



# Federal Subsistence Board Public Meeting

## Meeting Materials: Volume I

*January 31 - February 3, 2023*

William A. Egan Civic & Convention Center  
Anchorage, Alaska





# Volume I

## Consensus Agenda Fisheries Proposals, Closure Reviews, and other documents

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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 5<sup>th</sup> 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](http://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.

<b>Proposal/Closure Review</b>	<b>Region/Location/Species</b>	<b>Recommendation</b>	<b>Page</b>
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

<b>Proposal/Closure Review</b>	<b>Region/Location/Species</b>	<b>Page</b>
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

<b>Proposal/Closure Review</b>	<b>Region/Location/Species</b>	<b>Page</b>
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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## FISHERIES DELEGATION LETTERS & SPECIAL ACTION AUTHORITIES

### Background

The Federal Subsistence Board (Board) has delegated specific regulatory authority to Federal managers across Alaska for the management of Federal subsistence fish and wildlife resources, through delegation of authority letters (hereafter, delegation letters). This authority is granted to the Board by the Secretaries in subpart B, 36 CFR 242.10(d)(6) and 50 CFR 100.10(d)(6). The regulations 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.*

A recent review of fisheries delegation letters identified inconsistencies in the authorities granted to Federal managers. Specifically, the discrepancy between wildlife delegation letters, which allow the managers to issue emergency and temporary special actions, and fisheries delegation letters, which only allow managers to issue emergency special actions. These inconsistencies could be addressed through updates to the fisheries delegation letters and would provide transparency and uniformity within the program.

Historical documents were reviewed to determine if there were any clear indication of how this discrepancy arose. The following information was identified:

- Fisheries delegation letters began to be issued in 2000 and were expanded in 2001; both of these sets of letters were interim actions, requiring annual re-issuance. These letters delegated authority to *issue emergency regulations (special actions) affecting fisheries in Federal waters*, but they did not specify the types of special actions available. They also did not specify the limits on the length of the closures that managers issued as special actions.
- In 2002, the Secretaries conducted a rulemaking that more clearly addressed delegations of authority in Subpart B. However, nothing in the preamble addressed why the fisheries delegation letters were limited to emergency special actions. These letters delegated authority 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 populations, or for public safety reasons*. Further, they permitted Federal managers to *open and close Federal subsistence fishing periods or areas provided under codified regulations, and specify methods and means, permit requirements, and set harvest and possession limits for Federal subsistence fisheries*, and also allowed Federal managers to *close and re-open Federal public waters to nonsubsistence fishing when necessary to conserve healthy populations of fish or to ensure the continuation of subsistence uses*. Lastly, they specified that *all other proposed*

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

- The preamble for the 2009–2010 rulemaking regarding special actions does not address delegation or matters related to delegation of authority.
- Reasons as to why Federal fisheries managers do not have the same management tools as Federal wildlife managers could not be located or determined by OSM staff.

The DOI Assistant Regional Solicitor was contacted, and he noted that the rationale and justification for fisheries delegation letters was to allow field managers to respond quickly to rapidly changing circumstances, such as the development of salmon runs over the summer. He suspected this is why the focus was on emergency special actions.

It is important to note that some Regional Advisory Councils have expressed concern about delegation letters in the past, with one Council holding regularly scheduled reviews of delegated authorities over several meeting cycles. Information requested by the Councils has included how the Board delegates authority, the scope of authorities delegated to Federal managers, and what forms of consultations managers must have with the Councils before implementing special actions.

#### Granting Delegation Letters to Fisheries Managers for Temporary Special Actions

Several issues have arisen in recent years in which temporary special action authority could simplify the process for fisheries managers. There were two notable cases in 2022:

- The first case was when the Board acted on fisheries proposal FP21-10 to create the new Federal dipnet and rod and reel fishery in the lower Copper River, which provided an additional opportunity to harvest salmon for Federally qualified subsistence users. This proposal was initially deferred by the Board at their January 2021 fisheries regulatory meeting and was later adopted by the Board at their April 2022 wildlife regulatory meeting. The timing of Board passage created a situation where publication of the new regulations in the Code of Federal Regulations (CFR) would not happen until after the date that the fishery was set to start (June 1).

The in-season manager did not have the authority to issue a temporary special action that would ensure the fishery would be open from June 1 until publication of the new CFR was published. OSM, therefore, had to submit a temporary special action request, hold a public hearing, and put together another Board meeting as an interim measure to approve a regulatory change that the Board had already adopted. If in-season managers have authority to issue temporary special actions, then they will be able to pass through this process and enact the regulation changes adopted by the Board but not yet published in the CFR, which will make the regulation implementation more efficient. Federal wildlife managers, on the other hand, already have the capacity to do this.

- The second case was when, in anticipation of low salmon returns on the Yukon River during 2022, the Board acted on FSA22-01 to both limit salmon harvest on Federal public waters of the Yukon River drainage to Federally qualified subsistence users from June 1 through September 30, a period of 121 days, and specify that the Federal Fisheries Manager, who is delegated authority from the Board, may issue emergency special actions during the season to open, close, or change gear types in the Federal subsistence salmon fisheries. The salmon returns were then well below average, requiring the Federal Fisheries Manager to close the Yukon River to all harvest of Chinook, summer and fall Chum salmon. Yet, since the emergency special actions are limited to 60 days, the manager had to issue 15 special actions—split by species, dates, and areas—to cover as much of the fishery as possible for the duration of the 121 days. With this constraint, the manager had to leave parts of the lower river open to harvest by Federally qualified users before the Board’s restriction expired at the end of September, but during a period that the fall Chum Salmon run still needed to be closed for conservation purposes. Having temporary special action authority would have enabled the Federal fishery manager to close all portions of the fishery for the entire 121 days with a single action and more effectively manage the Yukon River salmon harvest throughout the 2022 season.

Temporary special actions could help to manage closures that may soon be rescinded by the Board. During the current (2023–2025) fisheries regulatory cycle, there are a number of fisheries closures under review in areas closed to Federal subsistence harvest yet open to sport fishing harvest. The OSM position on these closures is that they are counter to Title VIII of ANILCA and those locations should be reopened to Federal subsistence harvest. Should the Board rescind a closure without a corresponding proposal to address items such as seasons, harvest limits, and gear types, the newly re-opened areas would revert to the more liberal area-wide regulations. The impacts that these area regulations will have on each specific fishery is unknown, and residents have raised concerns that fish populations maybe overharvested. Any modifications for specific gear types, harvest limits, or seasons in the fisheries would need to occur through the standard regulatory proposal process. Federal in-season managers may use their delegated authority to manage the fisheries as needed until regulatory proposals are submitted requesting specific changes. However, as explained above, managers are often constrained in their capacity to enact changes that exceed 60 days.

### Options

The following are three options for Board consideration:

1. Do not include temporary special action authority in the fisheries delegation letters. This would result in no change from the status quo; fisheries delegation letters would have only emergency special action authority. The issues described above would continue to occur, but could be addressed by the Board as temporary special actions when necessary.

2. Add temporary special action authority to the subset of fisheries delegation letters where these issues have already been shown to occur. This would alleviate the current problem situations that have arisen, but additional Board action will be required as future situations emerge and during the interim fisheries managers and subsistence users will face the issues described above.
3. Add temporary special action authority to all fisheries delegation letters. This would cover all fisheries delegations and match what is currently in place for wildlife managers.

### Recommendation

OSM recommends either Option 3 or Option 2. OSM staff agreed that Option 1, retaining the status quo, is undesirable because it would perpetuate the situations described above, to the detriment of managers and users.

Most OSM staff preferred Option 3, updating all fisheries delegation letters to include authority for temporary special actions. This would be consistent with the authorities delegated to wildlife managers and would proactively avoid the timing and procedural issues described above. Under this option, all fisheries delegation letters would be updated to include the authorization for temporary special actions and the associated regulatory requirements, similar to what is in the wildlife delegation letters. Annual reporting to the Board on management actions, which is already required, will continue.

Some OSM staff preferred Option 2, updating existing delegation letters covering fisheries where the need for temporary special actions has already been demonstrated. This would avoid the appearance of a blanket delegation of authority where none may be necessary. The Board would address new situations where temporary special action authority would be beneficial as those situations arise.

### Additional Items Regarding Fisheries Delegation Letters

A member of the ISC raised the issue of OSM support to field offices regarding public hearings should field managers be allowed to issue fisheries temporary special actions (planning, public outreach, meeting facilitation, records management). OSM has experience with these items and ensures staff are available to address questions and assist, as needed. If delegation letters are issued to field managers regarding temporary special actions, OSM expects an increase in queries from the field. However, OSM also expects that the number of queries would return to normal levels as field managers gain more experience with this proposed change.

Should the Board choose to implement changes to the special action authority, then minor administrative changes may be made to the delegation letter template used for the fisheries delegation letters in an effort to make them as uniform as possible with the wildlife letters and to correct any out-of-date information.



Delegated Federal fisheries managers for Federal public waters subject to ANILCA Title VIII

<b>Area</b>	<b>Lead Federal Official</b>	<b>Last Updated</b>
Waters within the Ketchikan Misty Fjords Ranger District of the Tongass National Forest	Ketchikan District Ranger, Tongass National Forest (USFS)	2017
Waters within the Craig Ranger District of the Tongass National Forest	Craig District Ranger, Tongass National Forest (USFS)	2017
Waters within the Thorne Bay Ranger District of the Tongass National Forest	Thorne Bay District Ranger, Tongass National Forest (USFS)	2017
Waters within the Wrangell Ranger District of the Tongass National Forest	Wrangell District Ranger, Tongass National Forest (USFS)	2017
Waters within the Petersburg Ranger District of the Tongass National Forest	Petersburg District Ranger, Tongass National Forest (USFS)	2017
Waters within the Sitka Ranger District of the Tongass National Forest	Sitka District Ranger, Tongass National Forest (USFS)	2017
Waters within the Admiralty Island National Monument of the Tongass National Forest	Admiralty Monument Ranger, Tongass National Forest (USFS)	2017
Waters within the Juneau Ranger District of the Tongass National Forest	Juneau District Ranger, Tongass National Forest (USFS)	2017
Waters within the Hoonah Ranger District of the Tongass National Forest	Hoonah District Ranger, Tongass National Forest (USFS)	2017
Waters within the Yakutat Ranger District of the Tongass National Forest	Yakutat District Ranger, Tongass National Forest (USFS)	2017
Waters in the Copper River Drainage within the Prince William Sound Area	Superintendent, Wrangell-St. Elias National Park and Preserve (NPS)	2017
Waters in the Prince William Sound Area, except for the Copper River Drainage	Cordova District Ranger, Chugach National Forest (USFS)	2017
Waters in the Cook Inlet Area	Senior Fisheries Biologist, Kenai Fish and Wildlife Conservation Office (USFWS)	2021
Waters in the Kodiak Area	Refuge Manager, Kodiak National Wildlife Refuge (USFWS)	2017
Waters in the Bristol Bay, Alaska Peninsula, Aleutian Islands, and Chignik areas	Fisheries Branch Chief, Anchorage Fish and Wildlife Field Office (USFWS)	2017
Waters in the Kuskokwim Area, including the Goodnews and Kanektok rivers	Refuge Manager, Yukon Delta National Wildlife Refuge (USFWS)	2018
Waters in the Yukon River Drainage, including the Arctic National Wildlife Refuge	Fisheries and Aquatic Resources Branch Manager, Northern Alaska Fish and Wildlife Field Office (USFWS)	2022
Waters that drain into the Arctic Ocean, excluding the Arctic National Wildlife Refuge, and those within the Kotzebue and Norton Sound-Port Clarence Areas	Superintendent, Western Arctic Parklands (NPS)	2017

**INTERAGENCY STAFF COMMITTEE RECOMMENDATION**

**Fisheries Delegation of Authority Letters & Temporary Special Actions**

The Interagency Staff Committee (ISC) **supports Option 3** as presented in the Office of Subsistence (OSM) background paper, updating all fisheries delegation letters to include authority to enact temporary special actions. The ISC supports ensuring that Federal managers have all the tools needed to effectively administer the Federal Subsistence Board's (Board's) authority on Federal public lands and waters, as well as ensuring consistency across all delegation letters for fisheries and wildlife. Action on this issue is timely in preparation for Board deliberation on Fisheries Closure Reviews.

FP23-02 Executive Summary																
<b>General Description</b>	<p>Proposal FP23-02 requests the Federal Subsistence Board to recognize customary and traditional uses of Chinook, summer Chum, Coho, Sockeye, and Pink salmon in the Yukon River drainage by residents of Chevak, Hooper Bay, and Scammon Bay. <i>Submitted by: Chevak Native Village.</i></p>															
<b>Proposed Regulation</b>	<p><b>Customary and traditional use determinations—Fish</b></p> <p><b>Yukon-Northern Area</b></p> <table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top;"><i>Yukon River drainage</i></td> <td style="vertical-align: top;"><i>Salmon <del>other than Fall Chum Salmon</del></i></td> <td style="vertical-align: top;"><i>Rural residents of the Yukon River drainage and the community of community of Stebbins, Scammon Bay, Hooper Bay, and Chevak</i></td> </tr> <tr> <td style="vertical-align: top;"><del><i>Yukon River drainage</i></del></td> <td style="vertical-align: top;"><del><i>Fall Chum Salmon</i></del></td> <td style="vertical-align: top;"><del><i>Rural residents of the Yukon River drainage and the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak</i></del></td> </tr> <tr> <td style="vertical-align: top;"><i>Yukon River drainage</i></td> <td style="vertical-align: top;"><i>Freshwater fish species (other than salmon)</i></td> <td style="vertical-align: top;"><i>Residents of the Yukon-Northern Area</i></td> </tr> <tr> <td style="vertical-align: top;"><i>Remainder of the Yukon-Northern Area</i></td> <td style="vertical-align: top;"><i>All fish</i></td> <td style="vertical-align: top;"><i>Residents of the Yukon-Northern Area, excluding the residents of the Yukon River drainage and excluding those domiciled in Unit 26B</i></td> </tr> <tr> <td style="vertical-align: top;"><i>Tanana River drainage contained within the Tetlin NWR and the Wrangell-St. Elias NPP</i></td> <td style="vertical-align: top;"><i>Freshwater fish (other than salmon)</i></td> <td style="vertical-align: top;"><i>Residents of the Yukon-Northern Area and residents of Chistochina, Mentasta Lake, Slana, and all residents living between Mentasta Lake and Chistochina</i></td> </tr> </table>	<i>Yukon River drainage</i>	<i>Salmon <del>other than Fall Chum Salmon</del></i>	<i>Rural residents of the Yukon River drainage and the community of community of Stebbins, Scammon Bay, Hooper Bay, and Chevak</i>	<del><i>Yukon River drainage</i></del>	<del><i>Fall Chum Salmon</i></del>	<del><i>Rural residents of the Yukon River drainage and the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak</i></del>	<i>Yukon River drainage</i>	<i>Freshwater fish species (other than salmon)</i>	<i>Residents of the Yukon-Northern Area</i>	<i>Remainder of the Yukon-Northern Area</i>	<i>All fish</i>	<i>Residents of the Yukon-Northern Area, excluding the residents of the Yukon River drainage and excluding those domiciled in Unit 26B</i>	<i>Tanana River drainage contained within the Tetlin NWR and the Wrangell-St. Elias NPP</i>	<i>Freshwater fish (other than salmon)</i>	<i>Residents of the Yukon-Northern Area and residents of Chistochina, Mentasta Lake, Slana, and all residents living between Mentasta Lake and Chistochina</i>
<i>Yukon River drainage</i>	<i>Salmon <del>other than Fall Chum Salmon</del></i>	<i>Rural residents of the Yukon River drainage and the community of community of Stebbins, Scammon Bay, Hooper Bay, and Chevak</i>														
<del><i>Yukon River drainage</i></del>	<del><i>Fall Chum Salmon</i></del>	<del><i>Rural residents of the Yukon River drainage and the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak</i></del>														
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<i>Tanana River drainage contained within the Tetlin NWR and the Wrangell-St. Elias NPP</i>	<i>Freshwater fish (other than salmon)</i>	<i>Residents of the Yukon-Northern Area and residents of Chistochina, Mentasta Lake, Slana, and all residents living between Mentasta Lake and Chistochina</i>														

<b>FP23-02 Executive Summary</b>	
<b>OSM Conclusion</b>	<b>Support</b>
<b>Yukon-Kuskokwim Delta Subsistence Regional Advisory Council Recommendation</b>	<b>Support</b>
<b>Western Interior Alaska Subsistence Regional Advisory Council Recommendation</b>	<b>Support</b>
<b>Seward Peninsula Subsistence Regional Advisory Council Recommendation</b>	<b>Support</b>
<b>Eastern Interior Alaska Subsistence Regional Advisory Council Recommendation</b>	<b>Support</b>
<b>Interagency Staff Committee Comments</b>	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.
<b>ADF&amp;G Comments</b>	<b>Support</b>
<b>Written Public Comments</b>	<b>None</b>

**STAFF ANALYSIS  
FP23-02**

**ISSUES**

Proposal FP23-02, submitted by the Chevak Native Village, requests the Federal Subsistence Board (Board) to recognize customary and traditional uses of Chinook, summer Chum, Coho, Sockeye, and Pink salmon in the Yukon River drainage by residents of Chevak, Hooper Bay, and Scammon Bay.

**DISCUSSION**

The proponent states that residents of Chevak, Hooper Bay, and Scammon Bay depend on Chinook, summer Chum, Coho, Sockeye, and Pink salmon in the Yukon River drainage and should be able to harvest salmon under Federal regulations. The current customary and traditional use determinations for Yukon River drainage salmon were adopted from State regulations in 1992 at the beginning of the Federal Subsistence Management Program and should be modified to include these three coastal communities.

For the purpose of the customary and traditional use determinations for salmon, the Yukon River drainage consists of waters flowing into the Bering Sea from Point Romanof extending south and west along the coast of the delta to approximately one nautical mile south of the mouth of the Black River, based on the description of the Yukon River drainage in regulation in **Appendix 1**. District 1 of the Yukon River drainage encompasses the mouth of the Yukon River and the Black River, as shown in **Figure 1**. The Coastal District, which encompasses the three communities, is shown in **Figure 2**.

In contrast, for the propose of managing seasons, harvest limits, and gear, the “Yukon River drainage” encompasses the entire Yukon Area. This has confused interpretation of these customary and traditional use determinations, which this analysis is intended to fix.

**Existing Federal Regulation**

**Customary and traditional use determinations—Fish**

**Yukon-Northern Area**

<i>Yukon River drainage</i>	<i>Salmon other than Fall Chum Salmon</i>	<i>Residents of the Yukon River drainage and the community of community of Stebbins</i>
<i>Yukon River drainage</i>	<i>Fall Chum Salmon</i>	<i>Residents of the Yukon River drainage and the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak</i>



<i>Yukon River drainage</i>	<i>Freshwater fish species (other than salmon)</i>	<i>Residents of the Yukon-Northern Area</i>
<i>Remainder of the Yukon-Northern Area</i>	<i>All fish</i>	<i>Residents of the Yukon-Northern Area, excluding the residents of the Yukon River drainage and excluding those domiciled in Unit 26B</i>
<i>Tanana River drainage contained within the Tetlin NWR and the Wrangell-St. Elias NPP</i>	<i>Freshwater fish (other than salmon)</i>	<i>Residents of the Yukon-Northern Area and residents of Chistochina, Mentasta Lake, Slana, and all residents living between Mentasta Lake and Chistochina</i>

**Proposed Federal Regulation**

**Customary and traditional use determinations—Fish**

**Yukon-Northern Area**

<i>Yukon River drainage</i>	<del><i>Salmon other than Fall-Chum Salmon</i></del>	<i>Residents of the Yukon River drainage and the community of community of Stebbins, Scammon Bay, Hooper Bay, and Chevak</i>
<del><i>Yukon River drainage</i></del>	<del><i>Fall-Chum Salmon</i></del>	<del><i>Residents of the Yukon River drainage and the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak</i></del>
<i>Yukon River drainage</i>	<i>Freshwater fish species (other than salmon)</i>	<i>Residents of the Yukon-Northern Area</i>
<i>Remainder of the Yukon-Northern Area</i>	<i>All fish</i>	<i>Residents of the Yukon-Northern Area, excluding the residents of the Yukon River drainage and excluding those domiciled in Unit 26B</i>

<i>Tanana River drainage contained within the Tetlin NWR and the Wrangell-St. Elias NPP</i>	<i>Freshwater fish (other than salmon)</i>	<i>Residents of the Yukon-Northern Area and residents of Chistochina, Mentasta Lake, Slana, and all residents living between Mentasta Lake and Chistochina</i>
---------------------------------------------------------------------------------------------	--------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------

**Note:** NWR=National Wildlife Refuge and NNP=National Park and Preserve.

## Relevant Federal Regulations

### **50 CFR 100.14 Relationship to State procedures and regulations.**

*(a) State fish and game regulations apply to public lands and such laws are hereby adopted and made a part of the regulations in this part to the extent they are not inconsistent with, or superseded by, the regulations in this part.*

## Relevant State Regulations

### **5 AAC 05.100 - Description of Yukon Area**

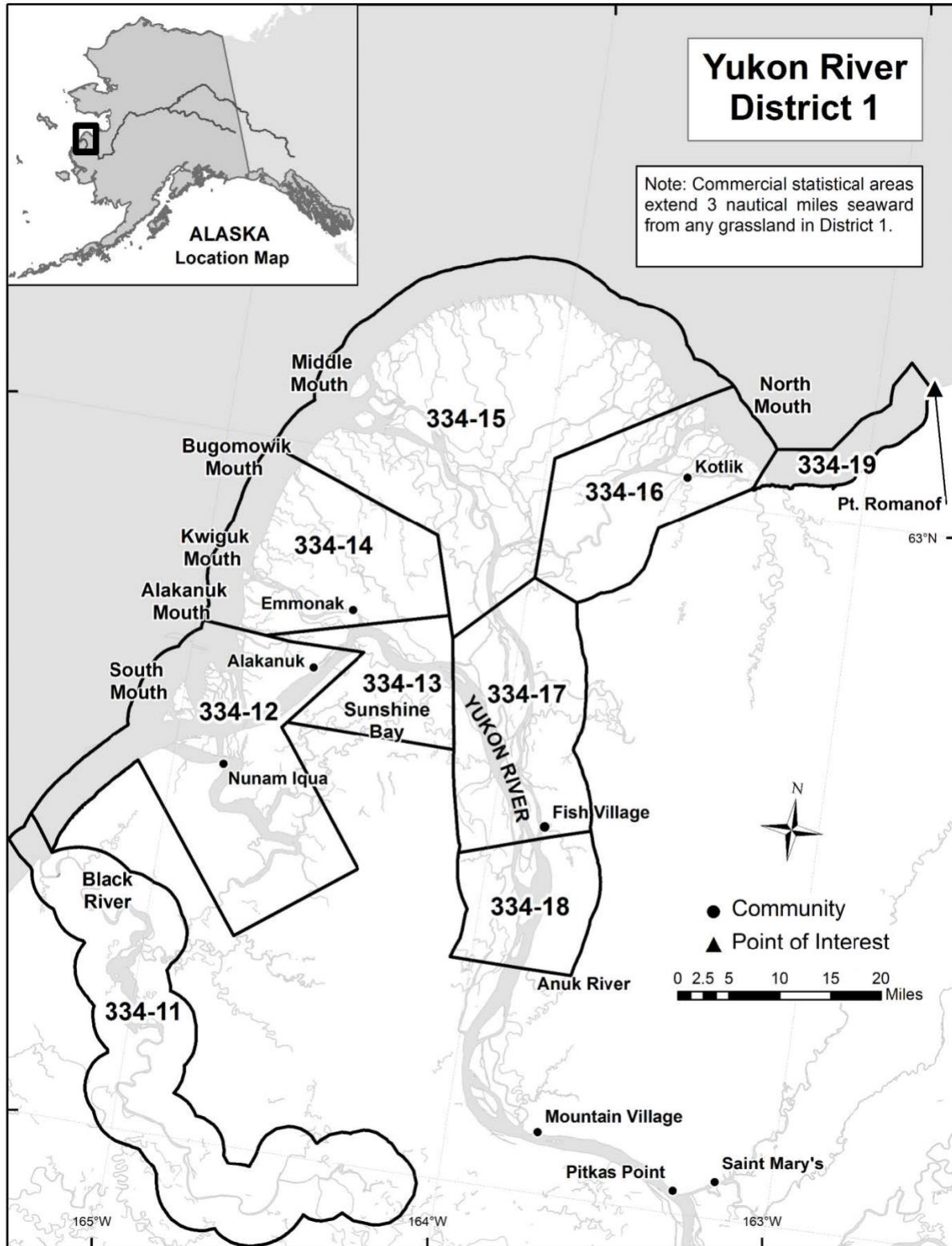
*The Yukon Area includes all waters of Alaska between a line extending 315° northwest from Point Romanof at 63° 12.16' N. lat., 162° 49.72' W. long. to a point three nautical miles offshore at 63° 14.27' N. lat., 162° 54.40' W. long. and the latitude of the westernmost point of the Naskonat Peninsula, including those waters draining into the Bering Sea.*

Descriptions of Yukon Area districts and subdistricts in State regulations are in **Appendix 1**. These State regulations that include Federal public waters are incorporated into these Federal regulations.

