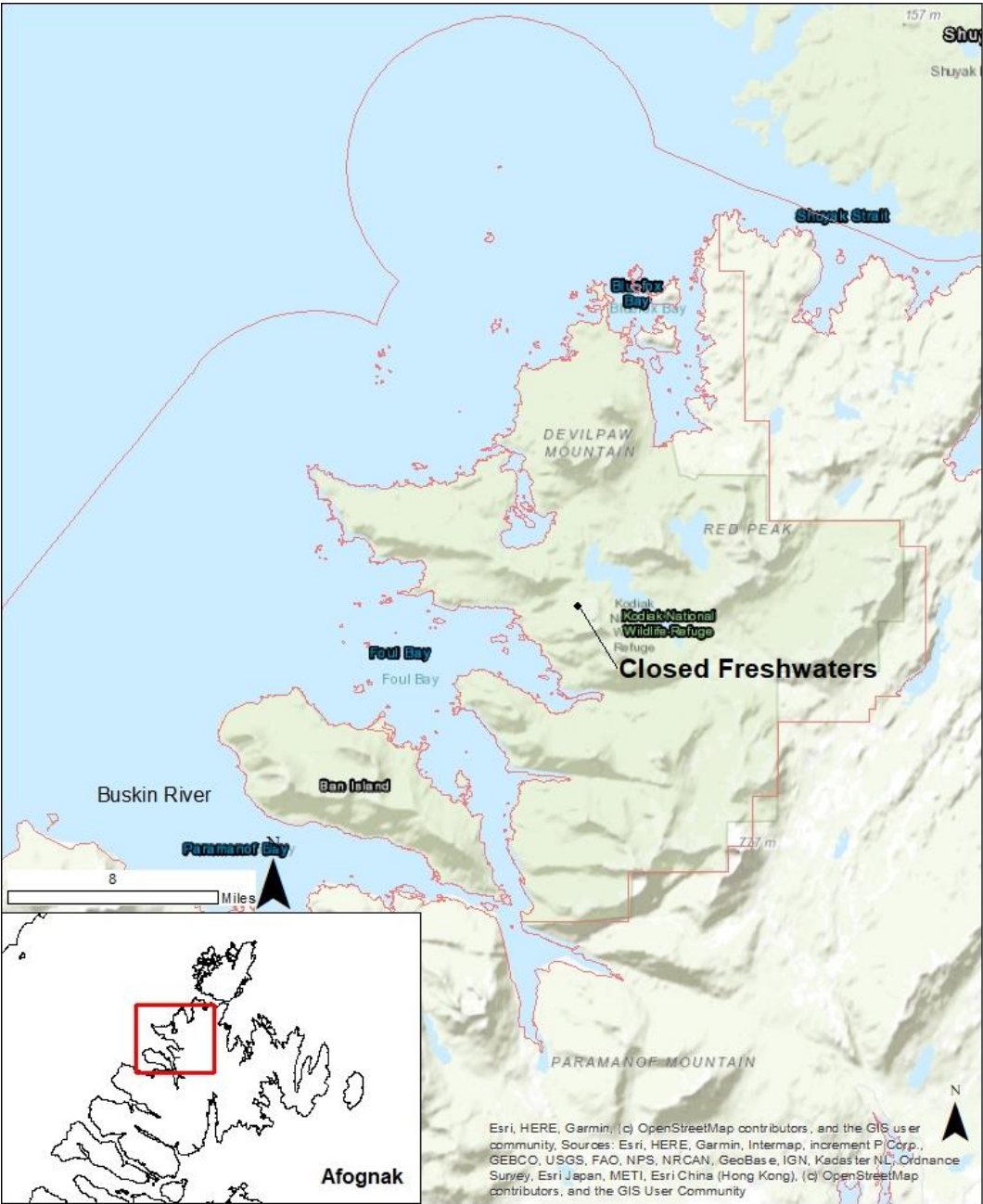


Figure 1. Afognak area map showing Federal closed freshwater systems.

Customary and Traditional Use Determination

Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base have a customary and traditional use determination for salmon for the Kodiak Area.

Regulatory History

In 1992, the Federal Subsistence Management Program promulgated regulations governing the harvest of fish for subsistence uses in waters qualifying as "public lands" under ANILCA. (57 FR 22940). These regulations incorporated many provisions from State of Alaska subsistence fishing regulations that previously applied to those waters. The closure under review in this analysis was incorporated into the Federal regulations in this manner and has not been subsequently modified.

Closure Last Reviewed

A review was initiated during the 2021 fish proposal cycle and was recommended to be deferred by the Kodiak Aleutian Subsistence Regional Advisory Council to allow for additional feedback from the rural public in affected communities. The Board subsequently deferred the review until the 2023 fisheries regulatory cycle.

Justification for Original Closure

There is no Federal Subsistence Board justification for the original closure as it was incorporated from the State subsistence fishing regulations.

Council Recommendation for Original Closure

N/A

State Recommendation for Original Closure

N/A

Biological Background and Harvest History

Subsistence harvest for salmon is open throughout the year in most Federal public waters of the Kodiak management area with a subsistence fishing permit. However, the freshwater systems of Afognak Island within the Kodiak National Wildlife Refuge are closed under both Federal and State regulation to subsistence harvest because of their relatively small size and accessibility making the risk of over exploitation high (Anderson et. al. 2019). Historically, the most utilized subsistence fishery areas under Federal regulations are the marine waters in proximity to the Buskin River on the north end of Kodiak Island and the marine waters of Afognak Bay on the southeast side of Afognak Island. Both areas are part of the Alaska Maritime National Wildlife Refuge (Fall. 2021). Sockeye Salmon are the primary species harvested by federally qualified subsistence users with a 3-year average harvest of 216 fish (**Table 1**) Coho Salmon are the second most frequently harvested fish with a 3-year average harvest of

48 fish. Fish harvested under State sport fish regulation in the Kodiak management area are estimated through the Alaska Sport Fishing Harvest Survey. Because of low response rates, there are no estimates of Sockeye or Coho Salmon harvests in the fresh water streams of Afognak Island (Dye, 2020).

Table 1. Federal subsistence salmon harvest in Kodiak area (Fall 2021).

Year	Permits Issued	Permits Returned	Chinook Salmon	Sockeye Salmon	Coho Salmon	Chum Salmon	Pink Salmon	Total
2015	18	16	0	52	0	0	0	52
2016	48	32	20	100	75	0	3	246
2017	55	30	0	383	57	0	5	508
2018	35	24	0	119	0	0	0	178
Average	39	26	5	164	33	0	2	246

Cultural Knowledge and Traditional Practices

The subsistence practices of the rural residents of the Kodiak Area reflect the cultural traditions of the Alutiiq/Sugpiaq; the Koniag/Qikertarmiut; and Eastern European, Asian, and American settlers. Indigenous populations have lived in the area for at least 7000 years, with subsistence economies largely based on the harvesting of maritime resources (Clark 1998). Key among these subsistence resources have been marine animals, shellfish, near-shore fisheries, sea or littoral birds and their eggs, and salmon harvested primarily in spawning areas (Clark 1998: 176). Salmon remain one of the primary components of subsistence diets for rural residents in this region (Fall and Walker 1993; Marchioni et al. 2016; Wolf and Walker 1987). Historically, some of the most-utilized harvest areas for subsistence salmon in the Kodiak archipelago have been the Buskin and Pasagshak Rivers located on the northern end of Kodiak Island and the southeast side of Afognak Island at Litnik (Anderson et al. 2016; Brown et al. 2021).

Today, the Kodiak Island Borough has a population of 13,383 residents (US Census Bureau 2020). Residents throughout the Kodiak Area currently harvest salmon using subsistence gillnets and seines, rod and reel, and removal of salmon from commercial catch for home use (Marchioni et al. 2016). Access for salmon harvesting is often obtained through social networks, and salmon harvests are regularly shared between community members (Marchioni et al. 2016). Harvested salmon are typically dried, smoked, or canned to preserve the resource for use out of season (Marchioni et al. 2016). These subsistence practices form a key basis of cultural identity, family life, and community well-being in the area (Fall 1999). When salmon are scarce, area residents must rely upon secondary subsistence resources and/or turn to expensive store-bought foods (Marchioni et al. 2016). According to the most recent Alaska subsistence and personal use fisheries report (Brown et al. 2021: 168), “the total reported subsistence salmon harvest for the Kodiak Area in 2018 was 17,459 fish, less than the reported 2017 harvest and well below the recent 5-year (2013–2017) and 10-year (2008–2017) averages of 26,390 salmon and 28,364 salmon, respectively.” The significant reductions in salmon stock available for subsistence harvest in recent years have caused increasing concerns about food security and the ability to maintain subsistence lifestyles in the region (KARAC 2021).

Effects

Currently, harvest of Sockeye and Coho salmon is allowed under State sport fish regulation in this area while harvest is prohibited for federally qualified subsistence users. If the closure is rescinded, federally qualified subsistence users would be allowed to harvest salmon using the methods described on the Federal permit which allows the use of nets and a more liberal harvest than sport harvest. To conserve fish populations, the Federal in-season manager could issue a special action for up to 60 days to set provisions for the fishery, such as stipulating gear types like rod and reel only and setting conservative harvest limits. This amount of time during the emergency special action may not cover the entire season of various freshwater fish.

If the closure were retained, sport harvest of salmon would continue while federally qualified subsistence users would be prohibited from harvesting salmon under Federal subsistence regulations in this location. There is opportunity for harvest outside of these closed waters.

OSM CONCLUSION

- Retain the Status Quo
- Rescind the Closure
- Modify the Closure
- Defer Decision on the Closure or Take No Action

The modified regulation should read:

Kodiak Area – Salmon

50 CFR 100.27(e)(9)

(iii) *You may not subsistence fish for salmon in the following locations:*

~~(F) All fresh water systems of Afognak Island.~~

Justification

These Afognak Island freshwaters are currently closed to the harvest of salmon by federally qualified subsistence users but remain open to other uses. Section 802(2) of ANILCA requires that subsistence uses by rural residents of Alaska shall by “the priority consumption uses of all such resources on the public lands of Alaska”. Federal subsistence opportunity should also be provided to comply with the rural preference mandated by ANILCA. The Federal in-season manager has been delegated authority to open or close Federal subsistence fishing periods or areas provided under codified regulations and to specify methods and means; to specify permit requirements; and to set harvest and possession limits for Federal subsistence fisheries. The in-season manager can use this authority to manage the fishery in the short term. Harvests levels would likely remain unaffected as federally qualified users already

participate in the State sport fishery. A proposal outlining specific parameters can be submitted during a future fisheries regulatory cycle if it is desired.

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SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS

Rescind the closure on FCR21-19. The Council recommends rescinding the closure because it would bring the Federal subsistence regulations in compliance with rural subsistence consumption priority set forth in Title VIII of ANILCA. In addition, the Federal manager can step in as needed in times of conservation concern to limit fisheries if needed.

INTERAGENCY STAFF COMMITTEE COMMENTS

The Interagency Staff Committee (ISC) acknowledges that this closure is out of compliance with Title VIII of ANILCA by being closed to fishing by federally qualified subsistence users while allowing for sport fishing under State regulations. The Federal Subsistence Board (Board) would need to take action to bring this situation back into compliance with ANILCA. The Board could modify the closure by closing to all uses. The Board could also rescind the closure and provide a priority consumptive use to federally qualified subsistence users.

The Region Advisory Council has recommended the closure be rescinded, bringing this fishery back into compliance with ANILCA. In the absence of this closure standard, area Federal subsistence regulations would apply which could present conservation concerns. Permanent regulations would be the preferable solution to address possible conservation concerns while still providing a meaningful priority to federally qualified subsistence users.

Until the Board receives and takes action on regulatory proposals, Federal managers can use their delegated authority if conservation concerns arise. The ISC recognizes that unless modified by the Board, current Fisheries delegation of authority letters limit Federal managers to emergency special actions (actions lasting no longer than 60 days).

ALASKA DEPARTMENT OF FISH AND GAME COMMENTS

Fisheries Closure Review FCR21-19

This is a routine closure review to determine if the current federal subsistence fisheries closure in the fresh waters of Afognak Island is still warranted. Currently, federal public waters are closed to federal subsistence fishing but remain open under state regulations.

Position

The Alaska Department of Fish & Game (ADF&G) **SUPPORTS** the closure remaining in place until such time as the Federal Subsistence Board (FSB) can reconcile the legality of effectively opening a fishery. Congress authorized the FSB to close, but not to open, a fish or wildlife harvest season as set forth in sections 815 and 816 of the Alaska National Interest Lands Conservation Act (ANILCA).

Without statutory authorization, the FSB adopted a regulation improperly granting itself authority to open public lands to the taking of fish and wildlife (50 CFR § 100.19).

These areas are currently open under state regulations; however, historically there has been little to no harvest in them and all federally qualified users (FQU) have been eligible to participate in these fisheries. As a result, there has never been a need to pass sport fish regulatory changes pertaining to them. Additionally, the subsistence gear type allowed is much more liberal and efficient at harvesting salmon in salt water in the Kodiak area and if modifications to gear types allowed were needed, those modifications could be addressed through the Alaska Board of Fisheries (BOF).

ADF&G suggests that the BOF process be used to bring subsistence and sport fishery regulations into alignment for Kodiak salmon systems if subsistence needs are not being met by current regulations. Doing so would prohibit conflicting regulations from being put into effect which would reduce the burden on subsistence users and alleviate conservation and enforcement concerns. This would also reduce confusion among users of the resource since subsistence and sport users are often both FQUs and are the primary harvesters for a food source rather than for recreation. Based on past subsistence salmon concerns that have been raised at Kodiak/Aleutians Regional Advisory Council (KARAC) meetings, ADF&G submitted proposals for the 2023 Board of Fish meeting to alleviate these concerns in line with its long history of working with local subsistence users to pass regulations to their benefit in a timely manner.