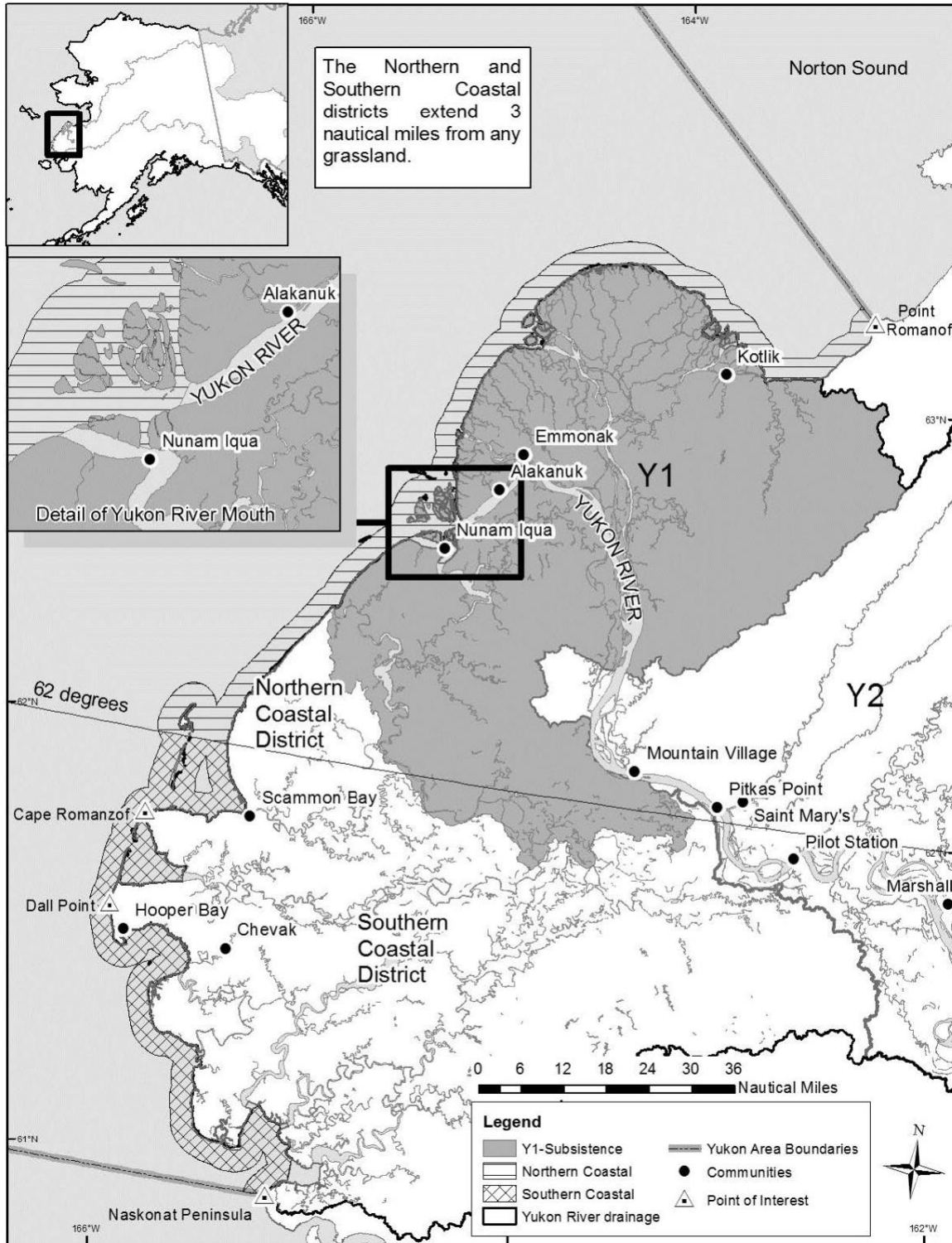
## Extent of Federal Public Waters

For purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 50 CFR 100.3. Federal public waters in the Yukon Area include all navigable and non-navigable freshwaters located within and adjacent to the exterior boundaries of the following Federal conservation units: Arctic, Innoko, Kanuti, Koyukuk, Nowitna, Tetlin, Yukon Delta, and Yukon Flats National Wildlife Refuges, Yukon-Charley Rivers National Preserve, Gates of the Arctic National Park and Preserve, and Wrangell St. Elias National Park and Preserve, Steese National Conservation Area, and White Mountains National Recreation Area. Federal public waters also include those segments of Beaver Creek, Birch Creek, Delta River, and Fortymile River National Wild and Scenic River systems located outside the boundaries of the other listed Federal conservation units (see **Lower Yukon River Map** and **Upper Yukon River Map**).

Inland freshwaters in Yukon District 1 and the Coastal District, nearby the communities in this proposal, are entirely within the outer boundary of the Yukon Delta National Wildlife Refuge. District 1



**Figure 1.** Map showing District 1 of the Yukon River drainage. The Black River drainage is situated within District 1 (Source: Estensen et al. 2018).



**Figure 2.** Map showing the Coastal District of the Yukon Area. The communities of Chevak, Hooper Bay, and Scammon Bay are situated within the Southern Coastal District (Source: Estensen et al. 2018).

encompassing the mouth of the Yukon River and the Black River is shown in **Figure 1**. The Coastal District, which encompasses the three communities, is shown in **Figure 2**.

### **Regulatory History**

In 1987, the Alaska Board of Fisheries adopted a regulation limiting the subsistence harvest of fall Chum Salmon in the Yukon River drainage to rural residents of the Yukon River drainage and the communities of Chevak, Hooper Bay, Scammon Bay, and Stebbins (State of Alaska July 1987 Register 102: page 5-14). The communities of Chevak, Hooper Bay, Scammon Bay, and Stebbins were considered outside the Yukon River drainage. Stebbins was outside the northern boundary of the Yukon Area.

It appears the definitions differ between the “Yukon River drainage” and the broader “Yukon Area,” because the communities of Chevak, Hooper Bay, and Scammon Bay were specifically cited as outside the Yukon River drainage. The new regulation is in **bolded** language:

#### **5 AAC 01.235 Limits on Participation in Subsistence Finfish Fisheries—Yukon Area**

*(a) Only those residents domiciled in the community of Nenana between mile posts 300 and 309 of the Parks Highway and in the community of Minto may take pike in the waters of the Tolovana River drainage upstream of its confluence with the Tanana River.*

***(b) Only those residents domiciled in rural locations in the Yukon River drainage as determined by the joint Boards of Fisheries and Game under 5 AAC 99, and the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak may take Yukon River Fall chum salmon for subsistence purposes.***

In 1988, the Alaska Board of Fisheries adopted a regulation limiting subsistence harvests of all salmon in the Yukon Area to rural residents of the Yukon Area and the community of Stebbins (State of Alaska April 1988 Register 105: page 5-15). Scammon Bay, Hooper Bay, and Chevak were considered within the Yukon Area. This new regulation for the Yukon Area, (a) below, encompassed the previous regulation for the Yukon River drainage, (b) below. The new regulation is in **bolded** language:

#### **5 AAC 01.235 Limits on Participation in Subsistence Finfish Fisheries—Yukon Area**

~~*(a) Only those residents domiciled in the community of Nenana between mile posts 300 and 309 of the Parks Highway and in the community of Minto may take pike in the waters of the Tolovana River drainage upstream of its confluence with the Tanana River.*~~

***(a) Only those residents domiciled in the rural locations of the Yukon Area, as determined by the joint Boards of Fisheries and Game in 5 AAC 99.014 and in the community of Stebbins may take salmon in the Yukon Area.***

***(b) Only those residents domiciled in rural locations in the Yukon River drainage, as determined by the joint Boards of Fisheries and Game under 5 AAC 99, and the communities of Stebbins,***



*Scammon Bay, Hooper Bay, and Chevak may take Yukon River Fall chum salmon for subsistence purposes.*

*(c) Only those residents domiciled in rural locations in the Yukon Area, as determined by the joint Boards of Fisheries and Game in 5 AAC 99.014, may take freshwater fish species, including sheefish, whitefish, lamprey, burbot, sucker, grayling, pike, char, and blackfish, in the Yukon Area.*

....

In 1992, the Federal Subsistence Board adopted Yukon Area customary and traditional use determinations for salmon and freshwater fishes that were in State regulations (57 Fed. Reg. 104, 22962 [May 29, 1992]). The difference between the definitions of the “Yukon River drainage” and the “Yukon Area,” mentioned above, appeared to still exist in the new Federal regulations:

**Customary and Traditional Use Determinations for Fish—Yukon Area**

<i>Yukon Area</i>	<i>Salmon</i>	<i>Rural residents of the Yukon Area, including the community of Stebbins</i>
<i>Yukon River</i>	<i>Fall Chum Salmon</i>	<i>Rural residents of the Yukon River drainage, including the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak</i>
<i>Yukon Area</i>	<i>Freshwater fish</i>	<i>Residents of the Yukon Area</i>

In 1993, the Alaska Board of Fisheries revised all State customary and traditional use findings to include all residents of Alaska (State of Alaska July 1993 Register 126: page 21). Subsequently, for the State, any question of effects of these regulations on residents of Chevak, Hooper Bay, and Scammon Bay was no longer relevant. The new regulation was the following:

**5 AAC 01.236 Customary and Traditional Uses of Fish Stocks—Yukon-Northern Area**

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

*(1) Salmon in the Yukon-Northern Area*

...

In 1999, the Federal Subsistence Board announced it was revisiting customary and traditional use determinations statewide for fish and shellfish to incorporate determinations that the Board of Fisheries had made since 1990 where they applied on Federal public waters and were consistent with Title VIII of

the Alaska National Interest Lands Conservation Act, ANILCA. For those determinations made by the Board of Fisheries since 1990, the Board decided that eligibility for fisheries should be limited to the residents of the area identified (64 Fed. Reg. 64; 1279-1284 [January 8, 1999]). The new regulations are in **bolded** language:

**Customary and traditional use determinations for fish— Yukon-Northern Area**

<i>Yukon River <del>Area</del> drainage</i>	<i>Salmon other than Fall Chum Salmon</i>	<i>Rural residents of the Yukon River drainage and the community of community of Stebbins</i>
<i>Yukon River drainage</i>	<i>Fall Chum Salmon</i>	<i>Rural residents of the Yukon River drainage and the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak</i>
<i>Yukon River drainage</i>	<i>Freshwater fish species (other than salmon)</i>	<i>Residents of the Yukon-Northern Area</i>
<i>Remainder of the Yukon-Northern Area</i>	<i>All fish</i>	<i>Residents of the Yukon-Northern Area, excluding the residents of the Yukon River drainage and excluding those domiciled in Unit 26B</i>

Again, the difference between the definitions of the “Yukon River drainage” and the “Yukon Area,” mentioned above, appeared to still exist in the newly modified Federal regulations (67 Fed. Reg. 26, 5893 [February 7, 2002]). It appears residents of the communities of Chevak, Hooper Bay, and Scammon Bay were outside of the Yukon River drainage for the purposes of these customary and traditional use determinations. Instead, the three communities were within the “Remainder” area of the Yukon-Northern Fisheries Management Area. If this was true, the communities had a determination for all salmon species in the Yukon-Northern Area except for in the Yukon River drainage. In the Yukon River drainage, the communities were eligible to harvest fall Chum Salmon only. In contrast, for the propose of managing seasons, harvest limits, and gear, the “Yukon River drainage” encompasses the entire Yukon Area. This has confused interpretation of these customary and traditional use determinations, which this analysis is intended to fix.

**Eight Factors for Determining Customary and Traditional Use**

Customary and traditional uses in a community or area is generally exemplified through the eight factors: (1) a long-term, consistent pattern of use, excluding interruptions beyond the control of the community or area; (2) a pattern of use recurring in specific seasons for many years; (3) a pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort

and cost, conditioned by local characteristics; (4) the consistent harvest and use of fish or wildlife as related to past methods and means of taking: near, or reasonably accessible from the community or area; (5) a means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate; (6) a pattern of use which includes the handing down of knowledge of fishing and hunting skills, values, and lore from generation to generation; (7) a pattern of use in which the harvest is shared or distributed within a definable community of persons; and (8) a pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area.

The Board makes customary and traditional use determinations based on a holistic application of these eight factors. In addition, the Board takes into consideration the reports and recommendations of any appropriate Regional Advisory Council regarding customary and traditional use of subsistence resources (50 CFR 100.16(b) and 36 CFR 242.16(b)). The Board makes customary and traditional use determinations for the sole purpose of recognizing the pool of users who generally exhibit the eight factors. The Board does not use such determinations for resource management or restricting harvest. If a conservation concern exists for a particular population, the Board addresses that concern through the imposition of harvest limits or season restrictions rather than by limiting the customary and traditional use finding.

### Introduction

The ancestors of people living in the area of Chevak, Hooper Bay, and Scammon Bay have relied on a seasonal round of wild resource harvesting in which salmon was prominent for at least several thousand years. Evidence suggests the ancestors of contemporary Central Yup'ik people most likely settled coastal areas of the Yukon-Kuskokwim delta by sometime after 4,500 years ago. The area consists of an intricate web of waterways ultimately flowing into the Bering Sea. VanStone (1984a:227) notes, "From the earliest times people were oriented toward a maritime economy in which the seal was the most important animal hunted. On the adjacent tundra there was some caribou hunting, and fishing for salmon was significant at the mouths of rivers and in certain bays."

A resident of Chevak further describes this longevity,

Before the missionaries, we were nomadic. . . . There are no further records, but we can establish that our forefathers have lived for generations before our first known establishment or communal remains in *Nunaruluq*. . . . Artifacts are proof that our forefathers were here for generations before the influx of the western society (Slats 2022, pers. comm.)

The area is crisscrossed by waterways, sloughs, and lakes that allow routes for people to access interior areas. Coastal areas are shallow, which discouraged Europeans from visiting the area, and as a result Yupiit in coastal areas had intensive contact with Europeans later than those who lived along the banks of the Yukon River, for example. While people lived in numerous settlements situated near to seasonal

migrations of fish, birds, seals, caribou, and other animals, “It was the presence of predictable supplies of salmon that made possible large and stable concentration of population” in this nomadic network (VanStone 1984b:207).

Historical settlements in the vicinity of these three communities are numerous (Fienup-Riordan 1986, Frink 2016, Godduhn et al. 2020). “Much of this rhythm of harvesting foods across the landscape is practiced even today. But a significant change is that the people of Chevak and other coastal communities are permanently settled. Some families still move out to the summer fish camp, and some will still travel to berry camp” (Frink 2016:26). Contemporary village sites are generally bases for winter activities. During summer, families disperse and reorganize into many smaller settlements, known as summer camps or fish camps. Some people are highly mobile between alternative dwelling places, especially during summer months (Ikuta 2016).

### Processing, Preservation, and Storage

The ability to keep foods edible is time-consuming and requires training and ability because proper processing is critical. “In the extreme Arctic environment, being able to find and harvest your foods is crucial. But just as important is the attendant processing of the harvested animals. Without the proper processing of foods, the harvest would be meaningless. Women have perfected the art of processing foods for appropriate consumption and storage in the Arctic climate for thousands of years” (Frink 2016:31). Frink (2016) describes women processing salmon,

Salmon are commonly cut with their tails still in place and hung. . . After the fish are dried, some are smoked in plywood sheds enclosed by plastic tarps. Before these structures were used, women would smoke the fish with willow wood (still used as fuel) in small, sod-covered pits. After the fish are properly prepared, they are stored in five-gallon plastic buckets, which have largely replaced the use of woven grass bags (Frink 2016:40).

People at Scammon Bay said that they begin salmon harvesting with the arrival of the first Chinook and summer Chum Salmon. At Scammon Bay,

Salmon fishers set gillnets in coastal areas to harvest these fish and process their harvests by cutting, hanging, and drying fish for long-term storage. Some salmon are also smoked, salted, partially dried and frozen, fresh frozen, or eaten fresh. Salmon fishing continues throughout the summer months depending on the needs of individual families and fishing groups . . . . Fishers also set gillnets for pink salmon, coho salmon, and whitefishes in summer months (Ikuta et al. 2016:28).

People use store-bought foods to supplement meals but rely on subsistence or traditional foods (Frink 2016, Ikuta 2016).

### The Subsistence Way of Life

People show animals respect in many ways (see Fienup-Riordan 1994, 2007). A resident of Chevak explained,

The subsistence way of life is taught from childhood until they begin living the subsistence ways, and the subsistence users will then teach their own children as they have been taught. . . . Hunting, fishing, handling, preparing, preserving, and storing are taught throughout their lives. The subsistence ways are a generational practice that is handed down for generations since time immemorial. . . . Fish and game that allowed itself to be caught is shown respect and is handled with care and processed with respect. All the parts are put back to the earth or the river with the understanding that they will return to you. All parts are used. . . . Nothing is wasted and we never take more than we need. We rely on the fish for maintaining our culture and heritage. Our fish camps are an integral part of what we use to teach our children subsistence (Slats 2022, pers. comm.).

### Community Background

Residents of Chevak, Hooper Bay, and Scammon Bay rely on a seasonal round of wild resource harvesting in which salmon are prominent. These three communities are situated near one another on the Bering Sea coast in southwestern Alaska. Chevak is approximately 140 air miles from Bethel and 520 air miles from Anchorage, Alaska. These communities are accessible by airplane only. Residents are primarily of Yup'ik and Cup'ik (in Chevak and Hooper Bay) cultural traditions (Fienup-Riordan 1986; Slats 2022, pers. comm.).

Chevak (*Cev'ak*), or *Qissunamiut* “Kashunamiut” (people of *Qissunaq* “Kashunak”), is located on the north bank of the Ninglikfak River, which empties into Hooper Bay 17 miles to the west of Chevak. Earlier, people lived at Kashunak (known locally as *Nunaraluq*),

. . . when traders, and following them Jesuit missionaries, entered the region in the later 1800s and early 1900s. . . . In 1949, the people of Kashunak left their village mound and brought their belongings upriver to Old Chevak, conveniently located at the confluence of the Keoklivik and Kashunak rivers. . . . Shortly after the establishment of the village, Old Chevak was vacated in 1950, and the entire group moved to the present village of Chevak (Frink 2016:13)

Chevak was established in about 1950 by residents of Old Chevak because the Bureau of Indian Affairs would not build a school in the low marshy lands surrounding the site of Old Chevak (Frink 2016; Slats 2022, pers. comm.).

Hooper Bay (*Naparyarmiut*) is the largest coastal community in the Yukon-Kuskokwim delta area and functions as the hub of transportation and trade for nearby villages. It is located two miles from the Bering Sea on the shores of Hooper Bay. The protected bay and abundance of wild resources attracted people to this village site. Hooper Bay was also known as *Askinuk* or *Askinaghamiut* (Orth 1967, FWS 1988).

The community of Scammon Bay (*Marayaaq*) is situated about one mile from the Bering Sea at the mouth of the Kun River. Historically, people called the people living there *Marayaarmiut* (people of *Marayaaq*). In the 1930s, people moved to the site of the contemporary Scammon Bay community to escape flooding, to attend church, to visit the nearby trading post, for children to attend school, and for other reasons (Ikuta et al. 2016, Godduhn et al. 2020).

The combined population of these communities has more than tripled in the 60 years between 1960 and 2020; in 2020, an estimated 2,926 people were permanent rural residents (**Table 1**, ADLWD 2022).

**Table 1.** The estimated number of people living in the communities of Chevak, Hooper Bay, and Scammon Bay, based on the U.S. Census (ADLWD 2022).

Community	1960	1970	1980	1990	2000	2010	2020
Chevak city	315	387	466	598	765	938	951
Hooper Bay city	460	490	627	845	1,014	1,093	1,375
Scammon Bay city	115	166	250	343	465	474	600
Total	890	1,043	1,343	1,786	2,244	2,505	2,926

Geographic Use Areas/Method and Means

People living in the coastal communities of Chevak, Hooper Bay, and Scammon Bay harvest salmon from marine waters and freshwater rivers, streams, sloughs, and lakes.

Chevak residents harvest salmon primarily along the coast and in the lower stretches of some rivers from Nuok Spit in Hooper Bay south to the mouth of the Aphrewn River. Set and drift nets are used to harvest salmon (FWS 1988), but as put forth by a Chevak resident, “Methods and mean of harvest would be those that are allowed by law and regulation. We are law abiding citizens. We prefer use of traditional tools and means of taking fish and game to maintain our culture and heritage” (Slats 2022, pers. comm.) (see **Figure 3**). A resident of Chevak continued,

We have fished for all fish in the ponds, streams, creeks, rivers, and our seas. . . . We have hunted and fished for the land and water resources in Kashunak and the river south from Chevak, the Bay, and mainly the rivers south of our location since time immemorial. We will continue to hunt and fish so long as the wind shall blow and the grass still blooms. Closing of fish that has been our mainstay will turn a culture and tradition into a life of extreme hardship through regulations, instead of environmental and climatic challenges that have been evident throughout our lives” (Slats 2022, pers. comm.).

Hooper Bay residents harvest salmon primarily with set nets in Hooper Bay and numerous rivers near the community. A popular area is the tidal flats inward of Nuok Spit. The lower Kokechik River, the Kashunak River from Nanvaranak Lake downstream to the Keoklevik River, the Keoklevik River, and the mouth of the Kashunak River are all important salmon fishing areas. Chinook and Chum salmon are



**Figure 3.** Map showing some of the rivers, creeks, and lakes visited by residents of Chevak, Hooper Bay, and Scammon Bay to harvest salmon (base map google.com)

the primary species of salmon harvested. Some Pink and Coho salmon are also harvested (FWS 1988) (see **Figure 3**).

At Scammon Bay, sea ice-out typically occurs in late May, and people begin herring fishing. Salmon fishing begins with the arrival of the first Chinook and summer Chum salmon:

Some people set gillnets in the Kun River or in Scammon Bay within a short distance from the community. Others travel to family fish camp sites, some of which are within five to ten miles west of Scammon Bay along the coast. Other fish camps are as far away as 20 miles north along the coast at the mouth of Melatolik Creek, to 40 miles north in the lower portion of Black River (Ikuta et al. 2016:28).

Scammon Bay residents described where they traveled in 2013 in order to harvest salmon:

[People] harvested salmon in the lower five miles of the Black River, in an area of the Bering Sea surrounding the mouth of the Black River, and in a strip of ocean along the coast extending approximately 15 miles from the mouth of the Black River southwest towards the mouth of Melatolik Creek. Fishers also harvested salmon in the mouth of Melatolik Creek and in the mouth of the Kipungolak River where it drains into the Black River. [People] harvested salmon in locations close to Scammon Bay including in the Kun River, from the mouth of the Kikneak River and other sites downstream to the mouth of the Kun River. Fishers also harvested salmon in an area of the Scammon Bay water body extending from the community eight miles west along the coast (Ikuta et al. 2016:68).

Residents of the three communities travel to the mouth of the Yukon River to participate in salmon commercial and subsistence fisheries there (Wolfe 1981, 1982; Fienup-Riordan 1986; Crawford and Lingnau 2004; Ikuta et al. 2016). In the 1980s, “Scammon Bay families regularly moved north to fish salmon around the mouth of the Black River. In 1981 some Scammon Bay people fished along the south pass, apparently with fish camps established on Manning Island” at the south mouth of the Yukon River (Wolfe 1981:59). Residents of Hooper Bay and Chevak worked at the salmon processor in Mountain Village. Fienup-Riordan (1986) reported that from their fish camps just inside the mouth of the Black River (about 30 miles below the south mouth of the Yukon River), Scammon Bay “men sometimes move into the Yukon River proper, as far up as Mountain Village, to try their luck drifting. Also, after the commercial season closes at Black River, several families normally relocate to the north or middle mouths of the Yukon River to take advantage of the fall runs of Chum and Coho, which only briefly visit the Black River area” (Fienup-Riordan 1986:136).

### Estimated Harvest of Salmon

In addition to population growth, social and economic changes have affected salmon harvesting in the area. One subsistence activity that impacted salmon harvesting levels was the use of salmon to feed sled dogs, described below.



The period from 1900 to 1940 encompasses the peak sled dog era in the Yukon River drainage . . . virtually every family maintained a small number of sled dogs . . . . In the 1930s airplanes began to replace commercial dog teams for the movement of freight and mail but sled dogs continued to provide the bulk of winter transportation for individuals and families throughout the Yukon River drainage (Andersen and Scott 2010:2–5).

During the summer of 1957, the U.S. Fish and Wildlife Service collected harvest information in the community of Scammon Bay and estimated a harvest of 2,270 Chum Salmon and observed 140 sled dogs. In Hooper Bay they estimated a harvest of 12,150 Chum Salmon and observed 116 sled dogs. In Chevak they estimated a harvest of 14,480 Chum Salmon and observed 350 sled dogs (Mattson 1962).

By the 1970s snowmobiles had largely replaced the family dog team although some people continue to keep dogs (Andersen and Scott 2010).

#### *Division of Subsistence ADF&G Household Harvest Survey*

Residents of the community of Scammon Bay collaborated with researchers at the Alaska Department of Fish and Game (ADF&G) Division of Subsistence in 2013 to estimate their community’s harvests and describe their uses of wild resources (Ikuta et al 2016). While Chevak and Hooper Bay were not included in this research, some insight into the general use patterns of salmon can be gained because of their proximity and cultural similarities to Scammon Bay. Additionally, subsistence harvest surveys and ethnographic interviews were conducted by ADF&G Division of Subsistence in winter 2022 in Chevak and Hooper Bay, but results of these surveys have not yet been published at the time of this analysis (McDavid 2022, pers. comm.). Harvest of salmon plays a vital role in the seasonal round of all three communities.

Based on the household survey conducted in 2013, people at Scammon Bay harvested an estimated 11,488 salmon in 2013, or 85 pounds in edible weight per person. By far, most of the harvest was summer Chum Salmon (**Table 2**).

**Table 2.** The estimated harvest of salmon by species in numbers of fish and per person in pounds of edible weight at Scammon Bay in 2013 (N=86 households) (Source: ADF&G 2022b).

Salmon species	Salmon estimated harvest (in fish)	Lower harvest estimate (in fish)	Upper harvest estimate (in fish)	Per person harvest (in pounds of edible weight)
Summer Chum	9,680	9,669	9,691	71.4
Fall Chum	157	156	159	1.2
Unknown Chum	43	43	43	0.3
Coho Salmon	139	138	139	1.0
Chinook Salmon	455	454	456	6.9
Pink Salmon	930	927	932	4.0
Sockeye Salmon	84	84	85	0.6
Total	11,488	11,475	11,500	85.4

*Division of Commercial Fisheries ADF&G Postseason Harvest Survey*

Only two of these communities are included in the State’s salmon harvest monitoring program: Scammon Bay and Hooper Bay. **Table 3** describes the harvest of salmon by species and year from 2006 to 2021, based on the annual postseason salmon harvest survey conducted by the Division of Commercial Fisheries at ADF&G. Summer Chum Salmon are harvested at the highest levels in these communities. People have been able to harvest fewer and fewer salmon each year as conservation concerns for salmon have increased and harvest opportunities have been curtailed, especially in recent years, as demonstrated in **Table 3**.

Sharing of Wild Food Harvests

A Chevak resident described that people normally share their wild food harvests,

Sharing is our tradition, within our families, community members, and especially our elders. Customary trade is based on need for certain types of food that is not available in our areas, i.e. interior communities that don’t have fish and game from the sea and vice versa. . . . Gift giving is done during festivals, potlucks, and potlatches. Communities will give gifts to other communities that come to their communities for celebrations, festivals, potlatches, and potlucks (Slats 2022, pers. comm.)

People sharing their harvests of wild resources is a predominant feature of subsistence economies in Alaska. Salmon were and continue to be distributed through kin and community networks. A high level of sharing occurs at Scammon Bay, and households share, either through giving (45% of households) or receiving (58% of households), based on household surveys conducted in 2013 and local oral interviews with residents (ADF&G 2022b). For example, Ikuta and others (2016) documented that Scammon Bay households received salmon shared by Hooper Bay and Chevak households.

Reliance upon a Wide Diversity of Fish and Wildlife

Residents of Chevak, Hooper Bay, and Scammon Bay rely on a wide variety of wild resources. These resources comprise a substantial portion of their diet. The ADF&G Division of Subsistence household survey conducted in Scammon Bay in 2013 demonstrates this variety of use. **Table 4** describes this variety of wild foods. The overall harvest rate was 417 pounds in edible weight per person. Residents of Scammon Bay harvest fish (including salmon, halibut, herring, and whitefish), land mammals (including caribou and moose), and marine mammals (including seals), at the highest levels. Birds and eggs, vegetation (including berries), marine invertebrates (including clams and mussels), and small land mammals (including hares and porcupines) comprise smaller portions of annual harvests but are important components of the diet (ADF&G 2022b).

**Table 3.** Estimated harvests of salmon for subsistence at Hooper Bay and Scammon Bay 2006–2021, based on postseason surveys. Chevak residents were not surveyed. Pink and Sockeye salmon questions were not on the survey (Source: ADF&G 2022a; 2019, 2020, 2021 are preliminary data).

Community	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
<b>Chinook</b>																
Hooper Bay	376	430	388	183	584	252	1,090	1,210	455	534	284	320	456	784	436	13
Scammon Bay	507	768	1,104	722	716	517	1,014	332	108	432	602	733	661	1,233	935	17
<b>Summer Chum</b>																
Hooper Bay	19,468	12,234	12,007	9,195	17,020	13,460	15,799	13,629	13,236	11,870	6,324	7,969	8,332	2,999	3,450	290
Scammon Bay	4,703	3,887	6,113	3,602	5,405	4,845	7,442	9,506	6,068	8,598	5,520	6,036	7,019	4,037	3,776	13
<b>Fall Chum</b>																
Hooper Bay	26	64	329	41	116	267	1	91	137	79	105	139	158	210	636	28
Scammon Bay	84	170	57	117	70	48	10	58	115	119	657	422	367	605	417	11
<b>Coho</b>																
Hooper Bay	175	26	66	24	45	0	7	73	118	95	121	222	117	342	150	41
Scammon Bay	160	84	50	222	79	55	86	214	86	79	234	213	754	462	200	9
<b>Total</b>																
Hooper Bay	20,045	12,754	12,790	9,443	17,765	13,979	16,897	15,003	13,946	12,578	6,834	8,650	9,063	4,335	4,672	372
Scammon Bay	5,454	4,909	7,324	4,663	6,270	5,465	8,552	10,110	6,377	9,228	7,013	7,404	8,801	6,337	5,328	50

**Table 4.** The harvest of wildlife resources by resource category, in pounds of edible weight, during one study year in 2013 at Scammon Bay, based on household surveys (N=86 households) (Source: ADF&G 2022b).

Wild resource category	Per Person harvest (in pounds edible weight)	Percentage of total wild resources harvested
Salmon	85	20%
Nonsalmon Fish	103	25%
Land Mammals	82	20%
Large Land Mammals	82	20%
Small Land Mammals	<1	<1%
Marine Mammals	84	20%
Birds and Eggs	40	10%
Marine Invertebrates	1	<1%
Vegetation	21	5%
All Resources	417	100%

## Recent Events

In spring 2022, the Federal Subsistence Board adopted Fisheries Special Action FSA22-01 and closed Federal public waters of the Yukon Area to the harvest of salmon from June 1 through September 30, 2022. Any subsistence fishing opportunity on Federal public waters would be announced by the Federal Manager. This highlighted an issue, that Chevak, Hooper Bay, and Scammon Bay residents' customary and traditional use determination for salmon in the Yukon River drainage is for fall Chum Salmon only. If the Federal Manager provided opportunity to harvest salmon in District 1, residents of the three communities would not be eligible to harvest other species of salmon there, and Federal regulations prevent the Office of Subsistence Management from accepting a Special Action Request between two-year fishery regulatory cycles to modify a customary and traditional use determination, and therefore, a Special Action Request was not an option.

Staff requested the Chevak Native Village to submit this proposal requesting the Federal Subsistence Board to recognize the customary and traditional uses of all salmon species in the Yukon River drainage by residents of Chevak, Hooper Bay, and Scammon Bay.

## Effects of the Proposal

If this proposal is adopted, residents of Chevak, Hooper Bay, and Scammon Bay will be eligible to harvest Chinook, summer Chum, Coho, Sockeye, and Pink salmon, in addition to fall Chum Salmon, under Federal regulations in the Yukon River drainage beginning April 1, 2023.

If this proposal is adopted, the primary effect on the three communities is to make them eligible to continue harvesting these salmon species, Chinook, summer Chum, Coho, Sockeye, and Pink salmon, in the Yukon River drainage when the Federal Manager, one, closes the drainage to the harvest of salmon except by federally qualified subsistence users, and two, provides subsistence fishing opportunity.

Currently, residents of the three communities are not federally qualified subsistence users of these salmon species, and most salmon harvesting in the Yukon River drainage by them has been under State regulations.

If this proposal is not adopted, residents of the three communities will continue to be non-eligible to harvest Chinook, summer Chum, Coho, Sockeye, or Pink salmon in the Yukon River drainage when it is closed to the harvest of these salmon species except by federally qualified subsistence users and when harvest opportunity is provided by the Federal Manager. The effect on these communities can be substantial because they are highly dependent on salmon. For example, Yukon District 1 includes the Black River, which is a fish harvesting area frequently mentioned by residents of the communities.

## **OSM CONCLUSION**

**Support Proposal FP23-02.**

### **Justification**

Residents of Chevak, Hooper Bay, and Scammon Bay exemplify the customary and traditional use of all species of salmon in the Yukon River drainage. Traditionally and historically, residents of the three communities have used this area to harvest salmon, which is an important component of their diet, and a large portion of their subsistence harvests each year.

Fisheries Special Action FSA22-01 was adopted by the Board in spring 2022 and highlighted that these three communities do not have a customary and traditional use determination for Chinook, summer Chum, Coho, Sockeye, or Pink salmon in the Yukon River drainage. The Chevak Native Village submitted this proposal on behalf of the residents of Chevak, Hooper Bay, and Scammon Bay.

In the past, State regulations have provided opportunities for these communities to harvest salmon in the Yukon River drainage, but FSA22-01, described above, closed the Federal public waters in the drainage to the harvest of salmon, and State regulations were no longer effective.

The Board should recognize the customary and traditional uses of all salmon in the Yukon River drainage by residents of Chevak, Hooper Bay, and Scammon Bay.

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**SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS**

**Yukon-Kuskokwim Delta Subsistence Regional Advisory Council**

**Support** FP23-02. Residents of the three communities in the proposal rely on traditional foods and are highly dependent on salmon that are destined for the Yukon River drainage. These communities are known to share their harvests of salmon with other communities through kinship networks. These communities were not included in a customary and traditional use determination they clearly should have been part of. Council members must keep an eye on the regulations because they are made by others.

**Western Interior Alaska Subsistence Regional Advisory Council**

**Support** FP23-02. The Council agreed with OSM’s analysis and noted that it would be natural for these coastal communities to harvest migrating salmon headed to the Yukon River. This is a fishery that has been occurring and the passage of this proposal would be recognizing that use.

**Seward Peninsula Alaska Subsistence Regional Advisory Council**

**Support** FP23-02. The Council supported this proposal because they consider it is important to provide subsistence opportunity, especially during potential closure to non-federally qualified subsistence users.

**Eastern Interior Alaska Subsistence Regional Advisory Council**

**Support** FP23-02. The Council noted that these communities have a longstanding customary and traditional practice of utilizing all salmon species for subsistence. Adoption of this proposal would benefit the subsistence users in these communities and would make regulations fairer.

**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**

This proposal would include the communities of Chevak, Hooper Bay, and Scammon Bay in the Federal Subsistence Management Program’s customary and traditional use (C&T) determination for all species of salmon. The proposed changes to the regulatory language are:

<b>Customary and traditional use determinations—Fish</b>		
<b>Yukon-Northern Area</b>		
<i>Yukon River drainage</i>	<i>Salmon <del>other than Fall Chum</del> Salmon</i>	<i>Rural residents of the Yukon River drainage and the community of community of Stebbins</i>



<i>Yukon River drainage</i>	<i>Fall Chum Salmon</i>	<i>Rural residents of the Yukon River drainage and the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak</i>
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**Position**

The Alaska department of Fish & Game (ADF&G) **SUPPORTS** the proposal. The inclusion of the three communities would more accurately reflect the C&T of these species as well as reflect the findings by the Alaska Board of Fisheries C&T findings for the Yukon area.

**Background**

In 1993, the Federal Subsistence Management Board (FSB) adopted ADF&G’s C&T finding for all communities in the Yukon Management Area, which includes the Yukon River and the waters of the Bering Sea from Naskonat Peninsula to Point Romanof (Figure 1). In 1999, the FSB merged the Yukon and Northern areas, comprised of Yukon River drainage and Northern subareas. Following this change, the C&T determination for all salmon species applied only to Yukon River drainage communities and excluded coastal Yukon delta communities. At that time, the FSB C&T finding included the three communities but was made for fall chum salmon only.

**Impact on Subsistence Users**

If adopted, residents of Hooper Bay, Scammon Bay, and Chevak would now be included in any management actions the FSB or its delegated agents take in the management of the Yukon River drainage within federal public waters.

**Impact on Other Users**

This proposal is not expected to affect non-federally qualified users because, in times when fishing in federal waters is restricted, those users are already prohibited from harvesting salmon.

**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 all salmon in the Yukon Area. The Yukon Area includes all waters of Alaska between a line extending 315° northwest from Point Romanof at 63° 12.16' N. lat., 162° 49.72' W. long. to a point three nautical miles offshore at 63° 14.27' N. lat., 162° 54.40' W. long. and the latitude of the westernmost point of the Naskonat Peninsula, including those waters draining into the Bering Sea (5 AAC 01.200).

**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 ranges for salmon in the Yukon Area are (5 AAC 01.236):

Species	Lower	Upper
Chinook	45,500	66,704
Summer chum	83,500	142,192
Fall chum	89,500	167,900
Coho	20,500	51,980
Pink	2,100	9,700

**Conservation Issues**

There are no conservation issues directly related to the proposed action.

**Enforcement Issues**

There are no enforcement issues directly related to the proposed action.

## APPENDIX 1

### YUKON AREA FISHING DISTRICTS AND SUBDISTRICTS

#### **5 AAC 05.100 - Description of Yukon Area**

*The Yukon Area includes all waters of Alaska between a line extending 315° northwest from Point Romanof at 63° 12.16' N. lat., 162° 49.72' W. long. to a point three nautical miles offshore at 63° 14.27' N. lat., 162° 54.40' W. long. and the latitude of the westernmost point of the Naskonat Peninsula, including those waters draining into the Bering Sea.*

#### **5 AAC 05.200 - Fishing districts and subdistricts**

*(a) District 1 consists of that portion of the Yukon River drainage from a line extending northwest from Point Romanof at 63°12.16' N. lat., 162° 49.72' W. long., to a point three nautical miles offshore at 63° 14.27' N. lat., 162° 54 .40' W. long., extending south and west along the coast of the delta to a line approximately one nautical mile south of the mouth of the Black River from 62° 20.58' N. lat., 165° 22.66' W. long., to a point located three nautical miles offshore at 62° 22.67' N. lat., 165° 27.37' W. long., including the waters within three nautical miles seaward from any grassland bank within that area, and upstream from the mouth of the Black River to the northern edge of the mouth of the Anuk River and all waters of the Black River.*

*(b) District 2 consists of that portion of the Yukon River drainage from the northern edge of the mouth of the Anuk River upstream to an ADF&G regulatory marker located at Toklik, and includes the Anuk River drainage.*

*(c) District 3 consists of that portion of the Yukon River drainage from an ADF&G regulatory marker located at Toklik upstream to an ADF&G regulatory marker at the mouth of an unnamed slough three-fourths of a mile downstream from Old Paradise Village.*

*(d) District 4 consists of the Yukon River drainage from an ADF&G regulatory marker at the mouth of an unnamed slough three-fourths of a mile downstream from Old Paradise Village upstream to the western edge of the mouth of Illinois Creek at Kallands.*

*(1) Subdistrict 4-A consists of that portion of the Yukon River drainage from an ADF&G regulatory marker at the mouth of an unnamed slough three-fourths of a mile downstream from Old Paradise Village upstream to the tip of Cone Point;*

*(2) Subdistrict 4-B consists of the Yukon River drainage from the tip of Cone Point upstream along the north bank of the river to the westernmost edge of Illinois Creek and includes the following islands: Cook, Lark, Serpentine, Louden, Fish, Dainty, Yuki, Melozi, Dasha, Straight, Kit, Fox, Hardluck, Mickey, Florence, Doyle, Chokoyik, Lady, Liner, Flora and Cronin;*

(3) Subdistrict 4-C consists of the Yukon River drainage from the tip of Cone Point upstream along the south bank of the river to a point opposite the westernmost edge of Illinois Creek and includes the following islands: Cat, Hen, Jimmy, Big, Ninemile, Ham, Emerald, Edith, Kathaleen, Henry, Burns, Youngs, Weir, Clay, Large and Brant.

(e) District 5 consists of that portion of the Yukon River drainage (excluding the Tanana River drainage) from the western edge of the mouth of Illinois Creek to the United States-Canada border, and includes the Illinois Creek drainage.

(1) Subdistrict 5-A consists of the Yukon River drainage from a point opposite the westernmost edge of Illinois Creek upstream along the south bank of the river to the easternmost edge of the Tanana River mouth and includes the following islands: Second, Corbusier, Sixmile, Deet'laa', Swanson, Blind, Basco, Sword, Leonard, Still, Tanana and Mission;

(2) Subdistrict 5-B consists of the Yukon River drainage from the westernmost edge of Illinois Creek upstream along the north bank of the river to a point opposite the easternmost edge of the Tanana River mouth upstream along both banks of the Yukon River to the westernmost tip of Gar-net Island and includes the following islands: Willow I, II, and III, Steamboat, Grant, Darwin, Little Joker, Station, Tozitna, Circle, Bull, and Long;

(3) Subdistrict 5-C consists of the Yukon River drainage upstream from the westernmost tip of Garnet Island to ADF&G regulatory markers located approximately two miles downstream from Waldron Creek;

(4) Subdistrict 5-D consists of the Yukon River drainage from ADF&G regulatory markers located approximately two miles downstream from Waldron Creek upstream to the United States-Canada border.

(f) District 6 consists of the Tanana River drainage to its confluence with the Yukon River.

(1) Subdistrict 6-A consists of that portion of the Tanana River drainage from its mouth upstream to the eastern edge of the mouth of the Kantishna River and includes the Kantishna River drainage;

(2) Subdistrict 6-B consists of that portion of the Tanana River drainage from the eastern edge of the mouth of the Kantishna River upstream to the eastern edge of the mouth of the Wood River and includes the Wood River drainage;

(3) Subdistrict 6-C consists of the Tanana River drainage from the eastern edge of the mouth of the Wood River upstream to the eastern edge of the mouth of the Salcha River and includes the Salcha River drainage;

(4) Old Minto Area consists of that portion of Subdistrict 6-B from the downstream end of upper Tolovana Island, located approximately two miles upstream of the Tolovana River, to three miles upstream of the mouth of the Totchaket Slough.