Background

Afognak Island has a large number of drainages that support sockeye, coho, chum and pink salmon as well as Dolly Varden, rainbow trout and steelhead. There are several drainages that support large subsistence and sport fisheries on the island, however, within the bounds of the Kodiak National Wildlife Refuge (KNWR) on Afognak Island, there are only a few small drainages, one of which supports primarily a hatchery produced run of sockeye salmon. There is a very small amount of sport effort in the area where anglers can use one line with no more than two hooks and have a daily bag limit of no more than 5 salmon. There is also a very small amount of subsistence effort as well where beach seines or gillnets up to 50 fathoms are allowed with no limits on harvest of salmon. A commercial fishery occurs in Foul Bay targeting sockeye salmon from the enhanced Hidden Lake run.

The freshwater closures of Afognak Island are intended to provide protection for migrating salmon in the various drainages given the harvest potential associated with beach seines or gillnets in the rivers as well as the increased harvest limits that apply to subsistence fisheries. All of the rivers and lakes on Afognak Island are small and without conservative measures in place, overharvest could occur quickly. While sport fisheries do occur in a handful of drainages on Afognak, where subsistence fishing is closed, the vast majority of both sport and subsistence effort occurs in saltwater, and in many areas, occurs concurrently. In addition, there is very little sport or subsistence effort on or near the KMWR as access to this area is difficult, there are just a couple small drainages in the area and the majority of drainages important to sport and subsistence users fall in areas of state jurisdiction.

Impact on Subsistence Users

Subsistence salmon fishing around the Kodiak area has historically been managed by ADF&G, even under federal regulations which often require a state subsistence fishing permit. Thus, users are familiar with state subsistence regulations as they have been following them for decades. Applying conflicting federal regulations would burden users in having to know which gear types they would be

allowed to legally use, and without clear demarcation of federal boundaries they may unknowingly fish illegally and be subject to prosecution.

Impact on Other Users

There would be minimal impact on any other users since there are a very small number of people fishing in this area who are not FQUs. Despite this minimal impact for those who do take advantage of fishing in this area, there is a possibility of confusion between the regulations and boundaries.

Opportunity Provided by State

While the Alaska Board of Fisheries made a positive customary and traditional use finding (C&T) and an amount reasonably necessary for subsistence (ANS) finding for salmon and finfish other than salmon in the Kodiak Area, subsistence harvest of salmon in freshwater on Afognak Island is currently closed under state regulation per the following:

5 AAC 01.525. Waters closed to subsistence fishing. The following waters are closed to the subsistence taking of salmon:

- (8) all freshwater systems of Afognak Island

Other subsistence opportunity exists under in the Kodiak Area.

5 AAC 01.526. Customary and traditional uses of fish stocks and amounts necessary for subsistence uses.

(a) The Alaska Board of Fisheries finds that salmon and finfish other than salmon, except steelhead and rainbow trout, in the Kodiak Area, except portions described in 5AAC 18.200(g), are customarily and traditionally taken for subsistence.

(b) The board finds that the following amounts of salmon and other finfish are reasonably necessary for subsistence uses in the Kodiak area:

- (1) 26,800 to 44,700 salmon;
- (2) 21,000-35,000 rockfish;
- (3) 3,000-5,600 lingcod;
- (4) 550,000-900,000 usable pounds of finfish, other than salmon, rockfish, and lingcod.

Conservation Issues

Rescinding this closure would allow for dramatically increased harvest opportunity by allowing the use of gillnets or beach seines in freshwater as well as greatly increased harvest limits. Depending on a federal in-season manager who may make the decision on the appropriate gear type does not give ADF&G the confidence to support rescinding this closure.

Enforcement Issues

If this closure is rescinded, it could create enforcement problems if the clarification is not provided as to the area considered by the proposal. In addition, since FQUs would be able to use rod and reel in the

rivers in a similar way to sport anglers, enforcement of both federal subsistence fisheries and state sport fisheries could be difficult as well as confusing to the users.

FCR23-21 Executive Summary	
General Description	FCR23-21 is a routine review of the closure to harvest of King Crab by non-federally qualified users in the marine waters near Womens Bay, Gibson Cove, Karluk River and Afognak surrounding marine waters.
Current Regulation	<p>§ __.28(i)(4) Kodiak Area</p> <p>***</p> <p><i>(iv) In the subsistence taking of King Crab:</i></p> <p>***</p> <p><i>(E) The waters of the Pacific Ocean enclosed by the boundaries of Womens Bay, Gibson Cove, and an area defined by a line 1/2 mile on either side of the mouth of the Karluk River, and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island are closed to the harvest of King Crab except by federally qualified subsistence users.</i></p>
OSM Conclusion	Retain status quo
Kodiak/Aleutians Subsistence Regional Advisory Council Recommendation	Retain status quo
Interagency Staff Committee Comments	The Interagency Staff Committee found the staff analysis to be a thorough and accurate evaluation of the proposal and that it provides sufficient basis for the Regional Advisory Council recommendation and Federal Subsistence Board action on the proposal.
ADF&G Comments	Rescind
Written Public Comments	None

FEDERAL FISHERIES CLOSURE REVIEW
FCR23-21

Issue

FCR23-21 is a standard review of a Federal fishery closure to King Crab harvest by non-federally qualified in the Kodiak and Afognak areas. It is the Federal Subsistence Board's (Board) policy that Federal public lands and waters should be reopened as soon as practicable once the conditions that originally justified the closure have changed to such an extent that the closure is no longer necessary. The purpose of this closure review is to determine if the closure is still warranted and to ensure the closure does not remain in place longer than necessary.

Closure Location: Kodiak Area and Afognak Area – King Crab

Current Federal Regulation**§___.28(i)(4) Kodiak Area**

(iv) In the subsistence taking of King Crab:

(E) The waters of the Pacific Ocean enclosed by the boundaries of Womens Bay, Gibson Cove, and an area defined by a line 1/2 mile on either side of the mouth of the Karluk River, and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island are closed to the harvest of King Crab except by federally qualified subsistence users.

Closure Dates: June 1 – January 31

Current State RegulationSubsistence Regulations

5 AAC 02.005. Subsistence fishing permitted

Shellfish may be taken for subsistence purposes at any time in any area of the state by any method unless restricted by the subsistence fishing regulations in this chapter.

Kodiak Area

5 AAC 02.420. Subsistence King Crab fishery

(a) In the subsistence taking of King Crab,

- (1) the annual limit is three King Crab for a household;*
- (2) all King Crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;*
- (3) notwithstanding 5 AAC 02.010(i), no more than one King Crab pot per person or per vessel may be used to take King Crab; in addition to the marking requirements specified in 5 AAC 02.010(e), a King Crab pot must have "King Crab" legibly inscribed on the keg or buoy attached to the King Crab pot;*
- (4) King Crab may be taken only from June 1 through January 31, except that the subsistence taking of King Crab is prohibited in waters 25 fathoms or more in depth during the 14 days immediately before the opening of a commercial king or Tanner crab fishing season in the location;*
- (5) only male King Crab seven inches or greater in width of shell may be taken or possessed.*

(b) In this section, "King Crab pot" is a pot that is no more than 10 feet long by 10 feet wide by 42 inches high with rigid tunnel eye openings that individually are no less than five inches in any one dimension, with tunnel eye opening perimeters that individually are more than 36 inches or a pot that is no more than 10 feet long by 10 feet wide by 42 inches high and that tapers inward from its base to a top consisting of one horizontal opening of any size.

Sport Regulations

Kodiak Area

5 AAC 64.022 Waters; seasons; bag, possession, annual, and size limits; and special provisions for the Kodiak Area

(a) Unless otherwise specified in this section, 5 AAC 64.051, or 5 AAC 64.060, or by an emergency order issued under AS 16.05.060, the following are the bag, possession, annual, and size limits, and special provisions for finfish and shellfish in the waters of the Kodiak Area:

(10) King Crab: no open season; may not be retained or possessed;

Regulatory Year Initiated: 1995

The Board closure decision was made November 14, 1994 (FSB 1994), the regulation was initially published February 1995 in the Federal Register (60 FR 10317), and the final regulation was published in June 1995.

Extent of Federal Public Lands/Waters

For the purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 36 CFR 242.3 and 50 CFR 100.3 This proposal will pertain to Federal marine waters of the Pacific Ocean enclosed by the boundaries of Women’s Bay, Gibson Cove, and an area defined by a line 1/2 mile on either side of the mouth of the Karluk River, and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island (**Figure 1**).

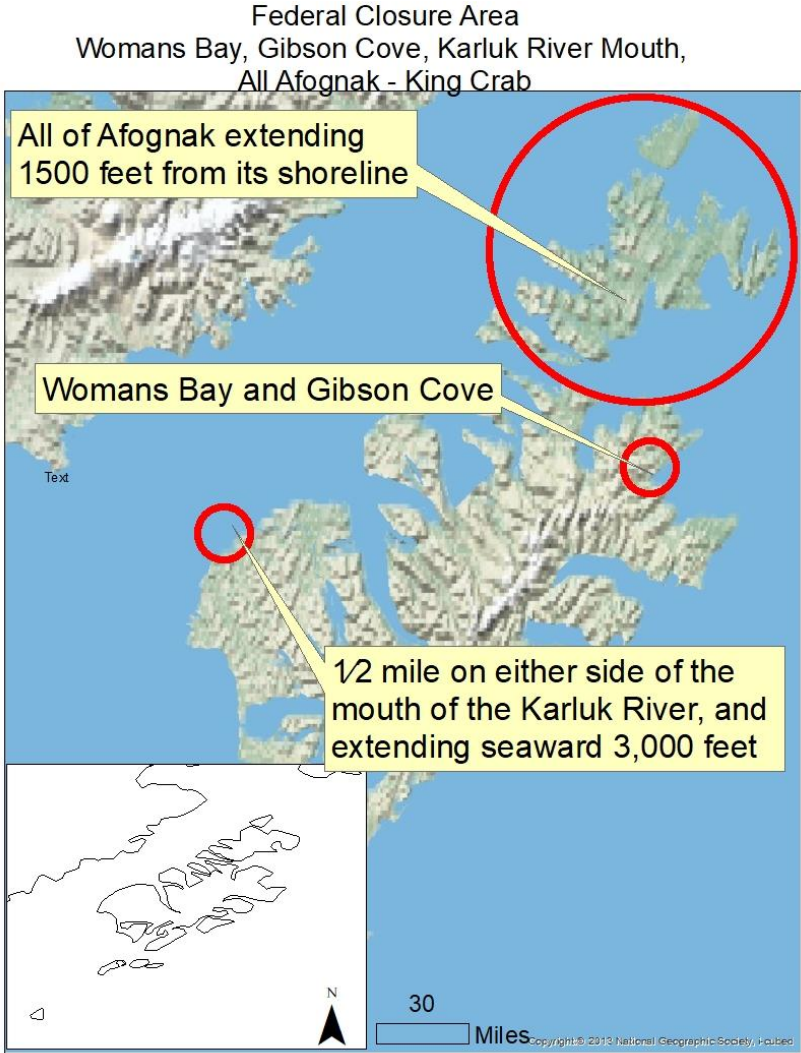


Figure 1. Women’s Bay, Gibson Cove, ½ mile on either side of the mouth of the Karluk River and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island are closed to the harvest of King Crab.

Customary and Traditional Use Determination

Residents of the Kodiak Island Borough, except those residents on the Kodiak Coast Guard Base, have a customary and traditional use determination for King Crab in the Kodiak Area, except for the Semidi Island, the North Mainland, and the South Mainland Sections.

Regulatory History

The initial closure was the result of Board deliberations on RFR94-03 submitted by the Alaska Department of Fish and Game (ADF&G) requesting that Federal subsistence harvests of Red King Crab (*Paralithodes camtschaticus*) be restricted to males with a shell size greater than or equal to seven inches. This would have aligned Federal with existing State regulations. The Federal Subsistence Board did not adopt a size limit, but instead closed Federal public waters to non-federally qualified users per the recommendation of the Interagency Staff Committee (FSB 1994).

In 2002, the Board acted on FP03-07, submitted by the Kodiak National Wildlife Refuge, which requested a decrease in the annual harvest limit from six to three male Red King Crabs per household and adoption of a seven-inch shell width minimum size limit (FSB 2002). Following the recommendation of the Kodiak/Aleutians Subsistence Regional Advisory Council, the Board adopted the minimum shell width requirement along with a gear reduction limit of one pot of any size but did not reduce the harvest limit. This action aligned Federal regulations for shell size and gear with those of the State but maintained the closure to non-federally qualified users and allowed a greater harvest limit for federally qualified users.

While the State has closed commercial fishing, it still allows subsistence fishing for Red King Crab in the Kodiak Area. However, in 1996, the Alaska Board of Fisheries reduced the subsistence daily bag and possession limit for Red King Crab from six per person to three per household per year due to conservation concerns. The State has continued to oppose proposals seeking an increase in these harvest limits. For example, the 2005 regulatory proposal #434, which sought to increase the subsistence annual household limit for Red King Crab in the Kodiak Area from three to ten, was opposed by the ADF&G (ADF&G 2005) and subsequently failed to pass at the Alaska Board of Fisheries meeting (ABF 2005) for conservation concerns.

Closure last reviewed: 2010

Justification for Original Closure (ANILCA Section 815 (3) criteria)

The closure was made for resource conservation concerns.

Section §815(3) of ANILCA states: Nothing in this title shall be construed as – (3) authorizing a restriction on the taking of fish and wildlife for nonsubsistence uses on public lands (other than national parks and monuments) unless necessary for the conservation of healthy populations of fish and wildlife, for the reasons set forth in section 816, to continue subsistence uses of such populations, or pursuant to other applicable law...

Council Recommendation for Original Closure

The Kodiak-Aleutians Subsistence Regional Advisory Council did not discuss or recommend a closure of this fishery in its review of RFR94-03, but it did recommend rejection of the proposed seven-inch minimum size limit.

State Recommendation for Original Closure

The State did not request, recommend, or support a closure to non-federally qualified users in 1994, but had only requested adoption of a seven-inch minimum size limit (RFR94-03). The State had already adopted a seven-inch minimum size limit for Kodiak Area subsistence Red King Crab fisheries in 1990.