*(g) Repealed 7/13/2012.*

*(h) Coastal District: all waters between the latitude of the westernmost point of the Naskonat Peninsula and a line extending 315° northwest from Point Romanof at 63° 12.16' N. lat., 162° 49.72' W. long. to a point three nautical miles offshore at 63° 14.27' N. lat., 162° 54.40' W. long. not included in (a) - (f) of this section.*

<b>FCR21-08 Executive Summary</b>	
<b>General Description</b>	FCR21-08 is a routine review of a Federal fishery closure to salmon fishing in the Unalaska Lake drainage.
<b>Current Regulation</b>	<p>§ __.27(e)(6) <i>Aleutian Islands Area</i></p> <p style="text-align: center;">***</p> <p style="text-align: center;"><i>(iv) You may not subsistence fish for salmon in the following waters:</i></p> <p style="text-align: center;"><i>(A) The waters of Unalaska Lake, its tributaries and outlet stream;</i></p>
<b>OSM Conclusion</b>	<b>Rescind</b>
<b>Kodiak/Aleutians Subsistence Regional Advisory Council Recommendation</b>	<b>Retain status quo</b>
<b>Interagency Staff Committee Comments</b>	<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 Council has recommended the closure be retained, keeping this fishery out of compliance with ANILCA. The ISC acknowledges the Council supports maintaining the status quo for this closure in deference to recommendations and comments from Council members and other representatives from the area. Testimony at the Council meeting included concerns about conservation, ongoing enforcement issues, and the desire to generate a local solution before rescinding the closure.</p> <p>If the Board were to rescind the closure, Federal managers can use their delegated authority if conservation concerns arise. The ISC recognizes that unless modified by the Board, current Fisheries</p>

<b>FCR21-08 Executive Summary</b>	
	delegation of authority letters limit Federal managers to emergency special actions (actions lasting no longer than 60 days).
<b>ADF&amp;G Comments</b>	<b>Retain status quo</b>
<b>Written Public Comments</b>	<b>None</b>

**FEDERAL FISHERIES CLOSURE REVIEW**  
**FCR21-08**

**Issue**

FCR21-08 is a routine review of a Federal fishery closure to salmon fishing in the Unalaska Lake drainage. 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:** Unalaska Lake drainage—Salmon

**Current Federal Regulation**

§ \_\_\_\_.27(e)(6) *Aleutian Islands Area*

\*\*\*

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

*(A) The waters of Unalaska Lake, its tributaries and outlet stream;*

**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.*

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*(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

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*(ii) In the Unalaska District, you may take salmon for subsistence purposes from 6:00 a.m. until 9:00 p.m. from January 1 through December 31, except as may be specified on a subsistence fishing permit.*

\*\*\*

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

*(vi) In the Unalaska District, if you fish with a net, you must be physically present at the net at all times when the net is being used.*

*(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, 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 Unalaska District, all users are required to have a State Subsistence Fishing Permit when subsistence fishing for salmon (**Appendix 1**, see 5 AAC 01.380. Subsistence fishing permits).

**Closure Dates:** Year-round

## **Current State Regulations**

### Subsistence Regulations

#### *Aleutian Islands 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.*

\*\*\*

*(d) In the Unalaska District, a subsistence permit holder fishing with a net must be physically present at the net at all times when the net is being used for fishing.*

#### *5 AAC 01.375 Waters closed to subsistence fishing*

*The following waters are closed to subsistence fishing for salmon:*

*(1) waters of Unalaska Lake (at the city of Unalaska), its tributaries and outlet stream, and waters between Unalaska and Amaknak Islands, including Margaret's Bay, west of a line from the "Bishop's House" at 53\_ 52.64' N. lat., 166\_ 32.30' W. long. to a point on Amaknak Island at 53\_ 52.82' N. lat., 166\_ 32.13' W. long., and north of line from a point south of Agnes Beach at 53\_ 52.28' N. lat., 166\_ 32.68' W. long. to a point at 53\_ 52.35' N. lat., 166\_ 32.95' W. long. on Amaknak Island;*

#### *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,*

*(1)the holder of a subsistence salmon fishing permit may take no more than 25 salmon, of which no more than 10 sockeye salmon may be harvested from Front Beach in Unalaska Bay, plus an additional 25 salmon for each member of the*

*same household whose name is listed on the permit, of which no more than 10 sockeye salmon may be harvested from Front Beach in Unalaska Bay; in this section, "Front Beach" means all Unalaska Bay waters south of a line from a point near the Bishop's House at 53\_E/CS> 52.64' N. lat., 166\_E/CS> 32.30' W. long., to a point on the Unalaska Bay shore at 53\_E/CS> 52.68' N. lat., 166\_E/CS> 30.91' W. long;*

*(2) a permit holder may obtain an additional permit from the department to harvest more salmon other than sockeye salmon from Front Beach in Unalaska Bay.*

*(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 65.022. Special provisions for bag, possession, and annual limits, and methods and means in the Alaska Peninsula and Aleutian Islands Area*

\*\*\*

*(e) In the salt waters and all freshwater drainages of Unalaska Bay, the bag and possession limit for salmon, other than king salmon, is five fish per day, five fish in possession, of which no more than two fish may be coho salmon and two fish may be sockeye salmon.*

*5 AAC 65.051. Waters closed to sport fishing in the Alaska Peninsula and Aleutian Islands Area*

*(4) the following areas on and around Unalaska Island are closed to sport fishing as follows:*

*(a) the Illiuliuk River drainage, including Illiuliuk Creek (also known as Town or Unalaska Creek), Illiuliuk [Unalaska] Lake, and all waters flowing into Illiliuk Lake,*

*(i) is closed to sport fishing for sockeye salmon;*

*(ii) upstream from ADF&G regulatory markers located at the Church Hole [in Unalaska Creek], is closed to sport fishing for salmon;*

**Regulatory Year Initiated:** 2001

**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 Unalaska Lake (also known as Iliukiuk Lake) and its tributaries and outlet streams, which are within and adjacent to the exterior boundaries of the Alaska Maritime National Wildlife Refuge (**Figure 1** and **Figure 2**).



**Figure 1.** Map showing Unalaska Lake drainage closure.



**Figure 2.** Aerial image of Unalaska Lake. Photo courtesy of Andy Dietrick, Aleutian Aerial LLC.

### **Customary and Traditional Use Determination**

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

### **Regulatory History**

In 1991, the Federal Subsistence Management Program adopted final temporary regulations for the harvest of fish for subsistence uses in non-navigable waters within and adjacent to the exterior boundaries of Federal public lands (56 Fed. Reg. 123, 29352 [June 26, 1991]). These regulations incorporated many provisions from State of Alaska subsistence fishing regulations, “These temporary regulations attempt throughout to limit change from the State regulations to that necessary to fulfill the Secretaries’ responsibilities pursuant to title VIII” (56 Fed. Reg. 123, 29311 [June 26, 1991]).

In 1992, the Federal Subsistence Board (Board) adopted final regulations for fish management and rescinded the closure (57 Fed. Reg. 103, 22564 [May 28, 1992]). 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]).

In 1999, the Board adopted Federal regulations for fish in navigable waters, in addition to non-navigable waters, but this closure was not included (64 Fed. Reg. 5, 1307 [January 8, 1999]). In 2001, the closure under review in this analysis was added to Federal regulations (66 Fed. Reg. 30, 10154 [February 13, 2001]).

### **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 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**

This system has been identified to contain Coho, Pink, and Sockeye salmon and Dolly Varden (Johnson and Blossom 2018). From 2018-2021, aerial surveys were conducted to enumerate salmon in Unalaska road system drainages using drones (Lawson 2020; Fox et al. 2020, 2021, 2022). The surveys, conducted by Aleutian Aerial LLC and funded by the Unalaska Native Fisherman’s Association, the Ounalashka Corporation, and the City of Unalaska, were commissioned out of concern for the lack of escapement estimates for Sockeye Salmon on the road system of Unalaska Island. The footage was provided to the Alaska Department of Fish and Game (ADF&G), who reviewed the footage and estimated the runs. The ADF&G also provided feedback for continued improvement of the aerial video monitoring methods, with the hopes of continuing these surveys. Minimum escapements (**Table 1**) indicate that this is currently a very small run for each salmon species. Additionally, substantial erosion and siltation of this system has been observed as identified by the brown colored shallow water at head of Unalaska Lake in **Figure 2**. Heavy siltation of this lake over decades may have eliminated shore spawning habitat for lake shore spawning Sockeye Salmon.

**Table 1.** Minimum salmon escapements at Unalaska Lake in 2018-2020, based on aerial drone surveys. Surveys did not include all habitat used by Pink Salmon and were not conducted during the peak of Coho Salmon abundance (Lawson 2020).

Year	Sockeye Salmon	Pink Salmon	Coho Salmon
2018	583	605	21
2019	350	25	0
2020	815	1,150	0

### Cultural Knowledge and Traditional Practices

Contemporary subsistence patterns in Unalaska are primarily derived from the Unangan (also known as Aleut) cultural traditions of harvesting a vast array of resources available in the tempestuous, temperate, and extremely diverse maritime environment. Marine mammals, multiple types of fish, crab, mollusks, birds, plants, berries, and driftwood provided the means for Unangan people and culture to flourish on the islands for at least nine thousand years (Gillespie 2018:5). Just two examples of Unangan science and engineering derived from traditional ecological knowledge include the invention of kayaks and the creation of watertight baskets woven from beach grasses. Some Unangan traditions were modified by Russians during the colonial period but mostly, Russians adapted to Unangan patterns of subsistence and survival. Unangan subsistence and cultural traditions are practiced in contemporary times; this is critical to the maintenance of the cultural identity of the Unangan people of Unalaska. Unalaska/Dutch Harbor has become one of the most productive commercial fishing ports in the world and has attracted people from all over the world. Unangan traditions and traditional knowledge continue to influence those who are drawn to the rich maritime environment.

The city of Unalaska is situated on Unalaska Island and is the largest city in the Aleutian Islands. The Port of Dutch Harbor is situated on adjacent Amaknak Island and is connected to Unalaska by a strip of road bridging the South Channel. This port city supports one of the largest commercial fisheries in the world. According to the 2020 United States Census, Unalaska has a population of 4,254 people. Considering the industrial scale of the fisheries operations there, many of the “residents” as recorded in the 2020 census may be seasonal workers that do not claim permanent Alaskan residency. As a context for assessing the actual number of permanent residents in Unalaska, in “Subsistence Fisheries Harvest Assessment and Traditional Ecological Knowledge, Lower Alaska Peninsula and Aleutian Islands,” Davis lists the population of Unalaska in 2000 as 2,091 people, less than half that of the 2000 census (4,283) (Davis 2005). Researchers specifically excluded any group quarter residents.

The most recent comprehensive subsistence surveys conducted by the ADF&G, Division of Subsistence were completed in 1993 (Scarborough and Fall 1997). During the study year, permanent residents of Unalaska harvested approximately 195 lbs. of subsistence foods per person, of which approximately 28%, or 54 lbs. per person, was salmon. Harvest methods for the salmon caught that year were “subsistence methods” (primarily nets, 62% of the salmon harvest), rod and reel (34% of the salmon harvest), and removal from commercial harvests (4% of the salmon harvest) (Scarborough and Fall 1997).

In 2013, Reedy conducted a partial house-to-house salmon harvest survey in Unalaska and made these observations:

*Many people go beach seining at Front Beach in Unalaska Bay for salmon in the summer months. The culture camp seines for pinks as well. Pink Salmon are the most abundant on the island but not the most desired fish. Their eggs are harvested and can be stored frozen. Sockeye is the most desired fish but abundance is down and this is blamed by locals on road construction, culverts, sediment runoff, and siltation ruining spawning beds. . . . A high school class runs the local Coho Salmon hatchery in the Iliuliuk River led by the science teacher, and the students are stewards of the river and its fish. Locals make lox with the salmon. Silvers are often smoked. Many keep Sockeye heads for soup (Reedy 2016: 25).*

### **Harvest History**

A State subsistence fishery for fish returning to this system exists in the marine waters near the mouth of the drainage, at Front Beach and beyond the channel bridge connecting to Little South America. There is also a marine waters State sport fishery, primarily with snagging gear, that takes place in close vicinity to the mouth of the Iliuliuk drainage in Margaret’s Bay. The primary fish species targeted in this snag fishery is Sockeye Salmon. Although other Sockeye Salmon systems exist in Unalaska Bay, much of the harvest from this snag fishery was probably returning to the Iliuliuk drainage. Both fisheries are conducted in the two access directions salmon must pass to get into the Iliuliuk drainage. The marine waters harvest is primarily Sockeye Salmon, but some Coho Salmon are also caught. During even years, Pink Salmon dominate the escapement into this system and are easily harvested both in the sport and marine based subsistence fisheries. Subsistence harvest in this area has contributed only a small percentage of overall subsistence harvest in the Unalaska Island area in the past few years, as most harvest has taken place in Reese Bay near McLees Lake (Fox et al. 2018, 2019).

Sport fishing under State regulations is the only harvest for salmon currently allowed in the Unalaska Lake system, also known as the Iliuliuk drainage. The entire drainage is closed year-round to fishing for Sockeye Salmon. Sport fishing for salmon (other than Sockeye Salmon) is allowed only downstream of the ADF&G regulatory marker located at the Church Hole, which is located at the top end of the intertidal zone by the Russian Orthodox Church. This limited fishing area is approximately 200 yards long and the standard salmon sport regulations for the area apply for the other salmon species present, allowing 5 per day and 5 in possession, of which 2 may be Coho Salmon. Dolly Varden regulations allow 10 per day and 10 in possession. Reported harvest from these areas is low enough that they are lumped into a general Alaska Peninsula/Aleutian lakes category that covers a broad swath of the region (Alaska Sport Fishing Survey database, May 28, 2020).

### **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 Unalaska Lake drainage, 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 which could lead to overharvest and conservation concerns. Fishing for salmon would be allowed daily between 6 a.m. and 9 p.m. and would require a State subsistence permit (since there are no Federal subsistence fishing permits for this area) with reporting due annually by October 31. Salmon could be taken by seine or gillnet, and gillnets would have to be physically supervised at all times when in use. In the Unalaska District, salmon harvest is limited to 25 salmon plus an additional 25 salmon for each member of a household listed on a permit. 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
- X Rescind the Closure**
- \_ Modify the Closure
- \_ Defer Decision on the Closure or Take No Action

The regulations should read:

§\_\_\_\_.27(e)(6) *Aleutian Islands Area*

\*\*\*

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

~~(A) *The waters of Unalaska Lake, its tributaries and outlet stream;*~~

## Justification

The Unalaska Lake drainage is currently closed to the harvest of salmon by federally qualified subsistence users but remains open to State sport fishing and there are State subsistence salmon opportunities in adjacent marine waters. 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.

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## **SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS**

### **Kodiak Aleutians Subsistence Regional Advisory Council**

**Retain the Status Quo** on FCR21-08. The Council supports retaining the status quo for this closure in deference to recommendations and comments from Council members and other representatives from the area. Testimony included concerns about conservation, ongoing enforcement issues, and the desire to generate a local solution before rescinding the closure.

## **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 retained, keeping this fishery out of compliance with ANILCA. The ISC acknowledges the Council supports maintaining the status quo for this closure in deference to recommendations and comments from Council members and other representatives from the area. Testimony at the Council meeting included concerns about conservation, ongoing enforcement issues, and the desire to generate a local solution before rescinding the closure.

If the Board were to rescind the closure, 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 FCR21-08**

This is a routine review of a federal subsistence fishery closure for salmon in the Unalaska Lake drainage.

### **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).

In addition, there is no need to rescind this closure or to have any federal regulations in place for a federal subsistence fishery within the Unalaska Lake drainage. There are already subsistence fisheries in place in marine waters which takes care of an overwhelming majority of the subsistence harvest for the residents of Unalaska plus the pre-existing sport fishery provides additional harvest opportunities. 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 for years. As a result, there has never been a need to pass sport fish regulatory changes pertaining to them.

ADF&G suggests that the Alaska Board of Fisheries (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 prevent 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 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 Unalaska Lake drainage supports runs of sockeye, coho, pink and chum salmon, as well as Dolly Varden. The drainage borders much of the community of Unalaska and is important to both subsistence and sport users. There is a significant history of fisheries restrictions for both subsistence and sport users in the broader Unalaska Bay area, most of these restrictions were adopted at the request of the community in recognition that salmon runs in the area were quite small and vulnerable to overfishing. The Unalaska Lake drainage, also called Iliuliuk River or Town Creek, has been an area of particular concern to the community due to indications of diminishing sockeye salmon returns and development of the watershed area since World War II.

The freshwater closure for subsistence fishing in the Unalaska Lake drainage is intended to protect the small salmon runs given the harvest potential that would accompany a subsistence fishery using gillnets or beach seines in the rivers and lakes, as well as the liberal harvest limits associated with subsistence fisheries in the area. There is an important subsistence fishery that occurs just outside of the Iliuliuk River on Front Beach primarily targeting sockeye salmon but also pink and coho salmon to a lesser degree. Sport effort primarily occurs in the intertidal area from the Church Hole to the mouth of the Iliuliuk River targeting pink and coho salmon and Dolly Varden. Monitoring of the sockeye salmon run has occurred recently by drone survey and the coho salmon run is monitored by foot survey annually.

In addition to the freshwaters of Unalaska Bay being closed to subsistence fishing and having established fishing markers that close a section of the saltwater near the river mouth, recent restrictions to harvest limits have been applied to the state subsistence fishery on Front Beach intended to protect sockeye salmon returning to Unalaska Lake. This was primarily driven by a community effort to try to protect the relatively small and potentially diminishing returns of sockeye to Unalaska Lake. Sport fishing

opportunities are also restricted in the drainage as the entire drainage is closed to the harvest of sockeye salmon and all salmon fishing above the intertidal zone beginning at the Church Hole. Some sportfishing effort occurs outside of the drainage in the nearby saltwater targeting sockeye and coho salmon. In all Unalaska Bay waters, anglers are only allowed two sockeye salmon or two coho salmon per day.

### **Impact on Subsistence Users**

Subsistence salmon fishing on Unalaska 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.

### **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**

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 Unalaska Lake drainage per the following:

### **§ 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 as recommended by OSM 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. Current management of the subsistence fishery maintains a 500-yard closure around the river mouth until the escapement goal is achieved for the drainage. 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.

Total indexed salmon escapements by species and year for Iliuliuk (Unalaska) Lake drone surveys.

<b>Year</b>	<b>Sockeye Salmon</b>	<b>Pink Salmon</b>	<b>Coho Salmon</b>
2018	583	605	21
2019	350	25	0
2020	815	1,550	0
2021	540	515	0

### **Enforcement Issues**

Enforcement of fishery regulations is an issue on Unalaska Island. Dutch Harbor only has one Alaska Wildlife Trooper (AWT) position assigned here and the local population is well aware that this AWT is on detail in Bristol Bay for most of the salmon run. ADF&G receives multiple reports of subsistence fishing violations on Dutch Harbor each summer. At this time, the trooper position is unfilled due to a recent retirement and the new officer has not yet started. Dutch Harbor has biologists that engage in some fisheries monitoring and educate users about regulations when they are not otherwise busy managing state fisheries.

Subsistence salmon fishing on Unalaska 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 Unalaska Island.

### **REFERENCES CITED**

Lawson, T. 2022. 2021 Escapement Estimates Using Drone Surveys on Unalaska Road-System Salmon Streams and Lakes. Unpublished memorandum. Alaska Department of Fish and Game, Division of Commercial Fisheries. Kodiak, AK. 3 pp.


### Appendix 1

Unalaska Area State subsistence salmon fishing permit.



**UNALASKA AREA SUBSISTENCE SALMON FISHING PERMIT**

Permit expires October 31, 2020 (5AAC 01.380(c))



This permit is valid in the Unalaska District of the Aleutian Islands Area Only.

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

I have personally reviewed the information on this permit and I HEREBY CERTIFY THAT ALL OF THE INFORMATION IS TRUE AND CORRECT. (NOTE: Making a false statement, or omitting a material fact, is subject to a maximum penalty of \$10,000 or 1 year imprisonment, or both, per AS 11.56.210 and AS 16.05.665).

Permittee signature \_\_\_\_\_ Date \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

Total number of salmon allowed on this permit: \_\_\_\_\_

Email Address or Phone: \_\_\_\_\_

**SUBSISTENCE SALMON HARVEST REPORT**

RECORD DATE, SPECIFIC LOCATION, AND NUMBER OF HARVESTED SALMON BY SPECIES  
IMMEDIATELY UPON HARVEST

DATE	SPECIFIC LOCATION	KING	SOCKEYE	COHO	PINK	CHUM

**REFER TO THE CURRENT SUBSISTENCE REGULATION BOOK FOR COMPLETE REGULATIONS**

The catch report table must be filled out (even if the permit was not used) and returned by **October 31, 2020** to: Alaska Department of Fish and Game, Unalaska Salmon Management, 351 Research Court, Kodiak AK 99615. **Failure to return this permit to ADF&G could result in denial of future permits.**

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 Unalaska Area.

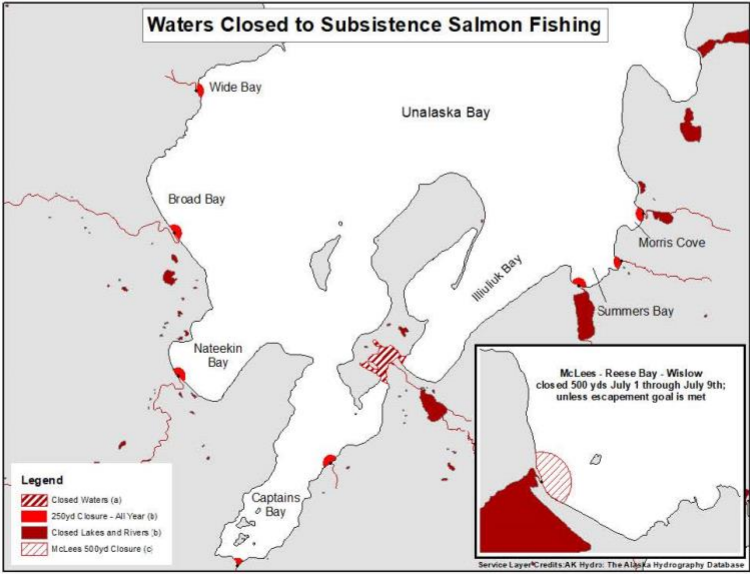
**5 AAC 01.380. LIMITS TO NUMBER OF SALMON TAKEN:** 25 salmon for the permit holder, of which no more than 10 sockeye salmon may be harvested from Front Beach in Unalaska Bay, plus an additional 25 salmon for each member of the same household whose name is listed on the permit, of which no more than 10 sockeye salmon may be harvested from Front Beach in Unalaska Bay. "Front Beach" means all Unalaska Bay waters south of a line from a point near the Bishop's House at 53° 52.64' N. lat., 166° 32.30' W. long., to a point on the Unalaska Bay shore at 53° 52.68' N. lat., 166° 30.91' W. long. Additional household permits are available by request from the local ADF&G representative.

**5 AAC 01.375. CLOSED WATERS: (see map below)**

- a. The waters of Unalaska Lake (at the city of Unalaska), its tributaries and the outlet stream, and all waters between Unalaska and Amaknak Islands, including Margaret's Bay, west of a line from the "Bishop's House" at 53° 52.64' N. lat., 166° 32.30' W. long. to a point on Amaknak Island at 53° 52.82' N. lat., 166° 32.13' W. long. and north of a line from a point south of Agnes Beach at 53° 52.28' N. lat., 166° 32.68' W. long. to a point at 53° 52.35' N. lat., 166° 32.95' W. long. on Amaknak Island.
- b. **Within Unalaska Bay (south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point): all waters are closed to subsistence salmon fishing within the waters of all streams, lakes, and within 250 yards of any anadromous stream outlet** (except for the vicinity of Unalaska Lake as described above in (a) above).
- c. At Reese Bay (Wislow), no subsistence salmon fishing is allowed in the waters of McLees Lake and its drainages or tributaries. **No subsistence salmon fishing is allowed within 500 yards of the terminus of the McLees Lake outlet during July 1 through July 9.**

**ADDITIONAL RESTRICTIONS:**

- 1. **This permit must be carried by permit holder while harvesting and transporting subsistence caught salmon and must be readily available for inspection.**
- 2. **The number of subsistence salmon, the species, the location of the catch, and the date of catch must be recorded on this permit immediately after harvest.** Maintain a consistent tally of your catch on the permit. This includes fish that are given away or shared.
- 3. **Subsistence fisherman must be in attendance of their net at all times that it is fished.**
- 4. In the Unalaska District, subsistence net may be fished **ONLY from 6:00 AM through 9:00 PM daily.**
- 5. Only household members listed on the permit may assist in the harvest of subsistence salmon.
- 6. Salmon may be taken by seine or gillnet. Gillnets are restricted to 50 fathoms total length. Each gillnet must have a buoy on each end. The **name and address** of the operator must be plainly and legibly inscribed on each buoy.
- 7. From June 1 through September 15, a salmon seine vessel may not be used to take salmon for subsistence use 24 hours before or 12 hours after an open commercial fishing period within an area open to commercial salmon fishing.
- 8. **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.**
- 9. **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."



For questions contact Fish and Game office: Dutch Harbor (907) 581-1239; 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

<b>FCR21-09 Executive Summary</b>	
<b>General Description</b>	FCR21-09 is a routine review of a Federal closure to salmon fishing at Summers and Morris Lakes drainages in the Aleutian Islands Area.
<b>Current Regulation</b>	<p>§ ____.27(e)(6) <i>Aleutian Islands Area</i></p> <p style="text-align: center;">***</p> <p style="text-align: center;"><i>(iv) 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) The waters of Summers and Morris Lakes and their tributaries and outlet streams;</i></p> <p style="text-align: center;">***</p>
<b>OSM Conclusion</b>	<b>Rescind</b>
<b>Kodiak/Aleutians Subsistence Regional Advisory Council Recommendation</b>	<b>Retain Status Quo</b>
<b>Interagency Staff Committee Comments</b>	<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 Council has recommended the closure be retained, keeping this fishery out of compliance with ANILCA. The ISC acknowledges the Council supports maintaining the status quo for this closure in deference to recommendations and comments from Council members and other representatives from the area. Testimony at the Council meeting included concerns about conservation, ongoing enforcement issues, and the desire to generate a local solution before rescinding the closure.</p>

<b>FCR21-09 Executive Summary</b>	
	If the Board were to rescind the closure, 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).
<b>ADF&amp;G Comments</b>	<b>Retain status quo</b>
<b>Written Public Comments</b>	<b>None</b>

## FEDERAL FISHERIES CLOSURE REVIEW

### FCR21-09

#### ISSUE

FCR21-09 is a routine review of a Federal closure to salmon fishing at Summers and Morris Lakes drainages in the Aleutian Islands 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:** Summers and Morris Lakes drainages—Salmon

#### Current Federal Regulation

§\_\_\_\_.27(e)(6) *slands Area*

\*\*\*

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

\*\*\*

*(B) The waters of Summers and Morris Lakes and their tributaries and outlet streams;*

\*\*\*

#### 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.*

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*(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

\*\*\*

*(ii) In the Unalaska District, you may take salmon for subsistence purposes from 6:00 a.m. until 9:00 p.m. from January 1 through December 31, except as may be specified on a subsistence fishing permit.*

\*\*\*

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

*(vi) In the Unalaska District, if you fish with a net, you must be physically present at the net at all times when the net is being used.*

*(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.*

*(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 Unalaska District, you are required to have a State Subsistence Fishing Permit when subsistence fishing for salmon (5 AAC 01.380 Subsistence fishing permits; see permit in Appendix I).*

**Closure Dates:** Year-round

## **Current State Regulations**

### Subsistence Regulations

#### **Alaska Peninsula Aleutian Islands 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.*

**\*\***

*(d) In the Unalaska District, a subsistence permit holder fishing with a net must be physically present at the net at all times when the net is being used for fishing.*

*5 AAC 01.375 Waters closed to subsistence fishing*

*The following waters are closed to subsistence fishing for salmon:*

**\*\*\***

*(3) waters of Summers and Morris Lakes and their tributaries and outlet streams;*

**\*\*\***

*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. . .*

**\*\*\***

*(2) a permit holder may obtain an additional permit from the department to harvest more salmon other than sockeye salmon from Front Beach in Unalaska Bay.*

*(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 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:*

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*(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;*

#### *5 AAC 65.051. Waters closed to sport fishing in the Alaska Peninsula and Aleutian Islands Area*

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*(3) Humpy Cove and Summer Bay Lake outlet creeks;*

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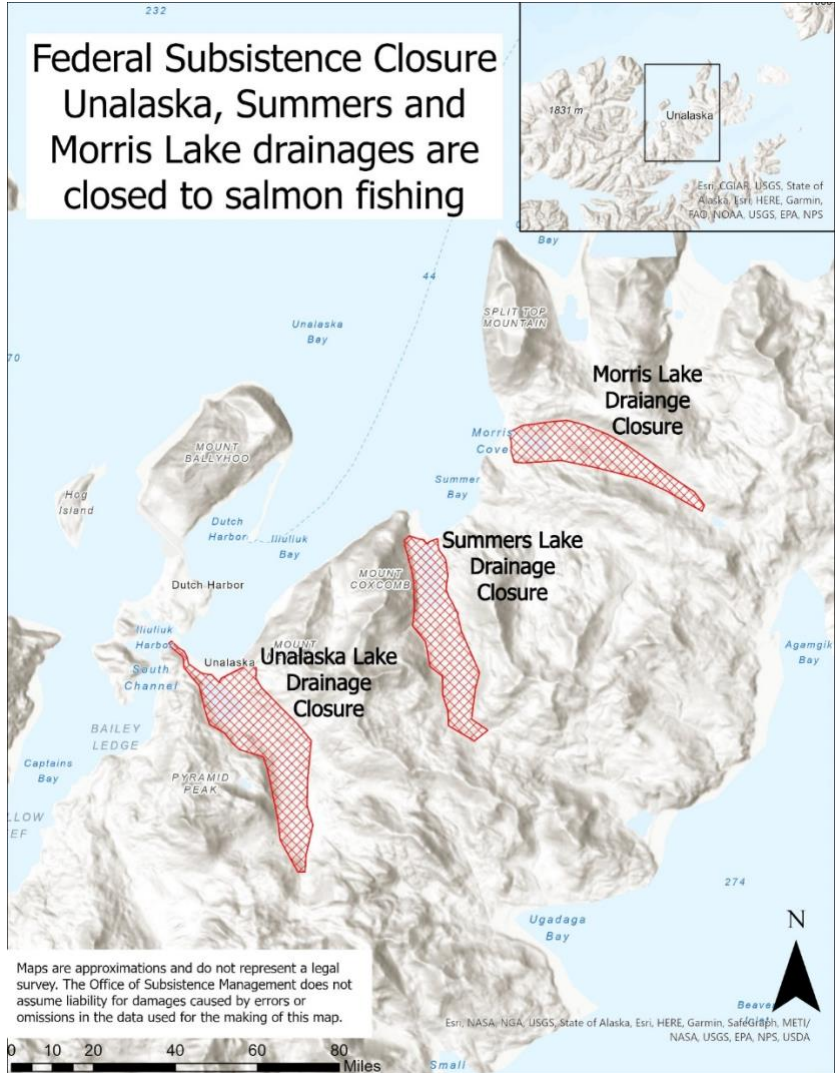
*(B) the Summer Bay Lake drainage and salt waters within a 250-yard radius of the Summer Bay Creek outlet are closed to sport fishing from August 16 through December 31;*

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**Regulatory Year Initiated: 2001**

**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 Summers and Morris Lakes and their tributaries and outlet streams, which are within and adjacent to the exterior boundaries of the Alaska Maritime National Wildlife Refuge (**Figure 1** and **Figure 2**).



**Figure 1.** Map of Morris Lake and Summers Lake drainage closures on Unalaska Island.



**Figure 2.** Aerial images of Summer (left) and Morris (right) lakes. Both systems are accessible through the road system. Photos courtesy of Andy Dietrick, Aleutian Aerial LLC.

### **Customary and Traditional Use Determination**

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

### **Regulatory History**

In 1999, the Federal Subsistence Board (Board) adopted Federal regulations for fishing in navigable waters, in addition to non-navigable waters (64 Fed. Reg. 5, 1307 [January 8, 1999]). However, this closure was not included until 2001 (66 Fed. Reg. 30, 10154 [February 13, 2001]).

### **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 1999, the Board adopted Federal regulations for fishing in navigable waters, in addition to non-navigable waters. Numerous revisions were made to fishing regulations to assure consistency with the then current State subsistence fisheries and shellfish regulations (64 Fed. Reg. 5, 1284 [January 8, 1999]). However, this closure was not included until 2001 (66 Fed. Reg. 30, 10154 [February 13, 2001]).

### **Council Recommendation for Original Closure**

None

### **State Recommendation for Original Closure**

None

## Biological Background

Summer Lake and its primary tributary have been surveyed and found to contain Coho, Pink, and Sockeye salmon while Morris Lake and its primary tributary have been identified as containing Coho and Sockeye salmon (Johnson and Blossom 2018). From 2018-2020, aerial surveys were conducted to enumerate salmon in these systems using drones (Lawson 2020, Fox et al. 2022). The surveys, conducted by Aleutian Aerial LLC and funded by the Unalaska Native Fisherman’s Association, the Ounalashka Corporation, and the City of Unalaska, were commissioned out of concern for the lack of escapement estimates for Sockeye Salmon on the road system of Unalaska Island. The footage was provided to the Alaska Department of Fish and Game (Department), who reviewed the footage and enumerated the runs. The Department also provided feedback for continued improvement of the aerial video monitoring methods, with the hopes of continuing these surveys. Minimum escapements (**Table 1**) indicate that while these lakes have relatively small runs, there are considerably more salmon returning to Summer Lake as compared to Morris Lake.

**Table 1.** Minimum salmon escapements based on aerial drone surveys. Surveys did not include all habitat used by Pink Salmon and were not conducted during the peak of Coho Salmon abundance (Lawson 2020, Fox et al. 2022).

Location	Year	Sockeye Salmon	Pink Salmon	Coho Salmon
Summer (Bay) Lake	2018	3,622	4,105	201
Summer (Bay) Lake	2019	2,575	4,090	415
Summer (Bay) Lake	2020	4,507	7,454	36
Morris (Cove) Lake	2018	315	7	0
Morris (Cove) Lake	2019	376	0	0
Morris (Cove) Lake	2020	106	354	0

## Cultural Knowledge and Traditional Practices

Contemporary subsistence patterns in Unalaska are primarily derived from the Unangan (also known as Aleut) cultural traditions of harvesting a vast array of resources available in the tempestuous, temperate and extremely diverse maritime environment. Marine mammals, multiple types of fish, crab, mollusks, birds, plants, berries and driftwood provided the means for Unangan people and culture to flourish on the islands for at least nine thousand years (Gillespie 2018:5). Just two examples of Unangan science and engineering derived from traditional ecological knowledge include the invention of kayaks and the creation of watertight baskets woven from beach grasses. Some Unangan traditions were modified by Russians during the colonial period but mostly, Russians adapted to Unangan patterns of subsistence and survival. Unangan subsistence and cultural traditions are practiced in contemporary times; this is critical to the maintenance of the cultural identity of the Unangan people of Unalaska. Unalaska/Dutch Harbor has become one of the most productive commercial fishing ports in the world and has attracted people from all over the world. Unangan traditions and traditional knowledge continue to influence those who are drawn to the rich maritime environment.

The city of Unalaska is situated on Unalaska Island and is the largest city in the Aleutian Islands. The Port

of Dutch Harbor is situated on adjacent Amaknak Island and is connected to Unalaska by a strip of road bridging the South Channel. This port city supports one of the largest commercial fisheries in the world. According to the 2020 United States Census, Unalaska has a population of 4,254 people. Considering the industrial scale of the fisheries operations there, many of the “residents” as recorded in the 2020 census may be seasonal workers that do not claim permanent Alaskan residency. As a context for assessing the actual number of permanent residents in Unalaska, in “Subsistence Fisheries Harvest Assessment and Traditional Ecological Knowledge, Lower Alaska Peninsula and Aleutian Islands,” Davis lists the population of Unalaska in 2000 as 2,091 people, less than half that of the 2000 census (4,283) (Davis 2005). Researchers specifically excluded any group quarter residents.

The most recent comprehensive subsistence surveys conducted by the ADF&G, Division of Subsistence were completed in 1993 (Scarborough and Fall 1997). During the study year, permanent residents of Unalaska harvested approximately 195 lbs. of subsistence foods per person, of which approximately 28%, or 54 lbs. per person, was salmon. Harvest methods for the salmon caught that year were “subsistence methods” (primarily nets, 62% of the salmon harvest), rod and reel (34% of the salmon harvest), and removal from commercial harvests (4% of the salmon harvest) (Scarborough and Fall 1997).

In 2013, Reedy conducted a partial house-to-house salmon harvest survey in Unalaska and made these observations:

*Many people go beach seining at Front Beach in Unalaska Bay for salmon in the summer months. The culture camp seines for pinks as well. Pink salmon are the most abundant on the island but not the most desired fish. Their eggs are harvested and can be stored frozen. Sockeye is the most desired fish but abundance is down and this is blamed by locals on road construction, culverts, sediment runoff, and siltation ruining spawning beds. . . . A high school class runs the local coho salmon hatchery in the Iliuliuk River led by the science teacher, and the students are stewards of the river and its fish. Locals make lox with the salmon. Silvers are often smoked. Many keep sockeye heads for soup (Reedy 2016: 25).*

## **Harvest History**

There is no subsistence harvest to report in either system as both are closed to subsistence fishing. However, both drainages are open to sport fishing and salmon destined for these drainages are caught in adjacent marine sport and subsistence fisheries. Summer Lake, also referred to as Summer Bay Lake, is open to fishing January 1 – August 15, but Summer Bay Creek (outlet stream) is closed to sport fishing year-round. Morris Lake and its drainage are open to sport harvest year-round. Sport harvest limits for salmon in open areas of both locations are the same. Coho, Chum, Sockeye, and Pink salmon are limited to a combined total of 5 per day and 5 in possession, only 2 of which may be Coho Salmon and only 2 of which may be Sockeye Salmon. Rainbow Trout/Steelhead and Dolly Varden have harvest limits of 2 per day, 2 in possession and 10 per day, 10 in possession, respectively. Reported harvest from these areas is low enough that they are lumped into a general Alaska Peninsula/Aleutian lakes category that covers a broad swath of the region (Alaska Sport Fishing Survey database, May 28, 2020). According to the Sport

Fish Area Management Biologist, most salmon harvest in the vicinity of these two drainages occurs in the marine environment (Polum 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 Summers and Morris Lake drainages, 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 which could lead to overharvest and conservation concerns. Fishing for salmon would be allowed daily between 6 a.m. and 9 p.m. and would require a State subsistence permit with reporting due annually by October 31. Salmon could be taken by seine or gillnet, and gillnets would have to be physically supervised at all times when in use. The harvest of trout and char would also require a permit and fall under those terms. Fish other than salmon could be taken under any gear listed in the fishing regulations or with gear specified on the permit. In the Unalaska District, salmon harvest is limited to 25 salmon plus an additional 25 salmon for each member of a household listed on a permit. To conserve fish populations, the Federal in-season manager could issue emergency special actions for up to 60 days to set provisions for the fisheries, 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:

§ \_\_.27(e)(6) *Aleutian Islands Area*

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

\*\*\*

~~*(B) The waters of Summers and Morris Lakes and their tributaries and outlet streams;*~~

\*\*\*



## Justification

Summers and Morris Lake drainages are currently closed to the harvest of salmon by federally qualified subsistence users but remain 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 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**

**Retain the Status Quo** on FCR21-09. The Council supports retaining the status quo for this closure in deference to recommendations and comments from Council members and other representatives from the area. Testimony included concerns about conservation, ongoing enforcement issues, and the desire to generate a local solution before rescinding the closure.

## 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 retained, keeping this fishery out of compliance with ANILCA. The ISC acknowledges the Council supports maintaining the status quo for this closure in deference to recommendations and comments from Council members and other representatives from the area. Testimony at the Council meeting included concerns about conservation, ongoing enforcement issues, and the desire to generate a local solution before rescinding the closure.

If the Board were to rescind the closure, 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 FCR21-09**

This is a routine review of a federal closure to subsistence salmon fishing in the Summers and Morris Lakes drainages in the Aleutian Islands area.

### **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).

In addition, there is no need to rescind this closure or to have any federal regulations in place for a federal subsistence fishery within Summer and Morris Lakes drainages. There are already subsistence fisheries in place in marine waters which represents an overwhelming majority of the harvest for subsistence for the residents of Unalaska plus the pre-existing sport fishery provides additional harvest opportunities. 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 for years. As a result, there has never been a need to pass sport fish regulatory changes pertaining to them.

ADF&G suggests that the Alaska Board of Fisheries (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 overwhelming majority of those fishing under these regulations. 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**

Summer Bay and Morris Cove lakes drainages support runs of sockeye, coho, pink and chum salmon, as well as Dolly Varden. The drainages are accessible by road from the community of Unalaska and are important to both subsistence and sport users. There is a significant history of fisheries restrictions for both subsistence and sport users in the broader Unalaska Bay area, most of these restrictions were adopted at the request of the community in recognition that salmon runs in the area were quite small and vulnerable to overfishing. Similar to the Unalaska Lake drainage, these two drainages have been areas of particular concern to the community due to indications of diminishing sockeye and coho salmon returns and potential for overfishing. Summer Bay Lake has been monitored in recent years by drone surveys and has had a weir in the past aimed at monitoring returns of sockeye salmon. The coho salmon run is also monitored annually by foot survey.

The freshwater closures for subsistence fishing in the two drainages are intended to protect the small salmon runs given the harvest potential that would accompany a subsistence fishery using gillnets or beach seines in the rivers and lakes, as well as the liberal harvest limits associated with subsistence fisheries in the area. There are relatively small subsistence fisheries targeting sockeye salmon and to a lesser degree, pink and coho salmon, near both drainages occurring in the saltwater outside established markers near the river mouths. Almost all sport effort occurs on the beaches near the river mouths and primarily targets sockeye salmon with a small amount of effort for pink and coho salmon and Dolly Varden.

Additional restrictions are in place in the Summer Bay Lake drainage aimed at conserving the small coho salmon run in the drainage. From August 16 through the end of the year, the entire drainage is closed to salmon fishing as well as the saltwater within 250 yards of the mouth of the outlet creek of Summer Bay Lake. The outlet creek itself is closed to salmon fishing year-round. Only very occasional and sporadic fishing effort occurs in the freshwaters of either Morris Cove Lake or Summer Bay Lake.

### **Impact on Subsistence Users**

Subsistence salmon fishing on Unalaska 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.

### **Impact on Other Users**

There would be minimal impact on any other users since there are a very small number of people fishing 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**

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 Aleutian Islands area per the following:

### **§ 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

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**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. Current management of the subsistence fishery maintains a 500-yard closure around the river mouth until the escapement goal is achieved for the drainage. 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.

Total indexed salmon escapements by species and year for Summer Bay Lake drone surveys.

<b>Year</b>	<b>Sockeye Salmon</b>	<b>Pink Salmon</b>	<b>Coho Salmon</b>
2018	3,622	4,105	201
2019	2,575	4,090	415
2020	4,507	7,454	33
2021	1,580	4,522	50

Total indexed salmon escapements by species and year for Morris Cove Lake drone surveys.

<b>Year</b>	<b>Sockeye Salmon</b>	<b>Pink Salmon</b>	<b>Coho Salmon</b>
2018	315	7	0
2019	376	0	0
2020	106	354	0
2021	41	97	17

**Enforcement Issues**

Enforcement of fishery regulations is an issue on Unalaska Island. Dutch Harbor only has one Alaska Wildlife Trooper (AWT) position assigned here and the local population is well aware that this AWT is on detail in Bristol Bay for most of the salmon run. ADF&G receives multiple reports of subsistence fishing violations on Dutch Harbor each summer. At this time, that trooper position is unfilled due to a recent retirement and the new officer has not yet started. Dutch Harbor has biologists that engage in some fisheries monitoring and educate users about regulations when they are not otherwise busy managing state fisheries.

Subsistence salmon fishing on Unalaska 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 Unalaska Island.

**REFERENCES CITED**

Lawson, T. 2022. 2021 Escapement Estimates Using Drone Surveys on Unalaska Road-System Salmon Streams and Lakes. Unpublished memorandum. Alaska Department of Fish and Game, Division of Commercial Fisheries. Kodiak, AK. 3 pp.


### Appendix 1

Unalaska Area State subsistence salmon fishing permit.



**UNALASKA AREA SUBSISTENCE SALMON FISHING PERMIT**

Permit expires October 31, 2020 (5AAC 01.380(c))



This permit is valid in the Unalaska District of the Aleutian Islands Area Only.

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

I have personally reviewed the information on this permit and I HEREBY CERTIFY THAT ALL OF THE INFORMATION IS TRUE AND CORRECT. (NOTE: Making a false statement, or omitting a material fact, is subject to a maximum penalty of \$10,000 or 1 year imprisonment, or both, per AS 11.56.210 and AS 16.05.665).

Permittee signature \_\_\_\_\_ Date \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

Total number of salmon allowed on this permit: \_\_\_\_\_

Email Address or Phone: \_\_\_\_\_

**SUBSISTENCE SALMON HARVEST REPORT**

RECORD DATE, SPECIFIC LOCATION, AND NUMBER OF HARVESTED SALMON BY SPECIES  
IMMEDIATELY UPON HARVEST

DATE	SPECIFIC LOCATION	KING	SOCKEYE	COHO	PINK	CHUM

**REFER TO THE CURRENT SUBSISTENCE REGULATION BOOK FOR COMPLETE REGULATIONS**

The catch report table must be filled out (even if the permit was not used) and returned by **October 31, 2020** to: Alaska Department of Fish and Game, Unalaska Salmon Management, 351 Research Court, Kodiak AK 99615. **Failure to return this permit to ADF&G could result in denial of future permits.**

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 Unalaska Area.