Biological Background

The 2021 large-mesh bottom trawl survey was conducted in known crab habitat using a fixed-grid station design developed in 1988. Total survey station area surveyed was approximately 15,500 km² at depths greater than 20 fathoms. In 2021, 337 successful bottom trawl hauls were conducted in 333 stations. Red King Crab were caught in 13.0% of Kodiak Area hauls totaling 179 males and 220 females (Spalinger and Knutson 2021). Of the 179 males, 67 were of legal size (>164mm; 37%)

The 2021 Kodiak Red King Crab abundance was estimated at 255,185 crabs, which was more than the estimated 121,284 crabs caught in 2020. The largest increases were observed among females and pre-recruit (class) IV males, while legal male abundance declined. The total estimated abundance of legal males decreased from 94,164 crabs in 2020 to 45,930 crabs in 2021 and represented 37.7% of the total male abundance.

Mean King Crab size was 129.0 mm carapace-length (CL) for males and 117.1 mm CL for females. Just over half of female King Crab were juvenile, while the majority of males were sublegal. During the 2021 Kodiak Area survey, 53.4% (n=55) of all mature females examined had an egg clutch that was more than half full, which was lower than 2020 (64.0%) (Spalinger and Knutson 2021).

No specific management objective has been set for either the Federal or State Red King Crab subsistence fisheries in the Kodiak Area. However the State does set a total threshold abundance of fertilized females for determining when to reopen the commercial fishery (Pengilly and Schmidt 1995). State trawl survey estimates have continued to remain well below the threshold level.

Women's Bay has been recognized as an important nursery area for Red King Crab, and studies of juveniles have shown that Women's Bay has much higher numbers than two nearby bays (Cummiskey et al. 2008, Dew 1991, Dew et al. 1992, and FSB 2002).

Since relatively few Red King Crabs are captured in the State trawl survey each year, it is not possible to accurately determine trends since small differences in catches result in large differences in population estimates (Spalinger 2009). However, these surveys show that the Red King Crab stock in the Kodiak Area has remained at a very low abundance with no indication of rebuilding.

Cultural Knowledge and Traditional Practices

The subsistence practices of the rural residents of the Kodiak Area reflect the cultural traditions of the Alutiiq/Sugpiaq, the Koniag/Qikertarmiut, and Eastern European and American settlers. Indigenous populations have lived in the area for at least 7000 years, with subsistence economies largely based on the

harvesting of maritime resources (Clark 1998). Key among these subsistence resources have been marine animals, near-shore fisheries, shellfish, sea or littoral birds and their eggs, and salmon harvested primarily from spawning streams (Clark 1998: 176).

Today, the Kodiak Island Borough has a population of approximately 13,383 residents (US Census Bureau 2020). Residents throughout the area depend upon shellfish as a key part of their subsistence base (Mishler 2001). The winter months have traditionally been a favored time for harvesting shellfish, which can be particularly important food sources when fish and other game animals are scarce (Mishler 2001). Access for shellfish harvesting is often obtained through social networks, and shellfish are regularly shared between community members (Mishler 2001; Sill et al. 2021). These subsistence practices form a key basis of cultural identity, family life, and community well-being in the area (Fall 1999). When shellfish are scarce, area residents must turn to secondary subsistence resources and expensive store-bought foods (Mishler 2001).

A 2018 study found that King Crab were one of the most regularly used subsistence shellfish species in Akhiok, Old Harbor, and Larsen Bay (Sill et al. 2021). However, King Crab have not composed a significant portion of local subsistence diets in the Kodiak area since the drastic decline in stocks witnessed in the 1980s (Sill et al. 2021). As Bruce Short explained at a winter KARAC (2019, 152) meeting, overharvesting and the emergence of sea otters has played a dramatic role in the decline of King Crab and other shellfish in the Kodiak Area:

“When I got old enough to have my own boat and everything I always went out and caught crab, and eventually I bought a place in Anton Larsen Island and wanted to live kind of a subsistence lifestyle – small boat fisheries. And the place was loaded with crab. There were King Crab, tanner crab, dungeness, lots of butter clams, lots of steamers. I thought I was in hog heaven. But, I saw the first otter in 1979, out at Craig Point which is over by Kukak Bay. By the mid '80s, they'd moved into Anton Larsen Bay, the bay where I live. It ices over in the winter, so it's a good place for marine mammals to haul out. We have lots of seals that come in there now too. But I commercially fished in there one year in 1980 with my dory. I mean, there were so many crab in there I could -- I pulled by hand, didn't have hydraulics or anything, just a little boat. But, it was enough to make, you know, a good living there. And I fished commercially in '83 which was the last year that there was a King Crab season here. And my impression was really that it had been overfished because the end of the season everyone had their pots, I mean, crab are a schooling animal, and all the pots were just three spots out in Marmot that was the only place there were any crab left. There were a few after that that survived inside the bay and I always caught some of those and there were always dungeness, but once the otters moved in in the mid '80s, and we had 200 coming in there in the wintertime, they essentially wiped out all the crab. They started with the crab, then they went to the clams, they got the gaper clams, then they went to the butter clams, and now there's none of that in Anton Larsen, absolutely none. The otter population has dwindled, there's probably 70 or 80 that overwinter there now. There's more seals, there are up to 200 seals sometimes that overwinter there...”

Women's Bay has also been an important location for the harvesting of shellfish like King Crab due to its historical productivity and current proximity to the Kodiak Island road network (KARAC 2010). This ease of access at Women's Bay is particularly important for older residents for whom travel to more remote sites can be difficult (KARAC 2010). However, Women's Bay and Gibson Cove have also been identified as key nurseries within the greater Chiniak area for juvenile King Crab, leading to ongoing

discussions about the best ways to maintain these nurseries to promote the recovery of King Crab stocks (KARAC 2010).

Harvest History

Historically, there were large numbers of Red King Crab in the Kodiak Management Area, and this species supported a large commercial fishery along with other uses (Mattes and Spalinger 2007). In the 1970s the commercial harvest of Red King Crab in the Kodiak Area ranged between 12 and 24 million pounds. A near peak commercial harvest of Red King Crab occurred in the 1980/81 season, but three years later the harvest precipitously declined. The four top historical producing areas were closed to commercial Red King Crab fishing for the first time, but the stocks have still not recovered.

Subsistence crab harvests in the Kodiak Area dropped dramatically with the decline of the Red King Crab stock. The estimated subsistence harvest for the Kodiak vicinity was almost 18,000 Red King Crabs in 1982 but declined to less than 6,000 Red King Crabs by the 1990s (FSB 2002 and 1994). About one quarter of this harvest may have been taken within the Chiniak Bay area, which includes the Federal public waters of Women's Bay and Gibson Cove.

Subsistence Red King Crab harvests in the Kodiak Area have been very small since the collapse of the stock (FSB 2002). An ADF&G subsistence permit is required to participate in the Federal subsistence crab fishery, and annual harvests documented through these permits have often been well under 100 Red King Crabs per year.

Effects

If the closure is retained, federally qualified subsistence users would continue to be allowed to harvest King crab under Federal regulations, while non-federally qualified would be prohibited from harvesting King Crab. This would keep in place a rural priority for subsistence while restricting nonsubsistence use during a time when crab stocks to continue trying to rebound.

If the closure is rescinded, non-federally qualified users would still not be allowed to harvest King Crab because the harvest remains closed under State regulations. This change would not align Federal subsistence regulations with current State sport and State subsistence regulations.

OSM CONCLUSION

- Retain the Status Quo**
- Rescind the Closure**
- Modify the Closure**
- Defer Decision on the Closure or Take No Action**

Justification

The conservation concern for King Crab continues in the Kodiak Area, including in the Federal public waters in Women's Bay, Gibson Cove, and near shore waters around the Karluk River mouth and

Afognak Island. The Kodiak area King Crab stock remains at very low abundance with no indication of improvement over the near term. Marine waters under Federal jurisdiction in Women's Bay are a known nursery area for the larger Chiniak Bay and are easy to access from the Kodiak road system. Restricting the taking of King Crab in Federal public waters for non-subsistence uses is necessary for the conservation of the King Crab resource and to help ensure continuation of Federal subsistence uses.

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SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS

Kodiak/Aleutians Subsistence Regional Advisory Council

Retain status quo on FCR23-21. In Council's opinion, retaining this closure protects the depleted stocks while maintaining a rural priority for federally qualified subsistence users.

INTERAGENCY STAFF COMMITTEE COMMENTS

The Interagency Staff Committee found the staff analysis to be a thorough and accurate evaluation of the proposal and that it provides sufficient basis for the Regional Advisory Council recommendation and Federal Subsistence Board action on the proposal.

ALASKA DEPARTMENT OF FISH AND GAME COMMENTS

Fisheries Closure Review FCR23-21

This is a routine closure review to determine if the current federal subsistence fisheries closure to the harvest of king crab by non-federally qualified users (NFQU) is still warranted.

Position

The Alaska Department of Fish and Game (ADF&G) **SUPPORTS** the repeal of this closure. While the population of red king crab has declined and remains at historically low levels, ADF&G has taken the appropriate management actions to conserve this stock by closing the commercial and sport red king crab fisheries. The amount reasonably necessary for subsistence (ANS) is being provided and this is confirmed because the historical average harvest in the state's subsistence red king crab fishery is within ANS. The state subsistence fishery is also overwhelmingly conducted by residents of the Kodiak Archipelago so there is no impact to federally qualified users (FQU) by NFQUs coming from non-rural areas of the state and out of state.

Background

Beginning in 1936, small amounts of red king crab were landed in Kodiak, but catches were not officially recorded until 1950. During this time, the fishery was largely exploratory as fishermen were developing gear, locating commercially harvestable quantities of crab, and expanding markets. Once established, the fishery grew rapidly and by 1960, 21 million pounds of red king crab were harvested during a year-long season. Harvest peaked during the 1965/66 season, when over 94 million pounds of crab were landed during a 12-month fishing season. The fishing season was reduced to 10 months beginning with the 1966/67 season. From that time, catches ranged from approximately 11 to 74 million pounds through the 1981/82 season.

Harvest declined from 24.2 million pounds in the 1981/82 season to 8.7 million pounds during the 1982/83 season, which was the lowest recorded catch in 23 years. High effort and low catch resulted in an average catch per unit effort (CPUE) of only 4 legal crab per pot for the season. These factors, combined with rapidly declining abundance estimates observed during annual assessment surveys, prompted ADF&G to close the commercial red king crab fishery prior to the start of the 1983/84 season; the commercial red king crab fishery has not reopened (Spalinger and Phillips 2017).

The Kodiak red king crab population remains at historically low levels. Annual fluctuation in population estimates occur when populations become depressed and unevenly distributed. A small increase or decrease in the absolute number of king crab encountered during the trawl survey can result in large fluctuations in the population estimate from year to year. From 2012 through 2021, survey estimated red king crab abundance in the Kodiak Area ranged from 121,284 to 580,727 crab (Spalinger and Knutson 2022).

Impact on Subsistence Users

If this closure is rescinded, it is not anticipated to impact subsistence users as harvest information shows participation in the king crab fishery is overwhelmingly conducted by local residents combined with the logistical constraints of non-local residents able to travel to Kodiak to participate in the state subsistence fishery.

Impact on Other Users

While rescinding this closure will allow Alaska residents qualified to participate in the state's subsistence fishery, the increase in harvest levels would be very minimal.

Opportunity Provided by State

State customary and traditional use findings: The Alaska Board of Fisheries (BOF) has made positive customary and traditional use findings for red king crab in the Kodiak Area.

Amounts Reasonably Necessary for Subsistence: Alaska state law requires the BOF to determine the amount of the harvestable portion of a fish population that is reasonably necessary for customary and traditional uses. This is an ANS. The BOF does this by reviewing extensive harvest data from all Alaskans, collected either by ADF&G or from other sources.

ANS provides the BOF with guidelines on typical numbers of fish harvested for customary and traditional uses under normal conditions. Fishing regulations can be re-examined if harvests for customary and traditional uses consistently fall below ANS. This may be for many reasons: fishing regulations, changes in abundance or distribution, or changes in human use patterns, just to name a few.

The ANS for red king crab in the Kodiak Area is 175–325 crab per year.

5 AAC 02.466. Customary and traditional subsistence uses of shellfish stocks and amounts necessary for subsistence uses (a) *The Alaska Board of Fisheries (board) finds that king crab, Tanner crab, Dungeness crab, shrimp, and miscellaneous shellfish are customarily and traditionally taken or used for subsistence in the Kodiak Area.*

(b) *The board finds that*

...

(6) *175 - 325 king crab are reasonably necessary for subsistence uses in the Kodiak Area.*

5 AAC 02.420. Subsistence king crab fishery (a) *In the subsistence taking of king crab,*

(1) *the annual limit is three king crab for a household;*

(2) all king crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(3) notwithstanding 5 AAC 02.010(i), no more than one king crab pot per person or per vessel may be used to take king crab; in addition to the marking requirements specified in 5 AAC 02.010(e), a king crab pot must have "king crab" legibly inscribed on the keg or buoy attached to the king crab pot;

(4) king crab may be taken only from June 1 through January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or more in depth during the 14 days immediately before the opening of a commercial king or Tanner crab fishing season in the location;

(5) only male king crab seven inches or greater in width of shell may be taken or possessed.

(b) In this section, "king crab pot" is a pot that is no more than 10 feet long by 10 feet wide by 42 inches high with rigid tunnel eye openings that individually are no less than five inches in any one dimension, with tunnel eye opening perimeters that individually are more than 36 inches or a pot that is no more than 10 feet long by 10 feet wide by 42 inches high and that tapers inward from its base to a top consisting of one horizontal opening of any size.

Conservation Issues

Under the current state regulations, there are no specific conservation issues for red king crab in the Kodiak Area. The current subsistence bag limit of three red king crab per year per household is conservative. Total subsistence harvest of red king crab in the Kodiak Area averaged 191 crab per year (2013–2021), which is within the range of the ANS (175–325 crab). The sport and commercial red king crab fisheries are closed due to low abundance.