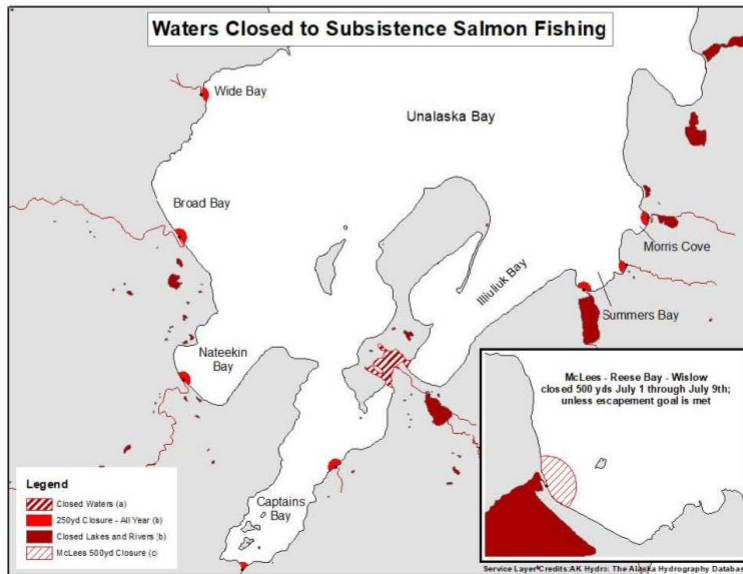
**5 AAC 01.380. LIMITS TO NUMBER OF SALMON TAKEN:** 25 salmon for the permit holder, of which no more than 10 sockeye salmon may be harvested from Front Beach in Unalaska Bay, plus an additional 25 salmon for each member of the same household whose name is listed on the permit, of which no more than 10 sockeye salmon may be harvested from Front Beach in Unalaska Bay. "Front Beach" means all Unalaska Bay waters south of a line from a point near the Bishop's House at 53° 52.64' N. lat., 166° 32.30' W. long., to a point on the Unalaska Bay shore at 53° 52.68' N. lat., 166° 30.91' W. long. Additional household permits are available by request from the local ADF&G representative.

**5 AAC 01.375. CLOSED WATERS: (see map below)**

- a. The waters of Unalaska Lake (at the city of Unalaska), its tributaries and the outlet stream, and all waters between Unalaska and Amaknak Islands, including Margaret's Bay, west of a line from the "Bishop's House" at 53° 52.64' N. lat., 166° 32.30' W. long. to a point on Amaknak Island at 53° 52.82' N. lat., 166° 32.13' W. long. and north of a line from a point south of Agnes Beach at 53° 52.28' N. lat, 166° 32.68' W. long. to a point at 53° 52.35' N. lat, 166° 32.95' W. long. on Amaknak Island.
- b. **Within Unalaska Bay** (south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point): **all waters are closed to subsistence salmon fishing within the waters of all streams, lakes, and within 250 yards of any anadromous stream outlet** (except for the vicinity of Unalaska Lake as described above in (a) above.
- c. At **Reese Bay (Wislow)**, no subsistence salmon fishing is allowed in the waters of McLees Lake and its drainages or tributaries. **No subsistence salmon fishing is allowed within 500 yards of the terminus of the McLees Lake outlet during July 1 through July 9.**

**ADDITIONAL RESTRICTIONS:**

- 1. **This permit must be carried by permit holder while harvesting and transporting subsistence caught salmon and must be readily available for inspection.**
- 2. **The number of subsistence salmon, the species, the location of the catch, and the date of catch must be recorded on this permit immediately after harvest.** Maintain a consistent tally of your catch on the permit. This includes fish that are given away or shared.
- 3. **Subsistence fisherman must be in attendance of their net at all times that it is fished.**
- 4. In the Unalaska District, subsistence net may be fished **ONLY from 6:00 AM through 9:00 PM daily.**
- 5. Only household members listed on the permit may assist in the harvest of subsistence salmon.
- 6. Salmon may be taken by seine or gillnet. Gillnets are restricted to 50 fathoms total length. Each gillnet must have a buoy on each end. The **name and address** of the operator must be plainly and legibly inscribed on each buoy.
- 7. From June 1 through September 15, a salmon seine vessel may not be used to take salmon for subsistence use 24 hours before or 12 hours after an open commercial fishing period within an area open to commercial salmon fishing.
- 8. **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.**
- 9. **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."



For questions contact Fish and Game office: Dutch Harbor (907) 581-1239; 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

<b>FCR21-11 Executive Summary</b>	
<b>General Description</b>	FCR21-11 is a routine review of a Federal closure to salmon fishing at McLees Lake drainage in the Aleutian Islands Area.
<b>Current Regulation</b>	<p>§ ____.27(e)(6) <i>Aleutian Islands Area</i></p> <p style="text-align: center;">***</p> <p style="text-align: center;"><i>(iv) 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>(D) Waters of McLees Lake and its tributaries and outlet stream</i></p> <p style="text-align: center;">***</p>
<b>OSM Conclusion</b>	<b>Rescind</b>
<b>Kodiak/Aleutians Subsistence Regional Advisory Council Recommendation</b>	<b>Retain Status Quo</b>
<b>Interagency Staff Committee Comments</b>	<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 Council has recommended the closure be retained, keeping this fishery out of compliance with ANILCA. The ISC acknowledges the Council supports maintaining the status quo for this closure in deference to recommendations and comments from Council members and other representatives from the area. Testimony at the Council meeting included concerns about conservation, ongoing enforcement issues, and the desire to generate a local solution before rescinding the closure.</p>

<b>FCR21-11 Executive Summary</b>	
	If the Board were to rescind the closure, 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).
<b>ADF&amp;G Comments</b>	<b>Retain Status Quo</b>
<b>Written Public Comments</b>	<b>None</b>

**FEDERAL FISHERIES CLOSURE REVIEW  
FCR21-11**

**Issue**

FCR21-11 is a routine review of a Federal closure to salmon fishing at McLees Lake drainage in the Aleutian Islands 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:** McLees Lake drainage—Salmon

**Current Federal Regulation**

§ \_\_.27(e)(6) *Aleutian Islands Area*

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

\*\*\*

*(D) Waters of McLees Lake and its tributaries and outlet stream*

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**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*

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

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*(10) You may not take fish for subsistence uses within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction, unless otherwise indicated.*

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*(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.*

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*(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*

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*(ii) In the Unalaska District, you may take salmon for subsistence purposes from 6:00 a.m. until 9:00 p.m. from January 1 through December 31, except as may be specified on a subsistence fishing permit.*

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

*(vi) In the Unalaska District, if you fish with a net, you must be physically present at the net at all times when the net is being used.*

*(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.*

*(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 Unalaska District, you are required to have a State Subsistence Fishing Permit when subsistence fishing for salmon (Appendix 1, see 5 AAC 01.380. Subsistence fishing permits).*

**Closure Dates:** Year-round

## **Current State Regulation**

### Subsistence Regulations

5 AAC 01.010 Methods, means, and general provisions

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(e) Fishing for, taking or molesting any fish by any means, or for any purpose, is prohibited within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction.

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Aleutian Islands 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 01.375 Waters closed to subsistence fishing

The following waters are closed to subsistence fishing for salmon:

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(5) waters of McLees Lake and its tributaries and its outlet stream; in the waters of Reese Bay from July 1 through July 9, salmon may not be taken within 500 yards of the outlet stream terminus to McLees Lake;

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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,

(1) the holder of a subsistence salmon fishing permit may take no more than 25 salmon, of which no more than 10 sockeye salmon may be harvested from Front Beach in Unalaska Bay, plus an additional 25 salmon for each member of the same household whose name is listed on the permit, of which no more

than 10 sockeye salmon may be harvested from Front Beach in Unalaska Bay; in this section, "Front Beach" means all Unalaska Bay waters south of a line from a point near the Bishop's House at 53\_ 52.64' N. lat., 166\_ 32.30' W. long., to a point on the Unalaska Bay shore at 53\_ 52.68' N. lat., 166\_ 30.91' W. long; and (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

#### 5 AAC 75.050 Waters closed to sport fishing

- (a) The waters within 300 feet of a fish weir or fish ladder are closed to sport fishing, unless a lesser distance is indicated by ADF&G regulatory markers.
- (b) It is unlawful to cast, drift, or place by any means a hook, bait, artificial lure, or artificial fly into waters closed to sport fishing.

#### 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:** 2001

**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 McLees Lake, its outlet stream and tributaries, which are within and adjacent to the exterior boundaries of the Alaska Maritime National Wildlife Refuge (**Figure 1**).



Figure 1. McLees Lake waters closed to salmon fishing under Federal subsistence regulation.

**Customary and Traditional Use Determination**

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

## **Regulatory History**

In 1999, the Federal Subsistence Board adopted Federal regulations for fishing in navigable waters, in addition to non-navigable waters. Numerous revisions were made to fishing regulations to assure consistency with the then current State subsistence fisheries regulations, (64 Fed. Reg. 5; 1284 [January 8, 1999]). However, this closure was not adopted until 2001 (66 Fed. Reg. 30, 10154 [February 13, 2001]).

## **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 1999, the Federal Subsistence Board adopted Federal regulations for fishing in navigable waters, in addition to non-navigable waters. Numerous revisions were made to fishing regulations to assure consistency with the then current State subsistence fisheries regulations, (64 Fed. Reg. 5; 1284 [January 8, 1999]).

## **Council Recommendation for Original Closure**

None

## **State Recommendation for Original Closure**

None

## **Biological Background**

Estimates of escapement have been conducted since 1974, starting with aerial surveys and switching to a weir at the outlet of the lake in 2001 (Lipka and Fox 2017). From 2001 to 2011, various offices of the US Fish and Wildlife Service (USFWS) in partnership with the Qawalangin Tribe operated a weir to enumerate McLees Lake escapement. ADF&G continued weir operations from 2012 to 2017, in cooperation with the Qawalangin Tribe. The weir did not operate during the 2018 and 2019 seasons due to lack of funding, but began operations again in 2020 and is still operational. The Unalaska Native Fishermen's Association (UNFA), the Ounalashka Corporation, the City of Unalaska, and the Qawalangin Tribe of Unalaska provided funding to contract Aleutian Aerial LLC to fly small unmanned aerial system (i.e., drone) surveys to capture sockeye salmon abundance in McLees lakes and other locations starting in 2020 (Fox et al. 2022). Funds were awarded through the Alaska Sustainable Salmon Fund (AKSSF) to continue drone work in 2022 and 2023. This system produces mainly Sockeye Salmon, but also sees occasional steelhead trout (Johnson and Blossom 2018). Sockeye Salmon escapements have ranged from a high of 101,793 Sockeye Salmon (2002) to a low of 5,037 (2020), with a recent 5-year average (2015-2017, 2020, 2021) of 18,914 fish (Hildreth and Finkle 2013, Lipka and Fox 2017, Fox et al. 2022).

## Cultural Knowledge and Traditional Practices

Contemporary subsistence patterns in Unalaska are primarily derived from the Unangan (also known as Aleut) cultural traditions of harvesting a vast array of resources available in the tempestuous, temperate and extremely diverse maritime environment. Marine mammals, multiple types of fish, crab, mollusks, birds, plants, berries and driftwood provided the means for Unangan people and culture to flourish on the islands for at least nine thousand years (Gillespie 2018:5). Just two examples of Unangan science and engineering derived from traditional ecological knowledge include the invention of kayaks and the creation of watertight baskets woven from beach grasses. Some Unangan traditions were modified by Russians during the colonial period but mostly, Russians adapted to Unangan patterns of subsistence and survival. Unangan subsistence and cultural traditions are practiced in contemporary times; this is critically important to the maintenance of the cultural identity of the Unangan people of Unalaska. Unalaska/Dutch Harbor has become one of the most productive commercial fishing ports in the world and has attracted people from all over the world. Unangan traditions and traditional knowledge continue to influence those who are drawn to the rich maritime environment.

The city of Unalaska is situated on Unalaska Island and is the largest city in the Aleutian Islands. The Port of Dutch Harbor is situated on adjacent Amaknak Island and is connected to Unalaska by a strip of road bridging the South Channel. This port city supports one of the largest commercial fisheries in the world. According to the 2020 United States Census, Unalaska has a population of 4,254 people. Considering the industrial scale of the fisheries operations there, many of the “residents” as recorded in the 2020 census may be seasonal workers that do not claim permanent Alaskan residency. As a context for assessing the actual number of permanent residents in Unalaska, in “Subsistence Fisheries Harvest Assessment and Traditional Ecological Knowledge, Lower Alaska Peninsula and Aleutian Islands,” Davis lists the population of Unalaska in 2000 as 2,091 people, less than half that of the 2000 census (4,283) (Davis 2005). Researchers specifically excluded any group quarter residents.

The most recent comprehensive subsistence surveys conducted by the ADF&G, Division of Subsistence were completed in 1993 (Scarborough and Fall 1997). During the study year, permanent residents of Unalaska harvested approximately 195 lbs. of subsistence foods per person, of which approximately 28%, or 54 lbs. per person, was salmon. Harvest methods for the salmon caught that year were “subsistence methods” (primarily nets, 62% of the salmon harvest), rod and reel (34% of the salmon harvest), and removal from commercial harvests (4% of the salmon harvest) (Scarborough and Fall 1997).

In 2013, Reedy conducted a partial house-to-house salmon harvest survey in Unalaska and made these observations:

Many people go beach seining at Front Beach in Unalaska Bay for salmon in the summer months. The culture camp seines for pinks as well. Pink salmon are the most abundant on the island but not the most desired fish. Their eggs are harvested and can be stored frozen. Sockeye is the most desired fish but abundance is down and this is blamed by locals on road construction, culverts, sediment runoff, and siltation ruining spawning beds. A high school class runs the local coho salmon hatchery in the Iliuliuk River led by the science teacher, and the students are stewards of the river and its fish. Locals make lox

with the salmon. Silvers are often smoked. Many keep sockeye heads for soup (Reedy 2016: 25).

### Harvest History

There is an active State managed subsistence fishery targeting the Sockeye Salmon returning to McLees Lake, which takes place in the marine waters of Reese Bay near the lake outlet. Subsistence harvests of Sockeye Salmon returning through Reese Bay to McLees Lake are typically taken by set gillnet in Reese Bay during the months of June and July. Participation requires a State subsistence permit, and estimates of harvests for this fishery between 1985 and 2020 have ranged from 436 to 4,694 fish annually (Fox et al. 2022). There were 23 permits issued for the first year of this fishery in 1985, and a high of 129 permits issued in 2013. This fishery is often the primary Unalaska Island subsistence salmon fishery, providing 45-94% of the annual Sockeye Salmon harvest in this community (Fox et al. 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 of salmon 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 McLees Lake drainage, 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 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)(6) *Aleutian Islands Area*

\*\*\*

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

\*\*\*



*(D) Waters of McLees Lake and its tributaries and outlet stream*

\*\*\*

**Justification**

The McLees Lake drainage is currently closed to the harvest of salmon by federally qualified subsistence users but remains open to State sport fishing and there are State subsistence salmon opportunities in adjacent marine waters. 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.

**Literature Cited**

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Scarborough, L., and J.A. Fall. 1997. Unalaska: subsistence harvest and use information. Alaska Department of Fish and Game Division of Subsistence, Special Publication No. SP1997-001, Anchorage, AK.

U.S. Census. 2020. Unalaska city, Alaska. [https://www.census.gov/search-results.html?q=Unalaska+Dutch+harbor&page=1&stateGeo=none&searchtype=web&cssp=SERP&\\_charset=UTF-8](https://www.census.gov/search-results.html?q=Unalaska+Dutch+harbor&page=1&stateGeo=none&searchtype=web&cssp=SERP&_charset=UTF-8). Retrieved July 17, 2022.

## SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS

### **Kodiak Aleutians Subsistence Regional Advisory Council**

**Retain the Status Quo** on FCR21-11. The Council supports retaining the status quo for this closure in deference to recommendations and comments from Council members and other representatives from the area. Testimony included concerns about conservation, ongoing enforcement issues, and the desire to generate a local solution before rescinding the closure.

## 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 retained, keeping this fishery out of compliance with ANILCA. The ISC acknowledges the Council supports maintaining the status quo for this closure in deference to recommendations and comments from Council members and other representatives from the area. Testimony at the Council meeting included concerns about conservation, ongoing enforcement issues, and the desire to generate a local solution before rescinding the closure.

If the Board were to rescind the closure, 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 FCR21-11**

This is a routine review of a federal closure to subsistence salmon fishing at McLees Lake drainage in the Aleutian Islands Area.

### **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).

In addition, there is no need to rescind this closure or to have any federal regulations in place for a federal subsistence fishery within McClees Lake drainage. There are already subsistence fisheries in place in marine waters which represents an overwhelming majority of the harvest for subsistence for the residents of Unalaska plus the pre-existing sport fishery provides additional harvest opportunities. 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.

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 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 McLees Lake drainage supports a run of sockeye salmon and a much smaller run of coho salmon. The drainage is accessible by boat from the community of Unalaska and is the primary area of subsistence harvest for the community at this time. The drainage supports a relatively large run of sockeye salmon and provides the majority of the sockeye salmon harvested in subsistence fisheries in the Unalaska area.

The freshwater closure for subsistence fishing under both state and federal regulations in the drainage is intended to protect the salmon runs returning to McLees Lake given the harvest potential that would accompany a subsistence fishery using gillnets or beach seines in the rivers and lakes, as well as the liberal harvest limits associated with subsistence fisheries in the area. There is significant subsistence effort that occurs outside markers established on the beach in front of the drainage in the Reese Bay area using gillnets and beach seines. The markers are reduced to the stream mouth terminus once the sustainable escapement goal (SEG) of 10,000 sockeye is reached. In recent years markers have been reduced sometime in mid-July. There is extremely low sport fishing effort that occurs in this area due to the limited opportunity provided by the freshwaters of the drainage and the relative difficulty in accessing the area. While there are no specific sport fishing restrictions to the drainage, other than the standard 100-yard closure for sportfishing near the weir, there are very limited areas where fishing would be possible in the drainage since sockeye salmon essentially enter the lake directly with incoming tides. There have only been a handful of occasions where there has been directed sportfishing effort on this run.

### **Impact on Subsistence Users**

Subsistence salmon fishing on Unalaska 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.

### **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**

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 Aleutian Islands area per the following:

### **§ 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 increased harvest limits. Current management of the subsistence fishery maintains a 500-yard closure around the river mouth until the escapement goal is achieved for the drainage. 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. As stated above there needs to be regulations put in place that guarantee the sustainability of these salmon stocks first.

### **Enforcement Issues**

The rescinding of this closure would create enforcement issues since there would now be a discrepancy in where federal and state subsistence fisheries occur. In addition, if the federal-inseason manager chooses to restrict FQUs to rod and reel then this will only exacerbate the issue.


Enforcement of fishery regulations is an issue on Unalaska Island. Dutch Harbor only has one Alaska Wildlife Trooper (AWT) position assigned here and the local population is well aware that this AWT is on detail in Bristol Bay for most of the salmon run. ADF&G receives multiple reports of subsistence fishing violations on Dutch Harbor each summer. At this time, that trooper position is unfilled due to a recent retirement and the new officer has not yet started. Dutch Harbor has biologists that engage in some fisheries monitoring and educate users about regulations when they are not otherwise busy managing state fisheries.

Subsistence salmon fishing on Unalaska 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 Unalaska Island.


Appendix 1

Unalaska area subsistence salmon fishing permit.



**UNALASKA AREA SUBSISTENCE SALMON FISHING PERMIT**

Permit expires October 31, 2020 (5AAC 01.380(c))



This permit is valid in the Unalaska District of the Aleutian Islands Area Only.

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

I have personally reviewed the information on this permit and I HEREBY CERTIFY THAT ALL OF THE INFORMATION IS TRUE AND CORRECT. (NOTE: Making a false statement, or omitting a material fact, is subject to a maximum penalty of \$10,000 or 1 year imprisonment, or both, per AS 11.56.210 and AS 16.05.665).

Permittee signature \_\_\_\_\_ Date \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

Total number of salmon allowed on this permit: \_\_\_\_\_

Email Address or Phone: \_\_\_\_\_

**SUBSISTENCE SALMON HARVEST REPORT**

RECORD DATE, SPECIFIC LOCATION, AND NUMBER OF HARVESTED SALMON BY SPECIES  
IMMEDIATELY UPON HARVEST

DATE	SPECIFIC LOCATION	KING	SOCKEYE	COHO	PINK	CHUM

**REFER TO THE CURRENT SUBSISTENCE REGULATION BOOK FOR COMPLETE REGULATIONS**

The catch report table must be filled out (even if the permit was not used) and returned by **October 31, 2020** to: Alaska Department of Fish and Game, Unalaska Salmon Management, 351 Research Court, Kodiak AK 99615. **Failure to return this permit to ADF&G could result in denial of future permits.**

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 Unalaska Area.

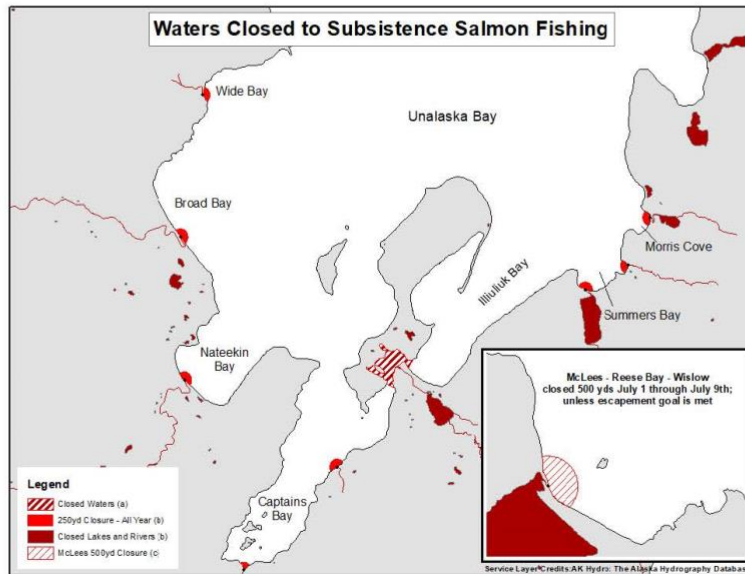
**5 AAC 01.380. LIMITS TO NUMBER OF SALMON TAKEN:** 25 salmon for the permit holder, of which no more than 10 sockeye salmon may be harvested from Front Beach in Unalaska Bay, plus an additional 25 salmon for each member of the same household whose name is listed on the permit, of which no more than 10 sockeye salmon may be harvested from Front Beach in Unalaska Bay. "Front Beach" means all Unalaska Bay waters south of a line from a point near the Bishop's House at 53° 52.64' N. lat., 166° 32.30' W. long., to a point on the Unalaska Bay shore at 53° 52.68' N. lat., 166° 30.91' W. long. Additional household permits are available by request from the local ADF&G representative.