Enforcement Issues

There are no enforcement issues associated with this closure.

References Cited

- Spalinger, K., and K. Phillips. 2017. Annual management report for shellfish fisheries in the Kodiak, Chignik, and Alaska Peninsula districts, 2015. Alaska Department of Fish and Game, Fishery Management Report No. 17-23, Anchorage.
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FCR23-22 Executive Summary	
General Description	FCR23-22 is a routine review of the closure to harvest of salmon by federally qualified subsistence users in Little Kitoi Creek.
Current Regulation	<p>§ __.27(e)(9) Kodiak Area</p> <p>***</p> <p><i>(iii) You may not subsistence fish for salmon in the following locations:</i></p> <p>***</p> <p><i>(E) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek.</i></p>
OSM Conclusion	Rescind
Kodiak/Aleutians Subsistence Regional Advisory Council Recommendation	Rescind
Interagency Staff Committee Comments	<p>The Interagency Staff Committee (ISC) acknowledges that this closure is out of compliance with Title VIII of ANILCA by being closed to fishing by federally qualified subsistence users while allowing for sport fishing under State regulations. The Federal Subsistence Board (Board) would need to take action to bring this situation back into compliance with ANILCA. The Board could modify the closure by closing to all uses. The Board could also rescind the closure and provide a priority consumptive use to federally qualified subsistence users.</p> <p>The Regional Advisory Council has recommended the closure be rescinded, bringing this fishery back into compliance with ANILCA. In the absence of this closure standard, area Federal subsistence regulations would apply which could present conservation concerns. Permanent regulations would be the preferable solution to address possible conservation concerns while still providing a meaningful priority to federally qualified subsistence users.</p> <p>Until the Board receives and takes action on regulatory proposals, Federal managers can use their delegated authority if conservation concerns arise. The ISC recognizes that unless modified by the</p>

FCR23-22 Executive Summary	
	Board, current Fisheries delegation of authority letters limit Federal managers to emergency special actions (actions lasting no longer than 60 days).
ADF&G Comments	Retain status quo
Written Public Comments	None

FEDERAL FISHERIES CLOSURE REVIEW
FCR23-22

Issue

FCR23-22 is a standard review of a Federal fishery closure to salmon fishing in Little Kitoi Creek. It is the Federal Subsistence Board's (Board) policy that Federal public lands and waters should be reopened as soon as practicable once the conditions that originally justified the closure have changed to such an extent that the closure is no longer necessary. The purpose of this closure review is to determine if the closure is still warranted and to ensure the closure does not remain in place longer than necessary.

Closure Location: Little Kitoi Creek - Salmon

Current Federal Regulation**§ __.27(e)(9) Kodiak Area**

(iii) You may not subsistence fish for salmon in the following locations:

(E) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek.

Relevant Federal Regulations**§ __.25 Subsistence taking of fish, wildlife, and shellfish: general regulations.**

(a) Definitions. The following definitions apply to all regulations contained in this part:

Subsistence fishing permit means a subsistence harvest permit issued by the Alaska Department of Fish and Game or the Federal Subsistence Board.

§ __.27 Subsistence taking of fish

(b) Methods, means, and general restrictions.

(16) Unless specified otherwise in this section, you may use a rod and reel to take fish without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(i) If you are required to obtain a subsistence fishing permit for an area, that permit is required to take fish for subsistence uses with rod and reel in that area. The harvest and possession limits for taking fish with a rod and reel in those areas are the same as indicated on the permit issued for subsistence fishing with other gear types.

(18) Provisions on ADF&G subsistence fishing permits that are more restrictive or in conflict with the provisions contained in this section do not apply to Federal subsistence users.

§ __.27(e)(9) Kodiak Area

(ii) You may take salmon for subsistence purposes 24 hours a day from January 1 through December 31, with the following exceptions:

(A) From June 1 through September 15, you may not use salmon seine vessels to take subsistence salmon for 24 hours before or during, and for 24 hours after any State open commercial salmon fishing period. The use of skiffs from any type of vessel is allowed.

(B) From June 1 through September 15, you may use purse seine vessels to take salmon only with gillnets, and you may have no other type of salmon gear on board the vessel.

(v) The annual limit for a subsistence salmon fishing permit holder is as follows:

(A) In the Federal public waters of Kodiak Island, east of the line from Crag Point south to the westernmost point of Saltery Cove, including the waters of Woody and Long Islands, and the salt waters bordering this area within 1 mile of Kodiak Island, excluding the waters bordering Spruce Island, 25 salmon for the permit holder plus an additional 25 salmon for each member of the same household whose names are listed on the permit: an additional permit may be obtained upon request.

(B) In the remainder of the Kodiak Area not described in paragraph (e)(9)(v)(A) of this section, there is no annual harvest limit for a subsistence salmon fishing permit holder.

(vi) *You must record on your subsistence permit the number of subsistence fish taken. You must record all harvested fish prior to leaving the fishing site, and must return the permit by the due date marked on permit.*

(vii) *You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.*

(viii) *You may take salmon only by gillnet, rod and reel, or seine.*

(ix) *You must be physically present at the net when the net is being fished.*

Closure Dates: August 15 through Sept 30

Current State Regulation

Kodiak Area

5 AAC 01.525

The following waters are closed to the subsistence taking of salmon:

(7) from August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek;

(11) from August 15 through September 30, all waters seaward of the terminus of Big Kitoi Creek (stream No. 252-324) west of a line from 58_ 11.53' N. lat., 152_ 21.77' W. long., to 58_ 11.25' N. lat., 152_ 21.69' W. long., and all waters near the terminus of Little Kitoi Creek (stream No. 252-323) west of a line from 58_ 11.69' N. lat., 152_ 21.59' W. long., to 58_ 11.55' N. lat., 152_ 21.59' W. long.;

Relevant State Regulations

Subsistence Regulations

Kodiak Area

5 AAC 01.520. Lawful gear and gear specifications

(a) Unless restricted by this section or under the terms of a subsistence fishing permit, fish may be taken by gear listed in 5 AAC 01.010(a).

(b) Salmon may be taken only by gillnet and seine. Gillnet and seine gear may not be operated in a manner to obstruct more than one-half the width of any waterway and any channel or side channel of a waterway.

(d) Subsistence fishermen must be physically present at the net at all times the net is being fished.

5 AAC 01.530. Subsistence fishing permits

(a) A subsistence fishing permit is required for taking salmon, trout, char, and herring for subsistence purposes.

(b) The annual limit for a subsistence salmon fishing permit holder is as follows:

(1) in the fresh waters of Kodiak Island, east of a line from Crag Point south to the westernmost point of Saltery Cove, including the waters of Woody and Long Islands, and the salt waters bordering this area within one mile of Kodiak Island, excluding the waters bordering Spruce Island, 25 salmon for the permit holder plus an additional 25 salmon for each member of the same household whose names are listed on the permit; an additional permit may be obtained if it can be shown that more fish are needed;

(2) in the remainder of the Kodiak Area not described in (1) of this subsection, there is no annual limit.

(c) A subsistence permit holder shall record the number, or if for herring, the number of pounds, of subsistence fish taken by that subsistence permit holder each year as described in this subsection. The subsistence permit holder shall record all harvested fish on the permit, before concealing the fish from plain view or transporting the fish from the fishing site. The subsistence permit holder must return the permit to the local representative of the department by February 1 of the year following the year the permit was issued. For the purposes of this subsection, "fishing site" means the location where the fish is removed from the water and becomes part of the permit holder's limit.

Sport Regulations

Kodiak Area

5 AAC 64.022

(a) Unless otherwise specified in this section, 5 AAC 64.051, or 5 AAC 64.060, or by an emergency order issued under AS 16.05.060, the following are the bag, possession, annual, and size limits, and special provisions for finfish and shellfish in the waters of the Kodiak Area:

(1) king salmon: may be taken from January 1 - December 31, as follows:

(A) in fresh waters:

(i) 20 inches or greater in length; bag and possession limit of two fish; annual limit of five king salmon; a harvest record is required as specified in 5 AAC 75.006;

(ii) less than 20 inches in length; bag and possession limit of 10 fish; king salmon less than 20 inches in length caught in fresh water do not count toward the annual limit;

(B) in salt waters: bag and possession limit of two fish; no size limit; no annual limit; a harvest record is not required;

(2) salmon, other than king salmon: may be taken from January 1 - December 31, as follows:

(A) 20 inches or greater in length; bag and possession limit of five fish, of which only two may be coho salmon and only two may be sockeye salmon;

(B) less than 20 inches in length; bag and possession limit of 10 fish

(c) In the Kodiak Remote Zone, the following bag and possession limits apply to salmon, other than king salmon:

(1) for salmon, other than king salmon, 20 inches or greater in length, the bag limit is five fish and 10 fish in possession;

(2) for salmon, other than king salmon, less than 20 inches in length, the bag and possession limit is 10 fish.

Regulatory Year Initiated: 1992

Extent of Federal Public Lands/Waters

For the purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 36 CFR 242.3 and 50 CFR 100.3 This closure pertains to Federal marine waters within 500 yards seaward of the terminus of Little Kitoi Creek (**Figure 1**).

Federal Closure Area
Little Kitoi Creek - Salmon



Figure 1. Little Kitoi Creek fisheries closure area within Kitoi Bay.

Customary and Traditional Use Determination

Residents of the Kodiak Island Borough, except those residents on the Kodiak Coast Guard Base, have a customary and traditional use determination for Salmon in the Kodiak Area, except the Mainland District where all rural residents have a customary and traditional use determination for salmon.

Regulatory History

In 1992, the Federal Subsistence Management Program promulgated regulations governing the harvest of fish for subsistence uses in waters qualifying as "public lands" under ANILCA. (57 FR 22940). These regulations incorporated many provisions from State of Alaska subsistence fishing regulations that previously applied to those waters. The closure under review in this analysis was incorporated into the Federal regulations in this manner and has not been subsequently modified.

Closure last reviewed

There have been no previous reviews of this closure.

Justification for Original Closure

There is no Federal Subsistence Board justification for the original closure as it was incorporated from the State subsistence fishing regulations.

Council Recommendation for Original Closure

N/A

State Recommendation for Original Closure

N/A

Biological Background

Little Kitoi Lake and Little Kitoi Creek are located approximately 0.5 miles north of the Kitoi Bay Hatchery, where Coho, Sockeye, Pink and Chum salmon adult egg takes occur at the weir. Little Kitoi Creek has a weir that monitors returning adult escapement and smolt outmigration simultaneously using a pipeline bypass adjacent to the adult fish pass. The hatchery has capacity to incubate 254 million salmon eggs and rear up to 180 million juveniles of all life stages (fry, fingerling, pre-smolt and smolt). The Chum Salmon run begins in early June, peaks in late June to early July, and ends in late July. The Pink Salmon return begins in mid-July, peaks in early to mid-August, and ends in late August to early September. The Coho Salmon run is expected to start in early August, peak in late August, and continue through early September. For the 2021 season, an estimated 128,000 Chum Salmon, 11.3 million Pink Salmon, 124,000 Coho Salmon, 15,000 Sockeye Salmon were expected to return to Kitoi Bay (Annual Management Plan 2021; Kitoi Bay Hatchery).

Cultural Knowledge and Traditional Practices

The subsistence practices of the rural residents of the Kodiak Area reflect the cultural traditions of the Alutiiq/Sugpiaq; the Koniag/Qikertarmiut; and Eastern European, Asian, and American settlers. Indigenous populations have lived in the area for at least 7000 years, with subsistence economies largely based on the harvesting of maritime resources (Clark 1998). Key among these subsistence resources have

been marine animals, shellfish, near-shore fisheries, sea or littoral birds and their eggs, and salmon harvested primarily in spawning areas (Clark 1998: 176). Salmon remain one of the primary components of subsistence diets for rural residents in this region (Fall and Walker 1993; Marchioni et al. 2016; Wolf and Walker 1987). Historically, some of the most-utilized harvest areas for subsistence salmon in the Kodiak archipelago have been the Buskin and Pasagshak Rivers located on the northern end of Kodiak Island and the southeast side of Afognak Island at Litnik (Anderson et al. 2016; Brown et al. 2021).

Today, the Kodiak Island Borough has a population of 13,383 residents (US Census Bureau 2020). Residents throughout the Kodiak Area currently harvest salmon using subsistence gillnets and seines, rod and reel, and removal of salmon from commercial catch for home use (Marchioni et al. 2016). Access for salmon harvesting is often obtained through social networks, and salmon harvests are regularly shared between community members (Marchioni et al. 2016). Harvested salmon are typically dried, smoked, or canned to preserve the resource for use out of season (Marchioni et al. 2016). These subsistence practices form a key basis of cultural identity, family life, and community well-being in the area (Fall 1999). When salmon are scarce, area residents must rely upon secondary subsistence resources and/or turn to expensive store-bought foods (Marchioni et al. 2016). According to the most recent Alaska subsistence and personal use fisheries report (Brown et al. 2021: 168), “the total reported subsistence salmon harvest for the Kodiak Area in 2018 was 17,459 fish, less than the reported 2017 harvest and well below the recent 5-year (2013–2017) and 10-year (2008–2017) averages of 26,390 salmon and 28,364 salmon, respectively.” The significant reductions in salmon stock available for subsistence harvest in recent years have caused increasing concerns about food security and the ability to maintain subsistence lifestyles in the region (KARAC 2021).

Harvest History

The vast majority of fish returning to Kitoi Bay are hatchery produced and most of the harvest is by commercial seiners and set gillnet fishers. Some harvest occurs from subsistence and recreational fishers but is thought to be very little. Subsistence and commercial fishermen harvest reporting aids in the management of the fishery and is conducted by the ADF&G Division of Commercial Fisheries through permits. Hatchery produced salmon are considered common property fisheries and the general public are allowed to harvest fish subject to State and Federal law. A proportion of the hatchery produced salmon returning to spawn are needed for brood stock, with an estimated 86,000 Chum Salmon, 118,000 Coho Salmon, 8,000 Sockeye Salmon are available for common property harvests. Pink Salmon available for harvests depends on a combination of marine survival, average adult fish weight, and Kodiak Region Aquaculture Association’s cost recovery harvest needs. Traditionally, portions of the Inner and Outer Kitoi, Izhut, and Duck Bay sections could close to commercial common property fishing for cost-recovery operations around August 1.

Effects

According to Title VIII, section 804 of the Alaska National Interest Lands Conservation Act (ANILCA), “...the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over taking on such lands of fish and wildlife for other purposes.” There are currently

nonsubsistence uses permitted in this area making the current situation out of compliance with Title VIII of ANILCA. Rescinding the closure would provide Federal opportunity to harvest salmon at the terminus of Little Kitoi Creek, thereby providing priority consumptive use to federally qualified subsistence users.

If the closure is rescinded, Federal subsistence regulations for the Kodiak Area would apply, which allow the use of rod and reel, gillnets, and seines to harvest salmon. However, there could be conflict between commercial and subsistence users in this area. The Federal in-season manager could issue a special action to set provisions for the fishery that deviate from the general area regulations, such as stipulating gear types or areas and setting harvest limits if conditions warranted.

OSM CONCLUSION

- Retain the Status Quo
- Rescind the Closure
- Modify the Closure
- Defer Decision on the Closure or Take No Action

The modified regulation should read:

§ __.27(e)(9) Kodiak Area

(iii) You may not subsistence fish for salmon in the following locations:

~~*(E) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek.*~~

Justification

During August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek are currently closed to the harvest of salmon by federally qualified subsistence users but are open to commercial fishing and hatchery cost recovery operations. Federal subsistence opportunity in this location would afford a rural preference as set forth in Title VIII of ANILCA. The Federal in-season manager has been delegated authority to open or close Federal subsistence fishing periods or areas provided under codified regulations and to specify methods and means; to specify permit requirements; and to set harvest and possession limits for Federal subsistence fisheries. The in-season manager could use this authority to manage the fishery in the short term. A proposal outlining specific parameters for this fishery may be submitted during the next fisheries cycle if desired.

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SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS

Kodiak/Aleutians Subsistence Regional Advisory Council

Rescind the closure on FCR23-22. The Council noted that these changes would bring the Federal subsistence regulations in compliance with rural subsistence consumption priority set forth in Title VIII of ANILCA. In addition, the Federal manager can step in as needed in times of conservation concern to limit fisheries if needed.

INTERAGENCY STAFF COMMITTEE COMMENTS

The Interagency Staff Committee (ISC) acknowledges that this closure is out of compliance with Title VIII of ANILCA by being closed to fishing by federally qualified subsistence users while allowing for sport fishing under State regulations. The Federal Subsistence Board (Board) would need to take action to bring this situation back into compliance with ANILCA. The Board could modify the closure by closing to all uses. The Board could also rescind the closure and provide a priority consumptive use to federally qualified subsistence users.

The Regional Advisory Council has recommended the closure be rescinded, bringing this fishery back into compliance with ANILCA. In the absence of this closure standard, area Federal subsistence regulations would apply which could present conservation concerns. Permanent regulations would be the preferable solution to address possible conservation concerns while still providing a meaningful priority to federally qualified subsistence users.

Until the Board receives and takes action on regulatory proposals, Federal managers can use their delegated authority if conservation concerns arise. The ISC recognizes that unless modified by the Board, current Fisheries delegation of authority letters limit Federal managers to emergency special actions (actions lasting no longer than 60 days).

ALASKA DEPARTMENT OF FISH AND GAME COMMENTS

Fisheries Closure FCR23-22

This is a routine closure review to determine if the current federal subsistence fisheries closure in Little Kitoi Creek is still warranted.

Position

The Alaska Department of Fish & Game (ADF&G) **SUPPORTS** the closure remaining in place until such time as the Federal Subsistence Board (FSB) can reconcile the legality of effectively opening a fishery. Congress authorized the FSB to close, but not to open, a fish or wildlife harvest season as set forth in sections 815 and 816 of the Alaska National Interest Lands Conservation Act (ANILCA).

Existing state sport and subsistence regulations and federal subsistence regulations have the area closed within 500 yards of Little Kitoi Creek to fishing from August 15 through September 30 as this is an area of brood stock storage for Kitoi Bay Hatchery.

Background

The area around the mouth of Little Kitoi Creek is an area used by Kitoi Bay Hatchery for collection of brood stock. Subsistence (both state and federal) and sport fishing are closed within 500 yards of the creek mouth to reduce conflicts with hatchery operations in the area, as well as ensure brood stock goals are attained. There are similar regulations near Big Kitoi Creek and Kitoi Bay Hatchery itself for the same purposes. While there is a sport fishery in the broader Kitoi Bay area, sport and subsistence seasons and areas are identical. In addition, though sport and subsistence harvests occur concurrently, sport harvests are limited to a 5 fish bag limit and one line with no more than two hooks, while both state and federal subsistence fisheries can use gillnets of up to 50 fathoms with no limits for salmon harvest in the state fishery.

Impact on Subsistence Users

If this closure is rescinded, it would create user conflicts and confusion between subsistence users and hatchery staff, as well as potentially jeopardize brood stock collections needs which could lead to decreased harvest opportunities for subsistence users.

Impact on Other Users

This proposal is likely to also impact other users in the area by jeopardizing brood stock collection at Kitoi Bay Hatchery that would impact future returns to Kitoi Bay.

Opportunity Provided by State

State customary and traditional use findings: The Alaska Board of Fisheries (BOF) has made positive customary and traditional use findings for salmon and species other than salmon except steelhead and rainbow trout in the Kodiak Area.

Amounts Reasonably Necessary for Subsistence: Alaska state law requires the BOF to determine the amount of the harvestable portion of a fish population that is reasonably necessary for customary and traditional uses. This is an ANS. The BOF does this by reviewing extensive harvest data from all Alaskans, collected either by ADF&G or from other sources.

ANS provides the BOF with guidelines on typical numbers of fish harvested for customary and traditional uses under normal conditions. Fishing regulations can be re-examined if harvests for customary and traditional uses consistently fall below ANS. This may be for many reasons: fishing regulations, changes in abundance or distribution, or changes in human use patterns, just to name a few.

The ANS for salmon and other finfish in the Kodiak Area (§ 5 AAC 01.536.(b)):

26,800 - 44,700 salmon;

21,000 - 35,000 rockfish;

3,300 - 5,600 lingcod;

550,000 - 900,000 usable pounds of finfish, other than salmon, rockfish, and lingcod.

Conservation Issues

Allowing a subsistence fishery in this area could jeopardize future returns of salmon to the Kitoi Bay area if brood stock collection goals are not met. There are highly developed commercial, sport and subsistence fisheries in the area that are dependent on returns to Kitoi Bay Hatchery and these returns could be reduced by reduced brood stock collection.

Enforcement Issues

If this closure is rescinded, it would create enforcement challenges due to the lack of federal enforcement as well as ambiguous boundaries of the fishery area in Kitoi Bay. Clarification would be needed for both issues for enforcement officers as well as the users to be able to clearly fish in this area. There is also currently no known federal enforcement presence in the area.

FP23-07 Executive Summary	
General Description	FP23-07 requests to restrict harvest of Chinook Salmon to only fish less than 34 inches and to prohibit the use of bait in the Federal rod and reel fishery during the Kenai River Chinook Salmon fishery (January 1- July 31). <i>Submitted by: Alaska Department of Fish and Game.</i>
Proposed Regulation	<i>See pages 505 to 508 of this book for proposed regulations.</i>
OSM Conclusion	Oppose
Southcentral Subsistence Regional Advisory Council Recommendation	Oppose
Interagency Staff Committee Comments	The Interagency Staff Committee found the analysis to be a thorough and accurate evaluation of the proposal and that it provides sufficient basis for the Regional Advisory Council recommendation and the Federal Subsistence action on this proposal.
ADF&G Comments	Support
Written Public Comments	None

STAFF ANALYSIS FP23-07

ISSUES

Proposal FP23-07, submitted by the Alaska Department of Fish and Game (ADF&G), requests the Federal Subsistence Board (Board) revise the Federal subsistence fishing regulations for the Kenai River Chinook Salmon in the Cook Inlet Area (§____.27(e)(10)) by restricting harvest of Chinook Salmon to only fish less than 34 inches in the waters upstream of Slikok Creek, a tributary to the Kenai River located approximately 19 river miles upstream from the mouth at Cook Inlet. Additionally, the proponent requests to prohibit the use of bait in the Federal rod and reel fishery in waters upstream of Slikok Creek during the Kenai River Chinook Salmon fishery (January 1 – July 31). Two Federal rod and reel fisheries are affected by this proposal; one that runs from January 1 to July 15 and one that runs from July 16 to August 31 (previously named early- and late-run respectively). The proposed regulation change covers all of the first date range (January 1 to July 15), and two weeks of the second (beginning July 16) but truncates the second fishery by removing all harvest dates in August.

DISCUSSION

The proponent states that this administrative change will align Federal subsistence regulations for Kenai River Chinook Salmon gillnet, dip net or rod and reel, and the general rod and reel only Federal subsistence fisheries with the established size limits for State sport fishing regulations. The current Federal subsistence fishing regulation allows for harvest of Chinook Salmon in a slot limit of less than 46 inches or 55 inches and longer, whereas the current State sport fish regulation is a maximum size of 34 inches (defined as the length from the tip of the snout to the tip of the total, i.e., total length; [5 AAC 75.995(a)(11)]). State regulations prohibit the use of bait in waters upstream of Slikok Creek during the Chinook Salmon fishery (January 1 – July 31). The proponent asserts that the alignment of federal subsistence and state sport fish regulations is meant to update the federal regulations to reflect the most up to date changes to the management of Kenai River Chinook Salmon for a large fish goal and the quality of escapement.

Existing Federal Regulation

§____.27(e)(10) Cook Inlet Area

(iii) Seasons, harvest limits, and methods and means for Kenai River fisheries. Household annual limits for salmon in Kenai River fisheries are as follows:

<i>Species</i>	<i>Number of fish allowed for each permit holder</i>	<i>Additional fish for each household member</i>	<i>Additional provisions</i>
****	****	****	****
<i>Chinook salmon (July 1 through July 15)</i>	2	1	<i>For the Kenai River community gillnet fishery described under paragraph (e)(10)(iii)(B) of this section</i>
<i>Chinook salmon (July 16 through August 31)</i>	10	2	
****	****	****	****

(A) Kenai River dip net or rod and reel; salmon

(2) You may take sockeye, Chinook, coho, and pink salmon through a dip net or rod and reel fishery at two specified sites in the Kenai River below Skilak Lake and as provided in this section.

(ii) At the Kenai River Moose Range Meadows site, dip netting is allowed only from a boat from a Federal regulatory marker on the Kenai River at about river mile 29 downstream approximately 2.5 miles to another marker on the Kenai River at about river mile 26.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to two baited single or treble hooks June 15 through August 31.

(iii) At the Kenai River mile 48 site, dip netting is allowed while either standing in the river or from a boat, from Federal regulatory markers on both sides of the Kenai River at about river mile 48 (approximately 2 miles below the outlet of Skilak Lake) downstream approximately 2.5 miles to a marker on the Kenai River at about river mile 45.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to two baited single or treble hooks June 15 through August 31.

(3) Fishing seasons are as follows:

<i>Species</i>	<i>Season</i>	<i>Location</i>
****	****	****
<i>Chinook salmon</i>	<i>July 16-September 30</i>	<i>Kenai River sites only</i>
****	****	****

(B) Kenai River gillnet; salmon

(2) Fishing will be allowed July 1 through August 15 and September 10-30 on the Kenai River unless closed or otherwise restricted by Federal special action. The following conditions apply to harvest in the Kenai River community gillnet

(iii) Additional harvest restrictions for this fishery are as follows:

<i>Species</i>	<i>Period</i>	<i>Harvest</i>	<i>Fishery limits</i>
****	****	****	****
<i>Chinook salmon less than 46 inches in length or greater than 55 inches in length</i>	<i>July 1-15</i>	<i>Fish may be retained if the most current preseason forecast from the Alaska Department of Fish and Game projects the in-river run to be within or above the optimal escapement goal range for early-run Chinook salmon; otherwise, live fish must be released</i>	<i>Fishery will close until July 16 once 50 Chinook salmon have been retained or released.</i>

<i>Chinook salmon</i>	<i>July 16-August 15</i>		<i>Fishery will close prior to August 15 if 200 Chinook salmon have been retained or released between July 16 and that date. Fishery will reopen September 10-30 for species available at that time</i>
****	****	****	****

(C) Kenai River rod and reel only; salmon

(2) Seasons, areas, harvest and possession limits, and methods and means for take are the same as for the taking of these salmon species under State of Alaska fishing regulations (5 AAC 56, 5 AAC 57 and 5 AAC 77.540), except for the following harvest and possession limits:

<i>Species</i>	<i>Size</i>	<i>Limits</i>
<i>Chinook salmon (January 1 through July 15)</i>	<i>Less than 46 inches or 55 inches and longer</i>	<i>2 per day and 2 in possession</i>
<i>Chinook salmon (July 16 through August 31)</i>	<i>20 inches and longer</i>	
****	****	****

(i) In the Kenai River below Skilak Lake, fishing is allowed with up to two baited single or treble hooks June 15 through August 31.