**5 AAC 01.375. CLOSED WATERS: (see map below)**

- a. The waters of Unalaska Lake (at the city of Unalaska), its tributaries and the outlet stream, and all waters between Unalaska and Amaknak Islands, **including Margaret's Bay**, west of a line from the "Bishop's House" at 53° 52.64' N. lat., 166° 32.30' W. long. to a point on Amaknak Island at 53° 52.82' N. lat., 166° 32.13' W. long. and north of a line from a point south of Agnes Beach at 53° 52.28' N. lat, 166° 32.68' W. long. to a point at 53° 52.35' N. lat, 166° 32.95' W. long. on Amaknak Island.
- b. **Within Unalaska Bay** (south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point): **all waters are closed to subsistence salmon fishing within the waters of all streams, lakes, and within 250 yards of any anadromous stream outlet** (except for the vicinity of Unalaska Lake as described above in (a) above.
- c. **At Reese Bay (Wislow)**, no subsistence salmon fishing is allowed in the waters of McLees Lake and its drainages or tributaries. **No subsistence salmon fishing is allowed within 500 yards of the terminus of the McLees Lake outlet during July 1 through July 9.**

**ADDITIONAL RESTRICTIONS:**

- 1. **This permit must be carried by permit holder while harvesting and transporting subsistence caught salmon and must be readily available for inspection.**
- 2. **The number of subsistence salmon, the species, the location of the catch, and the date of catch must be recorded on this permit immediately after harvest.** Maintain a consistent tally of your catch on the permit. This includes fish that are given away or shared.
- 3. **Subsistence fisherman must be in attendance of their net at all times that it is fished.**
- 4. In the Unalaska District, subsistence net may be fished **ONLY from 6:00 AM through 9:00 PM daily.**
- 5. Only household members listed on the permit may assist in the harvest of subsistence salmon.
- 6. Salmon may be taken by seine or gillnet. Gillnets are restricted to 50 fathoms total length. Each gillnet must have a buoy on each end. The **name and address** of the operator must be plainly and legibly inscribed on each buoy.
- 7. From June 1 through September 15, a salmon seine vessel may not be used to take salmon for subsistence use 24 hours before or 12 hours after an open commercial fishing period within an area open to commercial salmon fishing.
- 8. **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.**
- 9. **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."



For questions contact Fish and Game office: Dutch Harbor (907) 581-1239; 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

<b>FCR23-11 Executive Summary</b>	
<b>General Description</b>	FCR23-11 is a routine review of a Federal closure to salmon fishing in all freshwater streams flowing into Unalaska Bay.
<b>Current Regulation</b>	<p>§ __.27(e)(6) <i>Aleutian Islands Area</i></p> <p style="text-align: center;">***</p> <p style="text-align: center;"><i>(iv) 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>(C) All streams supporting anadromous fish runs that flow into Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point;</i></p> <p style="text-align: center;">***</p>
<b>OSM Conclusion</b>	<b>Rescind</b>
<b>Kodiak/Aleutians Subsistence Regional Advisory Council Recommendation</b>	<b>Retain Status Quo</b>
<b>Interagency Staff Committee Comments</b>	<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 retained, keeping this fishery out of compliance with ANILCA. The ISC acknowledges the Council supports maintaining the status quo for this closure in deference to recommendations and comments from Council members and other representatives from the area. Testimony at the Council meeting included concerns about conservation,</p>

<b>FCR23-11 Executive Summary</b>	
	<p>ongoing enforcement issues, and the desire to generate a local solution before rescinding the closure.</p> <p>If the Board were to rescind the closure, 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>
<b>ADF&amp;G Comments</b>	<b>Retain Status Quo</b>
<b>Written Public Comments</b>	<b>None</b>

**FEDERAL FISHERIES CLOSURE REVIEW**  
**FCR23-11**

**Issue**

FCR23-11 is a routine review of a Federal closure to salmon fishing in all freshwater streams flowing into Unalaska Bay. 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:** Unalaska Bay freshwater streams—Salmon

**Current Federal Regulation**

§ \_\_\_\_.27(e)(6) *Aleutian Islands Area*

\*\*\*

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

\*\*\*

*(C) All streams supporting anadromous fish runs that flow into Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point;*

\*\*\*

**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.*

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*(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

\*\*\*

*(ii) In the Unalaska District, you may take salmon for subsistence purposes from 6:00 a.m. until 9:00 p.m. from January 1 through December 31, except as may be specified on a subsistence fishing permit.*

\*\*\*

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

*(vi) In the Unalaska District, if you fish with a net, you must be physically present at the net at all times when the net is being used. (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.*

*(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, 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 Unalaska District, you are required to have a State Subsistence Fishing Permit when subsistence fishing for salmon (**Appendix 1**, 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:*

*(1) waters of Unalaska Lake (at the city of Unalaska), its tributaries and outlet stream, and waters between Unalaska and Amaknak Islands, including Margaret's Bay, west of a line from the "Bishop's House" at 53\_ 52.64' N. lat., 166\_ 32.30' W. long. to a point on Amaknak Island at 53\_ 52.82' N. lat., 166\_ 32.13' W. long., and north of line from a point south of Agnes Beach at 53\_ 52.28' N. lat., 166\_ 32.68' W. long. to a point at 53\_ 52.35' N. lat., 166\_ 32.95' W. long. on Amaknak Island;*

*(2) within Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point: waters are closed to subsistence salmon fishing within 250 yards of any anadromous stream, except the outlet stream of Unalaska Lake, which is closed under (1) of this section;*

## **Relevant State Regulations**

### Subsistence Regulations

#### **Aleutian Islands 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.*

\*\*\*

*(d) In the Unalaska District, a subsistence permit holder fishing with a net must be physically present at the net at all times when the net is being used for fishing.*

*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,*

*(1) the holder of a subsistence salmon fishing permit may take no more than 25 salmon, of which no more than 10 sockeye salmon may be harvested from Front Beach in Unalaska Bay, plus an additional 25 salmon for each member of the same household whose name is listed on the permit, of which no more than 10 sockeye salmon may be harvested from Front Beach in Unalaska Bay; in this section, "Front Beach" means all Unalaska Bay waters south of a line from a point near the Bishop's House at 53°E/CS> 52.64' N. lat., 166°E/CS> 32.30' W. long., to a point on the Unalaska Bay shore at 53°E/CS> 52.68' N. lat., 166°E/CS> 30.91' W. long;*

*(2) a permit holder may obtain an additional permit from the department to harvest more salmon other than sockeye salmon from Front Beach in Unalaska Bay.*

*(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;

5 AAC 65.022. Special provisions for bag, possession, and annual limits, and methods and means in the Alaska Peninsula and Aleutian Islands Area

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(e) In the salt waters and all freshwater drainages of Unalaska Bay, the bag and possession limit for salmon, other than king salmon, is five fish per day, five fish in possession, of which no more than two fish may be coho salmon and two fish may be sockeye salmon.

5 AAC 65.051. Waters closed to sport fishing in the Alaska Peninsula and Aleutian Islands Area

The following waters are closed to sport fishing in the Alaska Peninsula and Aleutian Island Area:

(1) that portion of the Makushin River drainage upstream from an ADF&G regulatory marker located approximately two miles upstream from its mouth;

(2) that portion of the Nateekin River drainage upstream from an ADF&G regulatory marker located approximately two miles upstream from its mouth (immediately below the canyon hole);

(3) Humpy Cove and Summer Bay Lake outlet creeks;

(4) the following areas on and around Unalaska Island are closed to sport fishing as follows:

*(A) the Illiuliuk River drainage, including Illiuliuk Creek (also known as Town or Unalaska Creek), Illiuliuk [Unalaska] Lake, and all waters flowing into Illiuliuk Lake,*

*(i) is closed to sport fishing for sockeye salmon;*

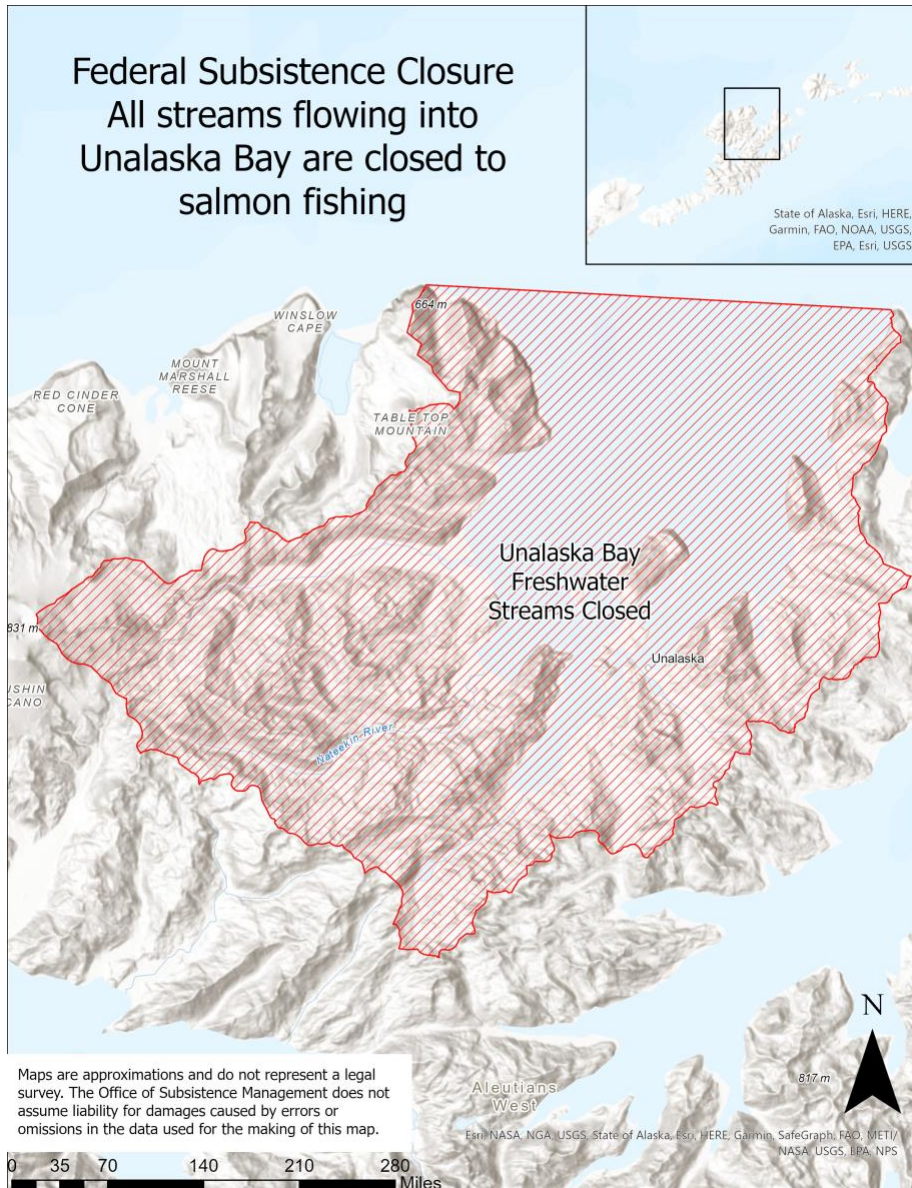
*(ii) upstream from ADF&G regulatory markers located at the Church Hole [in Unalaska Creek], is closed to sport fishing for salmon;*

*(B) the Summer Bay Lake drainage and salt waters within a 250-yard radius of the Summer Bay Creek outlet are closed to sport fishing from August 16 through December 31;*

**Regulatory Year Initiated:** 2001

### **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 of Unalaska Bay drainages comprise all freshwaters within and adjacent to the exterior boundaries of Alaska Maritime Wildlife Refuge flowing into Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point (**Figure 1**).



**Figure 1.** Map of freshwater drainages flowing into Unalaska Bay. Anadromous streams within these drainages are closed to Federal subsistence salmon fishing.

### Customary and Traditional Use Determination

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 1999, the Federal Subsistence Board adopted Federal regulations for fishing in navigable waters, in addition to non-navigable waters. Numerous revisions were made to fishing regulations to assure consistency with the then current State subsistence fisheries regulations, (64 Fed. Reg. 5; 1284 [January 8, 1999]). However, this closure was not adopted until 2001 (66 Fed. Reg. 30, 10154 [February 13, 2001]).

**Closure last reviewed**

There have been no previous reviews of this closure.

**Justification for Original Closure**

In 1999, the Federal Subsistence Board adopted Federal regulations for fishing in navigable waters, in addition to non-navigable waters. Numerous revisions were made to fishing regulations to assure consistency with the then current State subsistence fisheries regulations, (64 Fed. Reg. 5; 1284 [January 8, 1999]).

**Council Recommendation for Original Closure**

None

**State Recommendation for Original Closure**

None

**Biological Background**

There are many anadromous fish streams flowing into Unalaska Bay. Notable ones include Makushin Valley, Nateekin, Shaishnikof, Iliuliuk (Unalaska) Rivers, and Summer and Morris Lake drainages. Anadromous species present in these drainages, according to the ADF&G Anadromous Waters Catalog, is displayed in **Table 1** (Johnson and Blossom 2021).

**Table 1.** Primary freshwater streams flowing into Unalaska Bay

<b>Drainage</b>	<b>Species present</b>
Makushin River (Broad Bay)	Chum, Coho, Pink, Dolly Varden
Nateekin River	Coho, Pink
Shaishnikof River (Captains Bay)	Chum, Coho, Pink
Iliuliuk (Unalaska) Drainage	Coho, Pink, Sockeye, Dolly Varden
Summer Lake	Coho, Pink, Sockeye
Morris Lake	Coho, Sockeye

Unalaska Bay drainages are not monitored through the annual ADF&G aerial indexing. From 2018-2021, aerial surveys were conducted to enumerate salmon in Unalaska road system drainages using drones (Lawson 2020; Fox et al. 2020, 2021, 2022). The surveys, conducted by Aleutian Aerial LLC and funded by the Unalaska Native Fisherman’s Association, the Ounalashka Corporation, and the City of Unalaska, were commissioned out of concern for the lack of escapement estimates for Sockeye Salmon on the road system of Unalaska Island. The footage was provided to the Alaska Department of Fish and Game (ADF&G), who reviewed the footage and estimated the runs (**Table 2**). The ADF&G also provided feedback for continued improvement of the aerial video monitoring methods, with the hopes of continuing these surveys.

**Table 2.** Sockeye Salmon escapement indices on the Unalaska road system based on aerial drone surveys, 2018-2020.

<b>Year</b>	<b>Iliuliuk (Unalaska)</b>	<b>Summer Lake</b>	<b>Morris Lake</b>
2018	583	3,622	315
2019	350	2,575	376
2020	815	4,507	106

### **Cultural Knowledge and Traditional Practices**

Contemporary subsistence patterns in Unalaska are primarily derived from the Unangan (also known as Aleut) cultural traditions of harvesting a vast array of resources available in the tempestuous, temperate and extremely diverse maritime environment. Marine mammals, multiple types of fish, crab, mollusks, birds, plants, berries and driftwood provided the means for Unangan people and culture to flourish on the islands for at least nine thousand years (Gillespie 2018:5). Just two examples of Unangan science and engineering derived from traditional ecological knowledge include the invention of kayaks and the creation of baskets woven from beach grasses that are watertight. Some Unangan traditions were modified by Russians during the colonial period but mostly, Russians adapted to Unangan patterns of subsistence and survival. Unangan subsistence and cultural traditions are practiced in contemporary times; this is critical to the maintenance of the cultural identity of the Unangan people of Unalaska. Unalaska/Dutch Harbor has become one of the most productive commercial fishing ports in the world and has attracted people from all over the world. Unangan traditions and traditional knowledge continue to influence those who are drawn to the rich maritime environment.

### **Harvest History**

Subsistence harvest is reported on State issued subsistence fishing permits. Subsistence fishers around Unalaska primarily target Sockeye Salmon in Reese Bay that are returning to McLees Lake. However, in 2020 subsistence fishers reported harvesting an equal amount from the “Other Locations” category, probably due to a low return to McLees Lake (**Tables 3 and 4**; Fox et. al 2022). Most of this harvest occurred at Volcano Bay which is not located within Unalaska Bay.

**Table 3.** Estimated Unalaska Sockeye Salmon harvest by major location, in number of fish, 2020 (adapted from Fox et al. 2022).

Location <sup>a</sup>	Sockeye Harvest <sup>b</sup>	Percent of total harvest
Reese Bay (Wislow)	613	45%
Broad Bay	6	0%
Wide Bay	0	0%
Nateeken Bay	0	0%
Captains Bay	0	0%
Unalaska Lake vicinity	136	10%
Other locations	610	45%
<b>Totals</b>	<b>1,365</b>	<b>100%</b>

<sup>a</sup> Some permits fished in more than one location.

<sup>b</sup> Reported harvest from returned subsistence permits. Harvest from unreturned permits was not estimated.

**Table 4.** Estimated Unalaska Coho Salmon harvest by major location, in number of fish, 2020 (adapted from Fox et al. 2022).

Location <sup>a</sup>	Coho Harvest <sup>b</sup>	Percent of total harvest
Reese Bay (Wislow)	4	1%
Broad Bay	65	15%
Wide Bay	1	0%
Nateeken Bay	1	4%
Captains Bay	170	40%
Unalaska Lake vicinity	34	8%
Other locations	130	31%
<b>Totals</b>	<b>420</b>	<b>100%</b>

<sup>a</sup> Some permits fished in more than one location.

<sup>b</sup> Reported harvest from returned subsistence permits. Harvest from unreturned permits was not estimated.

## 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 flowing into Unalaska Bay, thereby providing priority consumptive use to federally qualified subsistence users. Rescinding this closure would not affect the Federal subsistence salmon closures of the outlet streams of the Unalaska, Summers, and Morris Lake drainages.

If the closure is rescinded, Federal subsistence regulations for the Aleutian Islands 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 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:

§ \_\_.27(e)(6) Aleutian Islands Area

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

\*\*\*

~~(C) All streams supporting anadromous fish runs that flow into Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point;~~

\*\*\*

## Justification

These drainages are currently closed to the harvest of salmon by federally qualified subsistence users but 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 streams flowing into Unalaska Bay and overlaps with the Federal subsistence salmon closures of the outlet streams of the Unalaska, Summers, and Morris Lake drainages. There is no evidence to suggest it is necessary to close all Federal public streams in Unalaska Bay to salmon fishing. 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.

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## **SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS**

### **Kodiak Aleutians Subsistence Regional Advisory Council**

**Retain the Status Quo** on FCR23-11. The Council supports retaining the status quo for this closure in deference to recommendations and comments from Council members and other representatives from the area. Testimony included concerns about conservation, ongoing enforcement issues, and the desire to generate a local solution before rescinding the closure.

## **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 retained, keeping this fishery out of compliance with ANILCA. The ISC acknowledges the Council supports maintaining the status quo for this closure in deference to recommendations and comments from Council members and other representatives from the area. Testimony at the Council meeting included concerns about conservation, ongoing enforcement issues, and the desire to generate a local solution before rescinding the closure.

If the Board were to rescind the closure, 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 FCR23-11**

This is a routine review of a federal closure to subsistence salmon fishing in all freshwater streams flowing into Unalaska Bay.

### **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).

In addition, there is no need to rescind this closure or to have any federal regulations in place for a federal subsistence fishery within the Unalaska Lake drainage. There are already subsistence fisheries in place in marine waters which takes care of an overwhelming majority of the subsistence harvest for the residents of Unalaska plus the pre-existing sport fishery provides additional harvest opportunities. 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 for years. As a result, there has never been a need to pass sport fish regulatory changes pertaining to them.

ADF&G suggests that the Alaska Board of Fisheries (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 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**

Unalaska Bay has a number of anadromous streams supporting sockeye, coho, pink and chum salmon, as well as Dolly Varden. Several of these drainages are somewhat remote and are difficult to access, while several are road accessible from the community of Unalaska. There is a significant history of fisheries restrictions for both subsistence and sport users in the Unalaska Bay area, most of which were adopted at the request of the community in recognition that salmon runs in the area were quite small and vulnerable to overfishing. Until recently, monitoring of the runs has been sporadic and little information has been available in terms of run size and timing over the years. For the last several years, drone surveys have been conducted for Unalaska Lake and Summer Bay Lake primarily for the sockeye runs. Foot surveys have been conducted for coho salmon in these drainages as well in most recent years.

The freshwater closures for subsistence fishing under both state and federal regulations in Unalaska Bay are intended to protect these small runs given the harvest potential that would accompany a subsistence fishery using gillnets or beach seines in the rivers and lakes, as well as the liberal harvest limits associated with subsistence fisheries in the area. There are important subsistence fisheries that occur just outside of the Iliuliuk River on Front Beach and as well as to a smaller degree near Summer Bay and Morris Cove. Sport effort primarily occurs in intertidal area of Unalaska Lake and the saltwater near Summer Bay and Morris Cove, as well as in Shaishnikof River at the head of Captain's Bay.

In addition to the freshwaters of Unalaska Bay being closed to subsistence fishing and established fishing markers near the mouths of the drainages of the bay, recent restrictions to harvest limits have been applied to the state subsistence fishery on Front Beach for sockeye salmon. This was primarily driven by a community effort to try to protect the relatively small returns of sockeye to Unalaska Lake. Sport fishing opportunities are also severely restricted in Unalaska Bay, even though there are some select areas of Unalaska Bay drainages that are open to sport fishing. The freshwaters of Humpy Creek and Iliuliuk River/Unalaska Lake drainage above the church hole are closed to salmon fishing year-round; Summer Bay Lake outlet creek is closed year-round to fishing and the entire drainage and nearby saltwater are closed from August 16 through the end of the year; and only the lower portions of Nateekin and Makushin rivers are open to fishing. In addition to this, recent restrictions for sockeye and coho salmon were adopted so that anglers may only harvest 2 sockeye salmon or 2 coho salmon per day in the Unalaska Bay area.

**Impact on Subsistence Users**

Subsistence salmon fishing on Unalaska 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.

**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**

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 Aleutian Islands Area per the following;

**§ 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 increased harvest limits. Current management of the subsistence fishery maintains a 500-yard closure around the river mouth until the escapement goal is achieved for the drainage. 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 Unalaska Island. Dutch Harbor only has one Alaska Wildlife Trooper (AWT) position assigned here and the local population is well aware that this AWT is on detail in Bristol Bay for most of the salmon run. ADF&G receives multiple reports of subsistence fishing violations on Dutch Harbor each summer. At this time, that trooper position is unfilled due to a


recent retirement and the new officer has not yet started. Dutch Harbor has biologists that engage in some fisheries monitoring and educate users about regulations when they are not otherwise busy managing state fisheries.

Subsistence salmon fishing on Unalaska 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 Unalaska Island.