Proposed Federal Regulation

§ __.27(e)(10) Cook Inlet Area

(iii) Seasons, harvest limits, and methods and means for Kenai River fisheries. Household annual limits for salmon in Kenai River fisheries are as follows:

<i>Species</i>	<i>Number of fish allowed for each permit holder</i>	<i>Additional fish for each household member</i>	<i>Additional provisions</i>
****	****	****	****
<i>Chinook salmon (July 1 through July 15)</i>	2	1	<i>For the Kenai River community gillnet fishery described under paragraph (e)(10)(iii)(B) of this section</i>
<i>Chinook salmon (July 16 through August 31)</i>	10	2	
****	****	****	****

(A) *Kenai River dip net or rod and reel; salmon*

(2) *You may take sockeye, Chinook, coho, and pink salmon through a dip net or rod and reel fishery at two specified sites in the Kenai River below Skilak Lake and as provided in this section.*

(ii) *At the Kenai River Moose Range Meadows site, dip netting is allowed only from a boat from a Federal regulatory marker on the Kenai River at about river mile 29 downstream approximately 2.5 miles to another marker on the Kenai River at about river mile 26.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with ~~up to two baited single or treble hooks~~ **only one unbaited, single hook, artificial lure** June 15 ~~through August 31~~ **July 31**.*

(iii) *At the Kenai River mile 48 site, dip netting is allowed while either standing in the river or from a boat, from Federal regulatory markers on both sides of the Kenai River at about river mile 48 (approximately 2 miles below the outlet of Skilak Lake) downstream approximately 2.5 miles to a marker on the Kenai River at about river mile 45.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with ~~up to two baited single or treble hooks~~ **only one unbaited, single hook, artificial lure** June 15 ~~through August 31~~ **July 31**.*

(3) *Fishing seasons are as follows:*

<i>Species</i>	<i>Season</i>	<i>Location</i>

****	****	****
<i>Chinook salmon</i>	<i>July 16- July 31</i> <i>September 30</i>	<i>Kenai River sites only</i>
****	****	****

(B) Kenai River gillnet; salmon

(2) Fishing will be allowed July 1 through August 15 and September 10-30 on the Kenai River unless closed or otherwise restricted by Federal special action. The following conditions apply to harvest in the Kenai River community gillnet

(iii) Additional harvest restrictions for this fishery are as follows:

<i>Species</i>	<i>Period</i>	<i>Harvest</i>	<i>Fishery limits</i>
****	****	****	****
<i>Chinook salmon less than 34 inches 46 inches in length or greater than 55 inches in length</i>	<i>July 1-15</i>	<i>Fish may be retained if the most current preseason forecast from the Alaska Department of Fish and Game projects the in-river run to be within or above the optimal escapement goal range for early-run Chinook salmon; otherwise, live fish must be released</i>	<i>Fishery will close until July 16 once 50 Chinook salmon have been retained or released.</i>

<i>Chinook salmon less than 34 inches in length</i>	<i>July 16-August 15</i>		<i>Fishery will close prior to August 15 if 200 Chinook salmon have been retained or released between July 16 and that date. Fishery will reopen September 10-30 for species available at that time</i>
****	****	****	****

(C) Kenai River rod and reel only; salmon

(2) Seasons, areas, harvest and possession limits, and methods and means for take are the same as for the taking of these salmon species under State of Alaska fishing regulations (5 AAC 56, 5 AAC 57 and 5 AAC 77.540), except for the following harvest and possession limits:

<i>Species</i>	<i>Size</i>	<i>Limits</i>
<i>Chinook salmon (January 1 through July 31 15)</i>	<i>Less than 34 inches in length 46 inches or 55 inches and longer</i>	<i>2 per day and 2 in possession</i>
<i>Chinook salmon (July 16 through August 31)</i>	<i>20 inches and longer</i>	<i>2 per day and 2 in possession</i>
****	****	****

(i) In the Kenai River below Skilak Lake, fishing is allowed with only one unbaited, single hook, artificial lure January 1 – July 31 ~~up to two baited single or treble hooks June 15 through August 31.~~

Existing State Regulation

In 1992, the State classified most of the Cook Inlet Area, including the Kenai and Kasilof River drainages, as part of the Anchorage-Matsu-Kenai Nonsubsistence Area (5AAC 99.015(3)). The only State subsistence fisheries in Cook Inlet occur in areas that are not accessible from the road system, including the Tyonek, Windy Bay, Port Chatham, and Port Graham subdistricts, as well as portions of Seldovia Bay and the Yentna River drainage. The State's subsistence priority does not apply on the Kenai Peninsula, and the Alaska Board of Fisheries may not authorize subsistence fisheries in this area. Under State regulations, personal use fisheries and educational fishery permits provide opportunities for harvesting fish with gear other than rod and reel in nonsubsistence areas.

5 AAC 57.120. General provisions for seasons, bag, possession, annual, and size limits, and methods and means for the Kenai River Drainage Area

(a) Unless otherwise specified in 5 AAC 57.121 - 5 AAC 57.123 or by an emergency order issued under AS 16.05.060, the following are the general seasons, bag, possession, annual, and size limits, and methods and means that apply to sport fishing for finfish in the Kenai River Drainage Area:

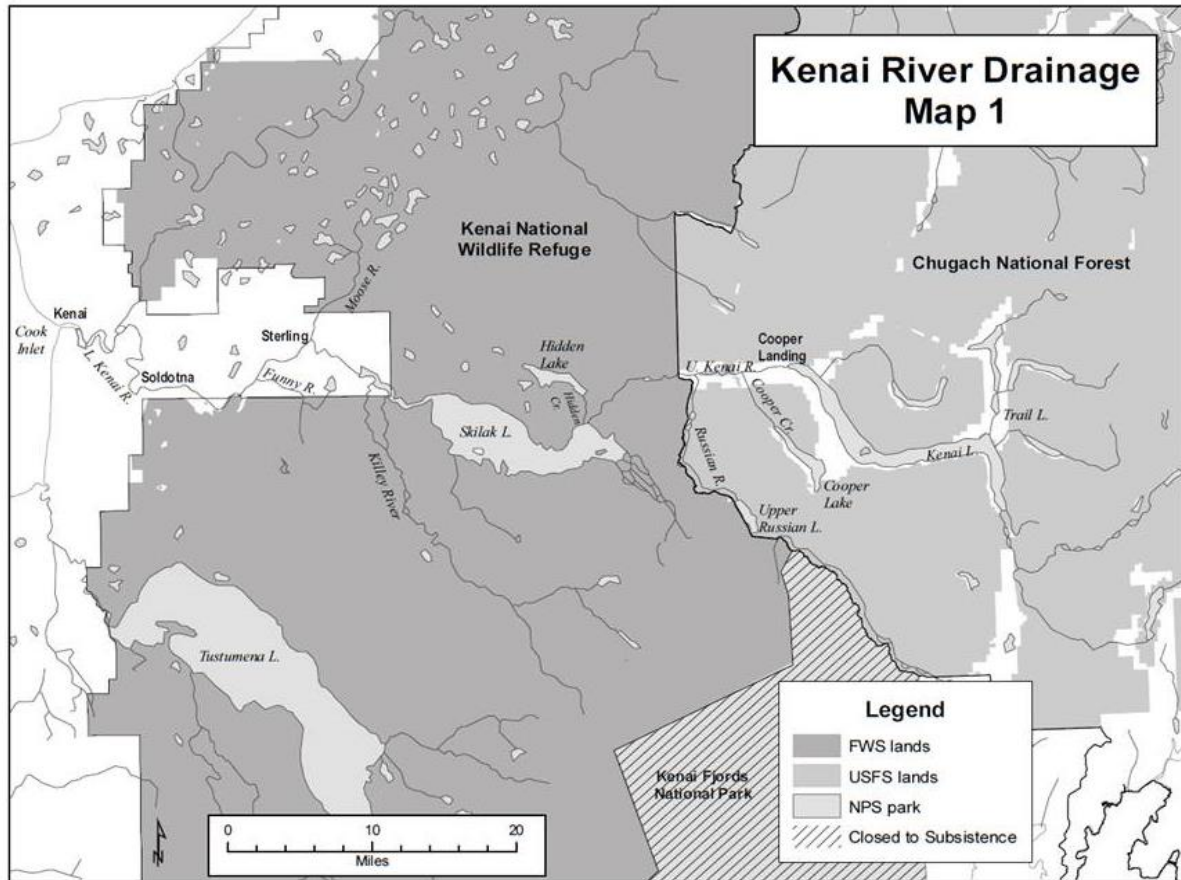
(2) king salmon 20 inches or greater in length, as follows:

(A) may be taken only from January 1 - July 31, in the Kenai River from its mouth upstream to an ADF&G regulatory marker located at the outlet of Skilak Lake, with a bag and possession limit of one fish, as follows:

(i) from January 1 - June 30, from its mouth upstream to an ADF&G regulatory marker located at the outlet of Skilak Lake, and from July 1 - July 31, from an ADF&G regulatory marker located approximately 300 yards downstream from the mouth of the Slikok Creek upstream to an ADF&G regulatory marker located at the outlet of Skilak Lake, only king salmon that are less than 34 inches in length as measured from tip of snout to tip of tail may be retained;

Extent of Federal Public Lands/Waters

For purposes of this discussion, the phrase "Federal public waters" are defined as those waters described under 36 CFR 242.3 and 50 CFR 100.3(b). Federal public waters under consideration include all waters of the Kenai River within and adjacent to the exterior boundaries of the Kenai National Wildlife Refuge and Chugach National Forest (**Map 1**). This includes Kenai Lake and its tributaries and all water downstream to the confluence of the upper branch of the Killey River (approximately RM 45.5), the mainstem Kenai River between RM 26.5 and 29 (known locally as Moose Range Meadows), and most of the upper reaches of tributaries below Skilak Lake including the Moose, Killey and Funny Rivers. The Kenai River Watershed encompasses more than 2,000 square miles of which approximately 91% lies within Federal public lands and waters (54% within Kenai Wildlife Refuge, 37% within Chugach National Forest), and the remaining 9% on State or private land (U.S. Fish and Wildlife Service Region 7 2010:1-14; Jones and Kukkonen 2017).



Map 1. Extent of Federal public waters in and around the Kenai River, Alaska.

Customary and Traditional Use Determinations

Residents of the communities of Cooper Landing, Hope, and Ninilchik have a customary and traditional use determination for all fish within the Kenai Peninsula District, waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest (Kenai River area).

Regulatory History

Prior to 1952, freshwater streams in the Kenai Peninsula were open to subsistence fishing. In 1952, as part of efforts to rebuild salmon runs, all streams and lakes of the Kenai Peninsula were closed to subsistence fishing under Territory of Alaska regulations. Only rod and reel fishing was allowed for “personal use” (Fall et al. 2004).

Sport and personal use fisheries in the Kenai River are intensively managed by ADF&G through a series of management plans. These plans provide goals for sustained yield, guidance for mixed-species and mixed-stock fisheries, and instructions for allocation between competing fisheries.

There are two plans that direct the management of Chinook Salmon in the Kenai River: the Kenai River and Kasilof River Early-Run King Salmon Conservation Management Plan (5 AAC 56.070), and the Kenai River Late-Run King Salmon Management Plan (5 AAC 21.359). These plans, which are a means to ensure adequate escapement and provide management guidelines for the department, outline general regulations for the Chinook Salmon sport fishery (5 AAC 57.120) using dates and river sections to specify when and where fishing can occur instead of delineating by early- or late-run stocks.

Most of the initial Federal subsistence fishing regulations for the Kenai River were put in place during the period of 2006 – 2008 and were based on plans that mirrored State regulations, conservation efforts, and management. The fisheries in this drainage were most recently updated to include a community gillnet fishery for the residents of Ninilchik through adoption of Proposals FP15-10 and FP17-10 and through Board approval and publication of the Cook Inlet Final Rule (FSB 2015, FSB 2017, FSB 2019, 84 FR 39188).

Current Events Involving the Species

The community of Moose Pass, (defined as including the census designated places of Moose Pass, Crown Point, and Primrose) received rural status in 2021. Currently proposal FP23-08/09/12 submitted to the 2023-2025 regulatory cycle is under review for Moose Pass be added to the customary and traditional use determination for all fish in the Kenai Peninsula district waters north of and including the Kenai River.

Biological Background

Chinook Salmon abundance in the Kenai River and throughout Alaska has been decreasing since around 2007. Some stocks are also exhibiting declining trends in size and age, including Kenai River Chinook Salmon that spawn on the Kenai National Wildlife Refuge, either in tributary streams (Boersma and Gates 2016) or the main-stem Kenai River (Lewis et al. 2015). Several possible factors have been identified as potential drivers of this downward trend in abundance, including changing ocean conditions resulting in poor juvenile survival and growth, size-selective harvest, competitive interactions, and changing environmental conditions, but the evidence is not conclusive for a specific cause (Lewis et al. 2015).

Early-Run Chinook Salmon

Early-run Chinook Salmon enter the Kenai River from about late-May through late-June. From 2018 – 2022 the average date for the earliest detected early-run large Chinook Salmon to pass through the ADF&G ARIS sonar was May 20 (ADFG 2022b). Most early-run Chinook Salmon spawn in Kenai River tributaries below the outlet of Skilak Lake, and most of these spawners are bound for the Killey and Funny rivers. In general, about 80 percent of the early-run Chinook Salmon spawn in either the Funny or the Killey Rivers, while only about 7% of all early-run Chinook Salmon spawn in tributaries above Skilak Lake (Burger et al. 1983, Bendock and Alexandersdottir 1992). In the mainstem Kenai River, staging behavior (preparing for spawning) generally runs from early- to mid-July, with most spawning occurring from mid-July through August.

In 2017, the ADF&G amended the Kenai River Chinook Salmon escapement goals based on large Chinook Salmon (fish greater than 75 centimeters mid-eye-to-tail-fork-length or approximately 34 inches total length as measured from tip of snout to tip of tail). The optimal escapement goal (OEG)¹ range for early-run Chinook Salmon was 3,900 to 6,600 large Chinook Salmon. Escapement is estimated using test netting at River Mile 9, sonar equipment located at River Mile 14, and sport angler harvest surveys.

The spawning escapement of large Chinook Salmon for the years 2006 – 2021 averaged 4,107 fish, with a range of 1,601 fish in 2013 to 6,725 in 2017. The spawning escapement in 2020 was 2,439 large Chinook Salmon and in 2021 was 4,036 large Chinook Salmon (ADF&G 2022a). The 2022 preseason forecast for large early-run Chinook Salmon was for a total run of 4,272 fish. The total run forecast is within the OEG and sustainable escapement goal (SEG)² range of 3,900 to 6,600 and 2,800 to 5,600 large Chinook Salmon, respectively. As of June 30, 2022, the cumulative ARIS sonar estimate was 2,051 large Chinook Salmon (ADF&G 2022b). The 2022 preliminary spawning escapement estimate of 2,047 and total inriver run estimate of 2,052 large fish did not achieve the OEG or SEG (ADF&G 2022c).

The State's *Kenai River and Kasilof River Early-Run King Salmon Conservation Management Plan* (5 AAC 57.160) establishes escapement objectives and guidelines for the management of all existing fisheries harvesting this run. This plan also tries to ensure that the age and size composition of the harvest closely approximates that of the run. The State manages other fisheries to minimize the harvest of this run. The commercial and personal use fisheries open after most early-run Chinook Salmon have entered the Kenai River. The Kenaitze Indian Tribe's educational fishery has historically had a seasonal limit of 300 Chinook Salmon, but in 2014 the limit was decreased to 50 Chinook Salmon to conserve returning fish retained.

All sport fishing for early-run Chinook Salmon in the Kenai River occurs below Skilak Lake. Only Chinook Salmon less than 34 inches can be retained in the sport fishery.

Late-Run Chinook Salmon

Late-run Chinook Salmon enter the Kenai River from about late-June through late-July. The sonar operations at River Mile 14 begin on May 16 and cease approximately August 20. Most late-run Chinook Salmon spawn in the mainstem Kenai River. An estimated 20 to 40 percent spawn between River Mile 10 and the Soldotna Bridge at River Mile 21 (ADF&G 2016c), more than half between the Soldotna Bridge and

¹ An optimum escapement goal, which may be expressed as a range, allows for sustainable runs based on biological needs of the stock and ensures healthy returns for commercial, sport, subsistence, cost-recovery, and personal use harvests. Optimum escapement goals are set by the State of Alaska Board of Fisheries (ADF&G 2016a).

² A sustainable escapement goal is a level of escapement, indicated by an index or an escapement estimate, that is known to provide for sustained yield over a 5 to 10 year period, used in situations where a biological escapement goal cannot be estimated due to the absence of a stock specific catch estimate; the SEG is the primary management objective for the escapement, unless an optimal escapement goal or inriver run goal has been adopted by the State of Alaska Board of Fisheries, and will be developed from the best biological information; the SEG will be determined by the Alaska Department of Fish and Game and will be stated as a range that takes into account data uncertainty; the Department will seek to maintain escapements within the bounds of the SEG (from 5 AAC 39.222(f)) (ADF&G 2016a).

the outlet of Skilak Lake, and about 9% of the total late run spawns within or above Skilak Lake (Burger et al. 1983, Hammarstrom et al. 1985, Bendock and Alexandersdottir 1992). In the mainstem Kenai River, staging behavior generally runs from late-July to mid-August, with most spawning occurring from mid-August to mid-September.

The optimum escapement goal (OEG) for late-run Chinook Salmon is 15,000 to 30,000 fish. As with the early run, escapement is estimated using test netting at river mile 9, sport angler harvest survey, and sonar equipment located at river mile 14. The spawning escapement for the years 2006 – 2015 averaged 26,613 fish with a range of 16,527 fish in 2010 to 48,950 in 2006.

The preliminary 2020 sonar count of large late-run Kenai River Chinook Salmon was 11,499 fish with an escapement estimate of 11,908 fish, accounting for sport fishery harvest above the sonar site and spawning below the sonar site (Brenner et al. 2021). Neither the large fish OEG (15,000–30,000 fish), nor the SEG (13,500–30,000 fish) for Kenai River late-run Chinook Salmon was achieved in 2020 (Brenner et al. 2021). The 2021 late-run Chinook Salmon returns were well below average with the large Chinook Salmon forecast of approximately 18,406 fish (ADF&G 2022d). Preliminary spawning escapement estimates for 2021 were 12,176 Chinook Salmon with a total run estimate of 12,519 large fish (ADF&G 2022d).

The State’s *Kenai River Late-Run King Salmon Management Plan* (5 AAC 21.359) establishes escapement objectives and guidelines for the management of all existing fisheries harvesting this run. While this run is primarily managed for use by the sport fishery, the incidental harvest in commercial fisheries is substantial. Most of the sport harvest is taken below the Soldotna Bridge within the Kenai River, although some are taken in marine waters in the Deep Creek sport fishery. Chinook Salmon in 2014. To determine whether the escapement goal will or will not be achieved, daily sonar estimates of Chinook Salmon passing the sonar site and estimates of the sport harvest from creel surveys are utilized in a run timing model to project total inriver return, total harvest and final spawning escapement. If escapement is projected to fall below the lower end of the SEG range, the fishery is restricted by several steps, including prohibiting use of bait, to catch-and-release only with barbless hooks, and ultimately to closure, if necessary.

Cultural Knowledge and Traditional Practices

The Kenai River flows through traditional Dena’ina Athabascan territory. Kenai River drainage Chinook Salmon historically provided an important subsistence resource; the first, early run of Chinook Salmon provided a valuable source of fresh food when it was most needed (Osgood 1937, Jones and Kukkonen 2017). Writing about Upper Cook Inlet traditions that likely also applied to the Kenai Peninsula, Kari and Fall reported that “Special care was taken with the first King salmon, and a special feast was given” (2016: 181). Chinook Salmon were traditionally harvested with dip nets from *tanik’edi*, or dip netting platforms (Kari and Fall 2016).

Table 1. Three measures of Hope’s use of Chinook Salmon during two survey years. (Sources: ADF&G 2022, Fall et al. 2004).

Survey year	Pounds per person harvested	Estimated total number harvested	Percent surveyed households using
2002-2003	4.2	41	32%
1990-1991	6.9	68	35%

Table 2. Three measures of Cooper Landing's use of Chinook Salmon during two survey years. (Sources: ADF&G 2022, Fall et al. 2004).

Survey year	Pounds per person harvested	Estimated total number harvested	Percent surveyed households using
2002-2003	4.2	82	48%
1990-1991	3.9	64	30%

Cooper Landing and Hope

Cooper Landing and Hope are small communities located in Unit 7 on the Kenai Peninsula. Both were settled by gold miners in the mid to late 1800s (Barry 1973, cited in Seitz et al. 1994). Cooper Landing is located along the Sterling Highway, about 97 road miles from Anchorage and approximately 59 road miles from the City of Kenai. Hope is about 87 miles south of Anchorage and 74 miles north of Seward (Morris Communication Company 2019). Sunrise is located approximately seven miles east of Hope and is considered a sub-community of the latter for the purposes of customary and traditional use determinations. In 2019, the estimated population of Hope-Sunrise was 229 and the estimated population of Cooper Landing was 269 (ADLWD 2020).

Cooper Landing and Hope's uses of fish have been surveyed by ADF&G, Division of Subsistence twice, first for the study period August 1990 through July 1991 (Seitz et al. 1994)³, and most recently for the study period April 2002 to March 2003 (Fall et al. 2004)⁴. For the 1990 to 1991 study year, 61 Cooper Landing households (62% of all households) and 41 Hope households (64% of all households) were surveyed. Salmon (all species) comprised approximately 45% of Hope's total estimated wild food harvest, and 43% of Cooper Landing's total harvest, providing 50 pounds and 40 pounds of food per person, respectively, making salmon the most significant resource in terms of pound of edible weight for both communities (Seitz et al. 1994).

For the 2002 to 2003 study year, 103 Cooper Landing households (78% of all households) and 60 Hope households (81% of all households) were surveyed. Data on total wild food harvest, and the portion of this harvest made up by salmon, is not available for the 2002 to 2003 study year. In both study years, Sockeye and Coho Salmon made up most of the salmon harvest, but Chinook Salmon also provided an important source of food (Seitz et al. 1994, Fall et al. 2004, **Tables 1** and **2**).

³While Sunrise was included as part of Hope in the survey for 2002 to 2003, it is not clear whether it was included as part of the survey for 1990 to 1991.

⁴Data from the 2002 – 2003 study year are not incorporated into the Community Subsistence Information System (CSIS).

In both study years, rod and reel was the predominant method used by residents of Cooper Landing and Hope for harvesting Chinook Salmon. During the 1990 to 1991 study period, Hope residents harvested Chinook Salmon by rod and reel (12% of all surveyed households), net (3.1% of households), and “other subsistence gear” (3.6% of households) (Seitz et al. 1994). During the same period, Cooper Landing residents harvested Chinook Salmon by rod and reel (14.1% of all surveyed households) and removed them from the commercial catch (1.2 % of households) (Seitz et al. 1994).

Although presented slightly differently for the 2002 to 2003 study period, this pattern of gear use persisted. During this time, 94% of Hope’s Chinook Salmon harvest was taken with rod and reel, and the remaining 6% was taken with dipnet. During this same period 90% of Cooper Landing’s Chinook Salmon harvest was taken with rod and reel, 6 % was taken by fish wheel, and the remaining Chinook Salmon were taken with dipnet or “other subsistence methods” (Fall et al. 2004).

Ninilchik

The community of Ninilchik (*Niqnalchint*) is within the traditional territory of the Lower or Outer Cook Inlet Dena’ina Athabaskans on the coast of the central Kenai Peninsula in Unit 15, 38 miles south of Soldotna (Georgette 1983). The present-day community of Ninilchik was settled in 1847 by former employees of the Russian-American Company and their families (Arndt 1996, cited in Fall et al. 2000), and included individuals of Alutiiq heritage. In 2019, the estimated population of Ninilchik was 821 (ADLWD 2020).

Ninilchik residents have traditionally preferred Chinook Salmon because they are firmer and oilier, “making them ideal for smoking and preserving” (Georgette 1983: 179). The community’s use of fish has been surveyed three times by ADF&G Division of Subsistence, detailed in **Table 3**.

Table 3. Study periods, households sample size, and percentage of all households surveyed for three Ninilchik subsistence surveys conducted by ADF&G, Division of Subsistence.⁵ (Sources: Reed 1985, Fall et al. 2000, Fall et al. 2004).

Study period	Number of Ninilchik households surveyed	Percentage of all households surveyed	Reference
April 2002 to March 2003	100	17%	Fall et al. 2004
1998 calendar year	101	25%	Fall et al. 2000
March 1982 to November 1983	24	11%	Reed 1985

Table 4. Three measures of Ninilchik’s use of Chinook Salmon during three survey years. (Sources: ADF&G 2022e, Fall et al. 2004).

⁵ In the 1982 study year, only households within the Ninilchik census area were included, whereas in the 1998 study year, “Ninilchik” also included the Happy Valley CDP, plus the population north of the Ninilchik CDP to the Clam Gulch CDP, and a small portion of the Clam Gulch CDP to approximately Milepost 121” (Fall et al. 2000).

Survey year	Pounds per person harvested	Estimated amount harvested	Percent using
2002-2003	8.4	877	66%
1998	10.4	721	69%
1982-1983	7.3	298	58%

During both the 1982 to 1983 and 1998 survey year, all species of salmon together comprised approximately a quarter of Ninilchik’s total estimated wild food harvest (Reed 1985, Fall et al. 2000). The 2002 to 2003 survey was not comprehensive and therefore did not produce a total wild food harvest in which to contextualize salmon harvest. Across the three survey years, all species of salmon together provided an estimated average 35.8 pounds of food per person. During the 1982 to 1983 survey year, Chinook Salmon was the most important species of salmon for residents of Ninilchik in terms of pounds harvested, but in the latter two survey years, Sockeye Salmon was the most important species, followed by Coho Salmon, and then Chinook Salmon (Reed 1985, Fall et al. 2000, Fall et al. 2004). Ninilchik’s use of Chinook Salmon is detailed in **Table 4**.

In all survey years, rod and reel accounted for most of Ninilchik’s Chinook Salmon harvest. For the 1982 to 1983 study year, 79% of Chinook Salmon were harvested by rod and reel, and 21% were removed from commercial year (Reed 1985). In 1998, 61% of the Chinook Salmon harvest was obtained by rod and reel, approximately 21% were removed from commercial catch, and 17% were caught with set nets (Fall et al. 2000). Finally, for the 2002 to 2003 study year, approximately 70% of the Chinook Salmon harvest was taken by rod and reel, followed by removal from the commercial catch (approximately 14%), gill net (approximately 11%), and removal from guided catch (approximately 5%) (Fall et al. 2004).

Harvest History

Harvest of Pacific salmon returning to the Kenai River drainage occurs in Federal subsistence fisheries, as well as State commercial, sport, personal use, and educational fisheries. Federal subsistence regulations have provided for the harvest of fish in the Kenai River drainage for the rural residents of Cooper Landing and Hope, and since 2006 and Ninilchik from 2006 to 2007, and from 2010 onward. Management of the Federal subsistence fishery occurs through general and Cook Inlet Area specific subsistence regulations, as well as in-season management actions. A Federal subsistence fishing permit is required for the harvest of salmon, trout, and char, and all harvest must be reported to the Federal in-season manager. While the Federal subsistence regulations allow for the harvest of Chinook Salmon from both runs, the actual harvest over the years has been very low (**Appendices 1 - 3**). Harvest closures have occurred in the Kenai River for the retention of Chinook Salmon over the past ten years may have impacted the harvest to some degree. Sport fishery harvests of early-run Kenai River Chinook Salmon during 2007 – 2016 have ranged from 0 to 3,500, with an average of 1,273 (Begich et. al. 2017). These harvests do not include the estimated hook-and-release mortality that ranges from 0 to 220 fish. The Kenaitze Tribe’s educational fishery harvest has ranged from 1 to 49 early-run Chinook Salmon during 2007 – 2016, with an average of 23.

The harvest of late-run Chinook Salmon is monitored in the commercial, personal use, sport, and educational fisheries (Begich et. al. 2017). Commercial fishery harvests during 2006 – 2015 have ranged from 621 to 15,812 Kenai River late-run Chinook Salmon, with an average of 4,933. Harvests in the Deep Creek marine sport fishery have ranged from 30 to 591 Kenai River late-run Chinook Salmon during 2006 – 2015, with an average of 386. Sport fishery harvests in the Kenai River have ranged from 103 to 15,812 late-run Chinook Salmon during 2006 – 2015, with an average of 6,515. These in-river harvests do not include the estimated hook-and-release mortality that ranges from 71 to 830 fish. Personal use dip net fishery harvests have ranged from 0 to 1,509 late-run Chinook Salmon during 2006 – 2015, with an average of 813. Kenaitze Tribe’s educational fishery harvests have ranged from 0 to 21 late-run Chinook Salmon during 2006 – 2015, with an average of 8.

Effects of the Proposal

If adopted by the Board, this proposal will reduce the maximum allowable harvest length of Kenai River Chinook Salmon by federally qualified subsistence users by going from a slot limit less than 46 inches or 55 inches and longer, to a size limit less than 34 inches. Allowing harvest of smaller Chinook Salmon while protecting the larger more productive females to spawn may help improve the quality of escapement and the health of the run. Updating federal size regulations to be more consistent with recent changes to state regulations may benefit the Kenai River Chinook Salmon stock. Rural residents with a customary and traditional use determination for fish in the Kenai River area harvest most of their Chinook Salmon with rod and reel. This proposal would reduce opportunity for federally qualified subsistence users by decreasing the total allowable time to fish with rod and reel while Chinook Salmon are present in the Kenai River and by making any fish caught of length greater than 34 inches ineligible for harvest.

OSM CONCLUSION

Oppose Proposal FP23-07.

Justification

This proposal would place restrictions on federally qualified subsistence users that may be detrimental to the satisfaction of their subsistence needs. Restricting harvest of Chinook Salmon to only fish less than 34 inches, prohibiting bait as a means for harvest, and truncating harvest dates restricts harvest opportunity. The proposed change provides no meaningful priority of Kenai River Chinook Salmon for federally qualified subsistence users.

The historic Federal subsistence harvest of Kenai River Chinook Salmon in the rod and reel fishery has been relatively minimal and would have no significant impact on Kenai River large Chinook Salmon escapement. The harvest of two Chinook Salmon during the 12-year period from 2007 - 2019 suggests there is little evidence to support that subsistence harvest of Kenai River Chinook Salmon would violate recognized principles of fish and wildlife conservation.

A Federal subsistence permit is required to harvest Kenai River Chinook Salmon and that permit requires a record of the harvest and location of the harvest. The subsistence fishery can be monitored through these permits and changes made by the Federal in-season manager to the permit conditions if needed. Under existing authority delegated by the Board, the Field Supervisor of the Kenai Fish and Wildlife Conservation Office has the ability to open or close Federal subsistence fishing periods as well as specifying methods and means for the continued viability of Kenai River Chinook Salmon.

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SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS

Southcentral Alaska Subsistence Regional Advisory Council

Oppose FP23-07. The Southcentral Subsistence Regional Advisory Council found no biological concern given the low harvest of Chinook Salmon in the Kenai River Federal subsistence fishery. The Council felt that this regulation would remove a meaningful subsistence priority for federally qualified subsistence users. The Council noted that the Federal fisheries regulations do not need to align with State regulations.

INTERAGENCY STAFF COMMITTEE COMMENTS

The Interagency Staff Committee found the staff analysis to be a thorough and accurate evaluation of the proposal and that it provides sufficient basis for the Regional Advisory Council recommendation and Federal Subsistence Board action on the proposal.

ALASKA DEPARTMENT OF FISH AND GAME COMMENTS

Fisheries Proposal FP23-07

This proposal would update the federal subsistence fishing regulations for the Kenai River to reflect changes made by the Alaska Board of Fisheries (BOF) in response to the status of the early and late-run Chinook salmon.

Position

Alaska Department of Fish and Game (ADF&G) **SUPPORTS** this proposal. Federal subsistence fishing regulations contain an outdated slot limit allowing harvest of Chinook salmon “less than 46 inches or 55 inches and longer”. In 2017 and again in 2020 the BOF took additional actions to protect large productive female Chinook salmon spawning in the Kenai River and this federal regulation no longer matches the state’s size limit restricting harvest to only fish less than 34” in the waters upstream of Slikok Creek.

Additionally, for conservation purposes the restrictive size limit (>34”) requires the release of Chinook salmon and the use of bait increases the mortality associated with releasing salmon. Use of bait, as currently allowed in the federal rod and reel fishery, is associated with a higher mortality of released fish. State regulations prohibit the use of bait in waters upstream of Slikok Creek during the Kenai River Chinook salmon fishery (January 1 – July 31).

Background

Federal subsistence regulations for Kenai River Chinook salmon gillnet and hook and line fisheries were originally written to be consistent with the established state sport fishing regulations. Since its adoption into federal regulation, the state regulation has become more conservative to protect the early-run Chinook salmon stock. The slot limit currently in federal regulations was repealed by the BOF in 2017. It was replaced by a maximum size limit of 36 inches which was then further reduced to 34 inches in 2020. ADF&G recommends that only Chinook salmon that are less than 34 inches be allowed to be retained if the run projection is within the escapement goal range for the early and late run. If the inseason inriver run projection exceeds the goal for Chinook salmon that are 75cm from mid-eye to tail fork length or longer, ADF&G has the authority to liberalize the sport fishery by allowing the use of bait, and/or modifying the maximum size limit allowed for retention—but only in the waters downstream of Slikok Creek.

Additionally, state regulations prohibit the use of bait in waters upstream of Slikok Creek during the Kenai River Chinook salmon fishery (January 1 – July 31). This is a conservation issue since there is a size limit (>34”) which requires the release of Chinook salmon, and the use of bait increases the mortality associated with releasing salmon. This regulation further demonstrates concern on the part of the BOF for early-run Chinook salmon.

Impact on Subsistence Users

If adopted federally qualified users (FQU) will not be able to harvest Chinook salmon in the 34 to 46-inch range. Chinook 34 inches and greater in length are largely older productive females and would be required to be released alive when possible.

Impact on Other Users

If adopted this change will have no direct impact on other inriver users. Fishing regulations currently restrict anglers’ harvest to fish less than 34 inches in all waters during June and then above Slikok in July, and state regulations prohibit the use of bait in waters upstream of Slikok Creek during the Kenai River Chinook salmon fishery (January 1 – July 31).

Opportunity Provided by State

State customary and traditional use findings: The Alaska Board of Fisheries (BOF) only makes positive customary and traditional use findings for fish outside nonsubsistence areas and the Kenai River is within the Anchorage-Matsu-Kenai Nonsubsistence Area as described in 5 AAC 99.015(a)(3). Therefore, Kenai River Chinook do not have a positive customary and traditional use finding.

Amounts Reasonably Necessary for Subsistence: Alaska state law requires the BOF to determine the amount of the harvestable portion of a fish population that is reasonably necessary for customary and traditional uses. This is an ANS. Because Kenai River Chinook do not have a customary and traditional use finding, they do not have an ANS.

5 AAC 57.120. General provisions for seasons, bag, possession, annual, and size limits, and methods and means for the Kenai River Drainage Area

(a) Unless otherwise specified in 5 AAC 57.121 - 5 AAC 57.123 or by an emergency order issued under AS 16.05.060, the following are the general seasons, bag, possession, annual, and size limits, and methods and means that apply to sport fishing for finfish in the Kenai River Drainage Area:

(2) king salmon 20 inches or greater in length, as follows:

(A) may be taken only from January 1 - July 31, in the Kenai River from its mouth upstream to an ADF&G regulatory marker located at the outlet of Skilak Lake, with a bag and possession limit of one fish, as follows:

(i) from January 1 - June 30, from its mouth upstream to an ADF&G regulatory marker located at the outlet of Skilak Lake, and from July 1 - July 31, from an ADF&G regulatory marker located approximately 300 yards downstream from the mouth of the Slikok Creek upstream to an ADF&G regulatory marker located at the outlet of Skilak Lake, only king salmon that are less than 34 inches in length as measured from tip of snout to tip of tail may be retained;

(ii) if retention is permitted under this subparagraph, a king salmon 20 inches or greater in length that is removed from the water must be retained and becomes part of the bag limit of the person originally hooking it; a person may not remove a king salmon from the water before releasing the fish; except as provided in (b)(1) of this section, there is an annual limit of two king salmon and a harvest record is required as specified in 5 AAC 75.006

5 AAC 57.121. Special provisions for the seasons, bag, possession, and size limits, and methods and means for the Lower Section of the Kenai River Drainage Area

Unless otherwise specified by an emergency order issued under AS 16.05.060, the following are the special provisions and localized exceptions to the general seasons, bag, possession, and size limits, and methods and means set out in 5 AAC 57.120 and 5 AAC 75 for the Lower Section of the Kenai River Drainage Area:

(1) sport fishing gear restrictions:

(A) from January 1 - June 30, in the Kenai River, and from July 1 - July 31, in the Kenai River from an ADF&G regulatory marker located approximately 300 yards downstream from the mouth of Slikok Creek upstream to an ADF&G regulatory marker located at the outlet of Skilak Lake, only one unbaited, single-hook, artificial lure may be used;

(B) from July 1 - July 31, in the Kenai River from its mouth upstream to an ADF&G regulatory marker located approximately 300 yards downstream from the mouth of Slikok Creek, only one single hook may be used

Special instructions: None

Conservation Issues

In 2020, the BOF restricted the harvest of Chinook salmon to less than 34 inches to allow larger, more productive fish to escape inriver harvest to spawn. In this period of low productivity of Chinook salmon, maximizing the number of large, healthy fish that successfully spawn will benefit Kenai River Chinook stocks. Kenai River Chinook salmon 34 inches and greater in length are 3-ocean to 5-ocean (5 to 7 years total age) and over 90% of females returning to the Kenai River are 34 inches or greater. ADF&G updated Kenai River Chinook salmon assessment to a large fish goal (Chinook salmon 75cm from mid-eye to tail fork length or longer) in 2017. One benefit of setting escapement goals based on large fish instead of fish of all sizes is the quality of escapement. Managing to achieve large fish goals helps ensure escapement is comprised of larger more productive females and not an abundance of jacks or smaller, less productive salmon. Current sport regulations, large fish management, and best practices for releasing fish outside of established size limits, protect reproductive potential of the stocks.

Enforcement Issues

Enforcement issues should diminish with an update of the federal regulations. Enforcement and compliance by users of the resource benefit from clear and consistent regulations.

APPENDIX 1

Kenai River Federal subsistence dip net salmon harvests by residents of Hope, Cooper Landing, and Ninilchik between the years 2007 and 2019. (Sources: USFWS 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020).

Dip Net Harvests										
Year	Russian River Falls			Kenai River (RM 45.5-48)			Moose Range Meadows			Total
	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	
2007	527	n/a	n/a	0	0	0	12	0	0	539
2008	1,281	n/a	n/a	0	0	0	0	0	0	1,281
2009	809	n/a	n/a	30	0	0	0	0	0	839
2010	804	n/a	n/a	0	0	0	0	0	0	804
2011	953	n/a	n/a	0	0	0	0	0	0	953
2012	1,285	n/a	n/a	0	0	0	0	0	0	1,285
2013	1,267	n/a	n/a	0	0	0	0	0	0	1,267
2014	1,672	n/a	n/a	0	0	0	0	0	0	1,672
2015	1,604	n/a	n/a	0	0	0	0	0	0	1,604
2016	1,641	n/a	n/a	0	0	0	0	0	0	1,641
2017	1,773	n/a	n/a	25	0	0	0	0	0	1,798
2018	1,951	n/a	n/a	0	0	0	0	0	0	1,951
2019	1,848	n/a	n/a	0	0	0	0	0	0	1,848
TOTAL	17,415	n/a	n/a	55	0	0	12	0	0	17,482
Average	1340	n/a	n/a	4	0	0	0.923077	0	0	1,345

APPENDIX 2

Kenai River Federal subsistence rod and reel salmon harvests by residents of Hope, Cooper Landing, and Ninilchik between the years 2007 and 2019. (Sources: USFWS 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020).

Rod and Reel Harvests										
	Upper Kenai/ Russian River Falls			Kenai River (RM 45.5-48)			Moose Range Meadows			
Year	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	Total
2007	169	5	n/a	0	0	0	0	0	0	174
2008	125	7	n/a	0	0	0	202	5	0	339
2009	165	9	n/a	0	0	0	93	0	0	267
2010	57	0	n/a	0	0	0	42	0	0	99
2011	46	0	n/a	0	0	0	90	0	0	136
2012	43	0	n/a	0	0	0	86	0	0	129
2013	68	4	n/a	0	0	0	73	0	0	145
2014	100	2	n/a	0	0	0	124	0	0	226
2015	89	0	n/a	0	0	0	75	0	0	164
2016	9	0	n/a	0	0	1	6	0	0	16
2017	88	0	n/a	0	0	1	42	0	0	131
2018	103	3	n/a	0	0	0	33	0	0	139
2019	127	5	n/a	0	0	0	55	0	0	187
TOTAL	1189	35	n/a	0	0	2	921	5	0	2,152
Average	91	3	n/a	0	0	0.2	71	0.4	0	166

APPENDIX 3

Kenai River Federal subsistence community gillnet salmon harvests by residents of Hope, Cooper Landing, and Ninilchik between the years 2007 and 2019. (Sources: USFWS 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020).

Community Gillnet Harvest										
Year	Sockeye	Coho	Chinook	Sockeye	Coho	Moose Range Meadows				Total
						Sockeye	Coho	Chinook	Pink	
2016	-	-	-	-	-	723	12	1	6	742
2017	-	-	-	-	-	2,169	-	1	11	2,193
2018	-	-	-	-	-	1,488	32	-	6	1,526
2019	-	-	-	-	-	2,832	6	-	1	2,839
TOTAL	-	-	-	-	-	7,212	62	2	24	7,300
Average	-	-	-	-	-	1,803	16	1	6	1,825

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