Appendix 1

Unalaska Area State subsistence salmon fishing permit.



**UNALASKA AREA SUBSISTENCE SALMON FISHING PERMIT**

Permit expires October 31, 2020 (5AAC 01.380(c))



This permit is valid in the Unalaska District of the Aleutian Islands Area Only.

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

I have personally reviewed the information on this permit and I HEREBY CERTIFY THAT ALL OF THE INFORMATION IS TRUE AND CORRECT. (NOTE: Making a false statement, or omitting a material fact, is subject to a maximum penalty of \$10,000 or 1 year imprisonment, or both, per AS 11.56.210 and AS 16.05.665).

Permittee signature \_\_\_\_\_ Date \_\_\_\_\_

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

Total number of salmon allowed on this permit: \_\_\_\_\_

Email Address or Phone: \_\_\_\_\_

**SUBSISTENCE SALMON HARVEST REPORT**

RECORD DATE, SPECIFIC LOCATION, AND NUMBER OF HARVESTED SALMON BY SPECIES  
IMMEDIATELY UPON HARVEST

DATE	SPECIFIC LOCATION	KING	SOCKEYE	COHO	PINK	CHUM

**REFER TO THE CURRENT SUBSISTENCE REGULATION BOOK FOR COMPLETE REGULATIONS**

The catch report table must be filled out (even if the permit was not used) and returned by **October 31, 2020** to: Alaska Department of Fish and Game, Unalaska Salmon Management, 351 Research Court, Kodiak AK 99615. **Failure to return this permit to ADF&G could result in denial of future permits.**

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 Unalaska Area.

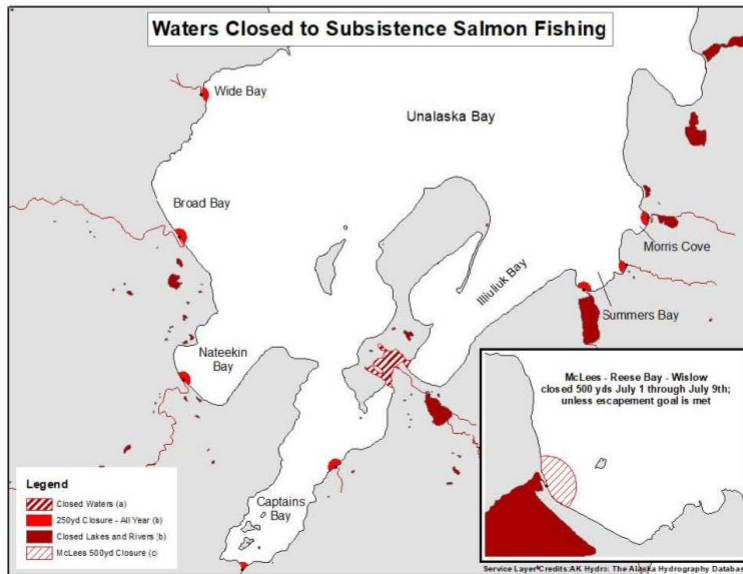
**5 AAC 01.380. LIMITS TO NUMBER OF SALMON TAKEN:** 25 salmon for the permit holder, of which no more than 10 sockeye salmon may be harvested from Front Beach in Unalaska Bay, plus an additional 25 salmon for each member of the same household whose name is listed on the permit, of which no more than 10 sockeye salmon may be harvested from Front Beach in Unalaska Bay. "Front Beach" means all Unalaska Bay waters south of a line from a point near the Bishop's House at 53° 52.64' N. lat., 166° 32.30' W. long., to a point on the Unalaska Bay shore at 53° 52.68' N. lat., 166° 30.91' W. long. Additional household permits are available by request from the local ADF&G representative.

**5 AAC 01.375. CLOSED WATERS: (see map below)**

- a. The waters of Unalaska Lake (at the city of Unalaska), its tributaries and the outlet stream, and all waters between Unalaska and Amaknak Islands, including Margaret's Bay, west of a line from the "Bishop's House" at 53° 52.64' N. lat., 166° 32.30' W. long. to a point on Amaknak Island at 53° 52.82' N. lat., 166° 32.13' W. long. and north of a line from a point south of Agnes Beach at 53° 52.28' N. lat., 166° 32.68' W. long. to a point at 53° 52.35' N. lat., 166° 32.95' W. long. on Amaknak Island.
- b. **Within Unalaska Bay (south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point): all waters are closed to subsistence salmon fishing within the waters of all streams, lakes, and within 250 yards of any anadromous stream outlet** (except for the vicinity of Unalaska Lake as described above in (a) above).
- c. At Reese Bay (Wislow), no subsistence salmon fishing is allowed in the waters of McLees Lake and its drainages or tributaries. **No subsistence salmon fishing is allowed within 500 yards of the terminus of the McLees Lake outlet during July 1 through July 9.**

**ADDITIONAL RESTRICTIONS:**

- 1. **This permit must be carried by permit holder while harvesting and transporting subsistence caught salmon and must be readily available for inspection.**
- 2. **The number of subsistence salmon, the species, the location of the catch, and the date of catch must be recorded on this permit immediately after harvest.** Maintain a consistent tally of your catch on the permit. This includes fish that are given away or shared.
- 3. **Subsistence fisherman must be in attendance of their net at all times that it is fished.**
- 4. In the Unalaska District, subsistence net may be fished **ONLY from 6:00 AM through 9:00 PM daily.**
- 5. Only household members listed on the permit may assist in the harvest of subsistence salmon.
- 6. Salmon may be taken by seine or gillnet. Gillnets are restricted to 50 fathoms total length. Each gillnet must have a buoy on each end. The **name and address** of the operator must be plainly and legibly inscribed on each buoy.
- 7. From June 1 through September 15, a salmon seine vessel may not be used to take salmon for subsistence use 24 hours before or 12 hours after an open commercial fishing period within an area open to commercial salmon fishing.
- 8. **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.**
- 9. **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."



For questions contact Fish and Game office: Dutch Harbor (907) 581-1239; 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

<b>FP23-05a Executive Summary</b>					
<b>General Description</b>	<p>FP23-05a requests to add residents of the Kodiak Coast Guard Base to the customary and traditional use determination for salmon for the Kodiak Area. The proposal also requests to change the area descriptors for the customary and traditional use determination zones within the Kodiak Islands, to clarify the areas under regulation and reduce administrative complexity for the public and Kodiak National Wildlife Refuge staff. <i>Submitted by: Kodiak National Wildlife Refuge.</i></p>				
<b>Proposed Regulation</b>	<p style="text-align: center;"><b>Kodiak Area – Salmon</b></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 70%; vertical-align: top;"> <p><i><b>Kodiak Archipelago: All waters of and around the islands of the Kodiak Archipelago. Except the Mainland District, all waters along the south side of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°51.10' North latitude) mid-stream Shelikof Strait, north and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57°10.34' North latitude, 156°20.22' West longitude)</b></i></p> </td> <td style="width: 30%; vertical-align: top;"> <p><i>Residents of the Kodiak Area Island Borough, except those residing on the Kodiak Coast Guard Base.</i></p> </td> </tr> <tr> <td style="vertical-align: top;"> <p><i><b>Kodiak Area Remainder: Mainland District, all freshwaters along the southside Alaska Peninsula bounded by the latitude of Cape Douglas (58°51.10' North latitude) mid-stream Shelikof Strait, north and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57° 10.34' North latitude, 156° 20.22' West longitude)</b></i></p> </td> <td style="vertical-align: top;"> <p><i>All rural residents</i></p> </td> </tr> </table>	<p><i><b>Kodiak Archipelago: All waters of and around the islands of the Kodiak Archipelago. Except the Mainland District, all waters along the south side of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°51.10' North latitude) mid-stream Shelikof Strait, north and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57°10.34' North latitude, 156°20.22' West longitude)</b></i></p>	<p><i>Residents of the Kodiak Area Island Borough, except those residing on the Kodiak Coast Guard Base.</i></p>	<p><i><b>Kodiak Area Remainder: Mainland District, all freshwaters along the southside Alaska Peninsula bounded by the latitude of Cape Douglas (58°51.10' North latitude) mid-stream Shelikof Strait, north and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57° 10.34' North latitude, 156° 20.22' West longitude)</b></i></p>	<p><i>All rural residents</i></p>
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<b>FP23-05a Executive Summary</b>	
<b>OSM Preliminary Conclusion (April 2022)</b>	<p><b>Support</b> FP23-05a with <b>modification</b> to the proposed customary and traditional use area descriptors:</p> <p><b>Kodiak Area – Salmon</b></p> <p><i><b>Kodiak Archipelago:</b> All waters of and around the islands of the Kodiak Archipelago. <del>Except the Mainland District, all waters along the south side of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°51.10' North latitude) mid-stream Shelikof Strait, north and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57°10.34' North latitude, 156°20.22' West longitude)</del></i></p> <p><i>Residents of the Kodiak Area Island Borough, except those residing on the Kodiak Coast Guard Base.</i></p> <p><i><b>Kodiak Mainland District:</b> All freshwaters along the southside Alaska Peninsula bounded by the latitude of Cape Douglas (58°51.10' North latitude) mid-stream Shelikof Strait, north and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57° 10.34' North latitude, 156° 20.22' West longitude)</i></p> <p><i>All rural residents</i></p>
<b>OSM Conclusion (January 2023)</b>	<b>Oppose</b>
<b>Kodiak-Aleutians Regional Advisory Council Recommendation</b>	<b>Oppose</b>
<b>Interagency Staff Committee Comments</b>	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.
<b>ADF&amp;G Comments</b>	<b>Neutral</b>
<b>Written Public Comments</b>	<b>None</b>

## STAFF ANALYSIS

### FP23-05a

#### ISSUES

FP23-05a was submitted by the Kodiak National Wildlife Refuge. The proponents are requesting to add residents of the Kodiak Coast Guard Base to the customary and traditional use determination for salmon for the Kodiak Area. The proponents are also requesting to change the area descriptors for the customary and traditional use determination zones within the Kodiak Islands, to clarify the areas under regulation and reduce administrative complexity for the public and Kodiak National Wildlife Refuge staff.

#### DISCUSSION

The proponents of FP23-05a note that it is inconsistent and unfair to exclude Kodiak Coast Guard Base residents from customary and traditional use salmon harvest opportunities in the Kodiak Area because active-duty Coast Guard service members live both on and off base here. Currently, Kodiak Coast Guard service members who reside off base can become eligible for Federal subsistence salmon harvest opportunities, while Kodiak Coast Guard service members who reside on base cannot. The proponents see no reason why members of the Coast Guard who meet the general eligibility requirements for Federal subsistence priority should be excluded from the privileges granted to all other eligible rural residents of the Kodiak Area. It should also be noted that, in contrast to the situation surrounding Federal subsistence salmon harvests, existing customary and traditional use determinations for the harvest of wildlife do not make a distinction between residents of the Kodiak Coast Guard Base and all other residents of the Kodiak Area (50 CFR §100.24(a)(1)). The proponents also believe that changing the area descriptors for the customary and traditional use determination zones within the Kodiak Islands will reduce administrative complexity and improve public understanding of the areas under regulation.

#### Existing Federal Regulation

##### **Kodiak Area – Salmon**

*Kodiak Area except the Mainland District: all waters along the south side of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°51.10' North latitude) mid-stream Shelikof Strait, north and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57°10.34' North latitude, 156°20.22' West longitude)*

*Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base.*

*Kodiak Area Remainder*

*All rural residents*

## Proposed Federal Regulation

### Kodiak Area – Salmon

*Kodiak Archipelago: All waters of and around the islands of the Kodiak Archipelago. Except the Mainland District, all waters along the south side of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°51.10' North latitude) mid-stream Shelikof Strait, north and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57°10.34' North latitude, 156°20.22' West longitude)*

*Residents of the Kodiak Area Island Borough, except those residing on the Kodiak Coast Guard Base.*

*Kodiak Area Remainder: Mainland District, all freshwaters along the southside Alaska Peninsula bounded by the latitude of Cape Douglas (58°51.10' North latitude) mid-stream Shelikof Strait, north and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57° 10.34' North latitude, 156° 20.22' West longitude)*

*All rural residents*

### Extent of Federal Public Lands and Waters

For the purpose of this discussion, the phrase “Federal public waters” is defined as those waters described under 36 CFR 242.3 and 50 CFR 100.3. In the Kodiak Management Area, these Federal subsistence fishing regulations apply on fresh waters within or adjacent to Kodiak National Wildlife Refuge and the submerged lands and waters within the Alaska Maritime National Wildlife Refuge that are described as the Karluk, Womens Bay, and Afognak subunits (see **Figure 1**).

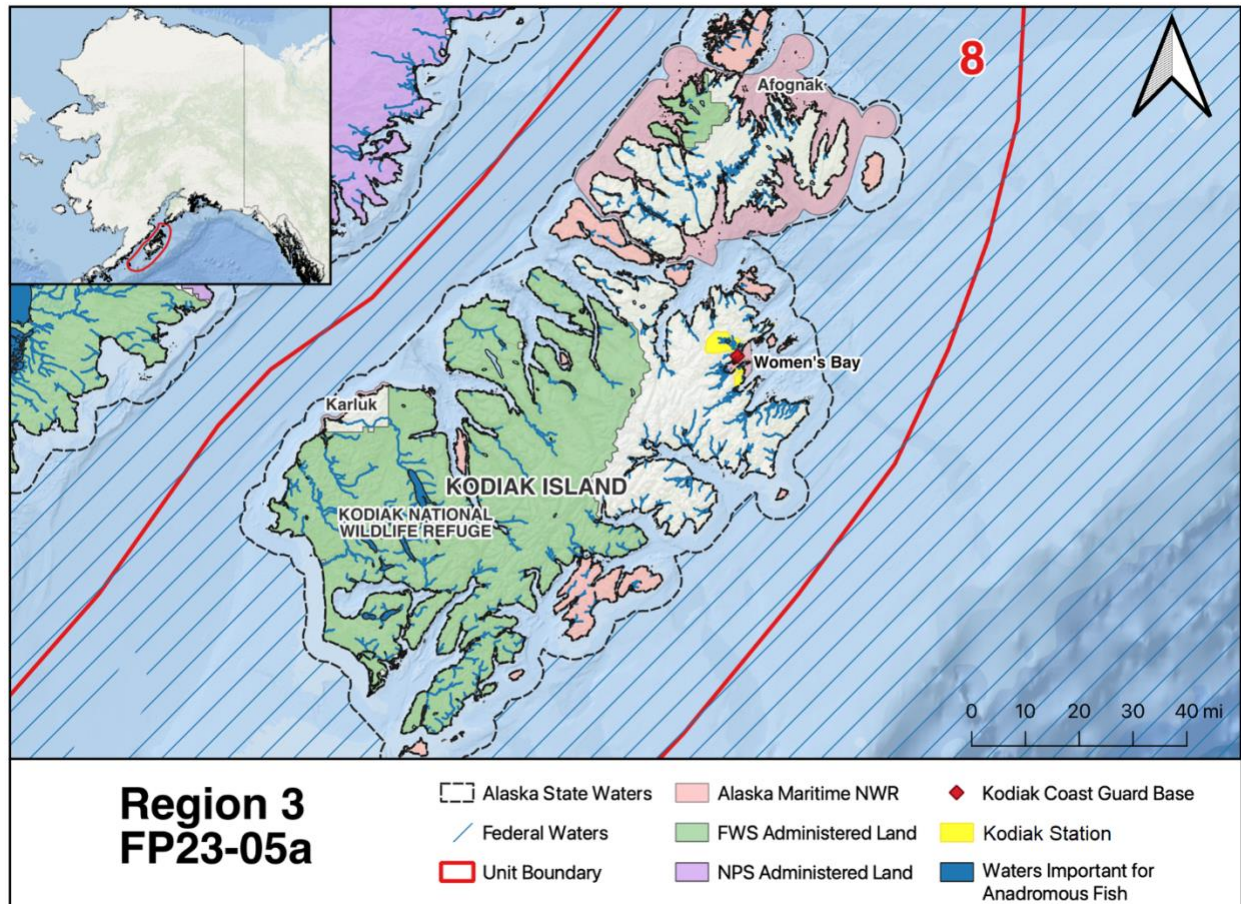
### Regulatory History

In 1988, the State of Alaska’s Board of Fisheries (BOF) met to determine the customary and traditional use salmon harvest status for residents of the Kodiak Management Area. At that time, the BOF considered the existence of multigenerational kinship relations between local subsistence users to be a key criterion for establishing customary and traditional use in a given area (Fall 7/2022, pers. comm.). The lack of multigenerational kinship relations between residents of the Kodiak Coast Guard Base was one of the key reasons why residents of the base were excluded from the customary and traditional use determination for salmon in the Kodiak Area at this time (Fall 7/2022, pers. comm.). The BOF also concluded that there were few long-term Alaskan residents living on the base, and that most of the population was transient. (Fall 7/2022, pers. comm.). This finding was another key reason for the exclusion of Kodiak Coast Guard Base residents from the customary and traditional use determination for salmon made in 1988 (Fall 7/2022, pers. comm.).

The Federal Subsistence Management Program assumed management of the subsistence uses of fish and wildlife on Federal public lands in 1990. In 1992, the Federal Subsistence Management Program



promulgated specific 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 earlier State subsistence fishing regulations. The existing customary and traditional use determination for salmon in the Kodiak Area was carried over from the earlier 1988 ruling by the State Board of Fisheries.



**Figure 1.** Kodiak Management Area Map

During a meeting of the Kodiak-Aleutians Subsistence Regional Advisory Council (KARAC) that took place in 1994, Robert Stovall of the Kodiak National Wildlife Refuge noted that the Coast Guard had recently submitted a letter to the Federal Subsistence Board (Board) asking for clarification about why they were left out of the customary and traditional use determination for salmon in the Kodiak Area (KARAC 1994). According to Mr. Stovall, the Board did not consider residents of the Kodiak Coast Guard Base to lead the same types of subsistence-oriented lifestyles as many of the other rural residents of Kodiak Island at this time (KARAC 1994). During this same meeting, KARAC Chair Olsen expressed additional concerns about extending customary and traditional salmon harvest opportunities to residents of the Kodiak Coast Guard Base (KARAC 1994). Chair Olsen was specifically concerned about the impacts of potential expansions of the Kodiak Coast Guard Base and base personnel on local fisheries, the effect that such expansions might have on the rural determination for the Kodiak Area, the potential difficulties of distinguishing qualified Alaskan resident Coast Guard service members from non-resident Coast Guard service members stationed at the base, and the inequity of extending Federal subsistence

harvest opportunities to Kodiak Coast Guard Base residents who were provided commissary and related resources that other residents of Kodiak Island could not access (KARAC 1994). However, some KARAC members like Mr. Squartsoff, were not as concerned about the issues of potential base and personnel expansion impacting the rural determination for the Kodiak Area (KARAC 1994).

In 1997, *Payton vs. The State of Alaska* (938 P.2d 1036 Alaska 1997) challenged the State's earlier use of multigenerational kinship relations as a key criterion for establishing customary and traditional use in a given area. The Plaintiffs, Tom and Diane Payton were ultimately successful in challenging this kinship criterion, as the Supreme Court of Alaska (The Court) ruled that the State Board of Fisheries' earlier customary and traditional use determination for the Yentna River Area "erroneously required current users of salmon in the upper Yentna River area to be related to prior generations of users in the area rather than focusing on whether the fish stocks are customarily and traditionally taken or used for subsistence" in that area. The Court also found it problematic to use short average length of residency as a disqualifying factor in customary and traditional use determinations. The Court noted "we consistently have interpreted 'customary and traditional' to refer to 'uses' rather than 'users.'" As a result of the ruling, a lack of kinship relationships between residents should no longer be used as a basis for denying customary and traditional subsistence use status to the residents of a given area. A relatively short average length of residency for recent residents should also not necessarily preclude a customary and traditional use determination, as long as there is evidence of ongoing, customary use of the resource. This ruling led to a change in the customary and traditional use determination for the residents of the Yentna River Area. However, it appears that the ruling has never been considered in relation to the customary and traditional use status of the residents of the Kodiak Coast Guard Base.

In 1999, the Federal Subsistence Board 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]). In 1999, the Board also revised the determinations for fish and shellfish to incorporate both the past State Board of Fisheries customary and traditional use determinations that were in compliance with Title VIII of ANILCA, and the determinations that the State Board of Fisheries had made since 1990 where they applied on Federal public waters and were consistent with Title VIII of ANILCA (64 Fed. Reg. 64; 1279-1284 [January 8, 1999]). The earlier 1988 customary and traditional use determination for salmon in the Kodiak Area was again carried over during this period. FP23-05a is the first proposal specifically addressing the status of Kodiak Coast Guard Base residents since this time.

Until 2008, the only significant differences between Federal and State subsistence salmon fishing regulations for the Kodiak Area concerned fishing areas, fishing times, allowable gear, and the residents of the Kodiak Coast Guard Base. Federally qualified subsistence users are allowed to fish 24-hours per-day and use rod-and-reel in addition to gillnets and seines. State users are only allowed to fish from 6:00 a.m. to 9:00 p.m. and cannot use rod-and-reel as a method of harvest. Residents of the Kodiak Coast Guard Base can qualify as State subsistence users in the Kodiak Area after a year of full-time, permanent residence in the area, but not as Federal subsistence users.

In January 2008, the State Board of Fisheries adopted a regulatory proposal submitted by the Alaska Department of Fish and Game (ADF&G) that eliminated salmon harvest limit requirements on

subsistence permits for people fishing in waters of the Kodiak Management Area that were not accessible from the Kodiak road system. Although another permit could be obtained to take additional salmon after the harvest limit on the original permit had been reached, it was difficult for people fishing and living off the road system to get additional permits. ADF&G expected that eliminating the harvest limit from permits issued to people that fish for salmon off the road system would result in more accurate subsistence harvest reporting. All federally qualified subsistence users are also required to obtain an ADF&G subsistence permit to fish for salmon in the Kodiak Area. In 2011, the Federal Subsistence Board adopted a proposal to eliminate salmon harvest limits associated with subsistence permits issued to federally qualified subsistence users who fish for salmon in the Federal public waters of the Kodiak Area that cannot be accessed via the Kodiak road system. This ruling mirrored the change enacted by the Board of Fisheries for State subsistence fisheries in the Kodiak Management Area in 2008.

Though different in terms of location and species, a 2010 wildlife regulatory decision in the Eastern Interior Region may also have some relevance for FP23-05a. In May 2010, The Board deliberated WP10-89, submitted by the Eastern Interior Alaska Subsistence Regional Advisory Council (EIRAC). WP10-89 requested to remove residents of Fort Greely from the customary and traditional use determination for caribou in Units 20D and 20E, and for moose in Unit 20D. The EIRAC requested the removal of Fort Greely residents from these customary and traditional use determinations because they felt that the temporary nature of their residence at Fort Greely did not allow for the establishment of a long-term, consistent pattern of use (FSB 2010). The Office of Subsistence Management's (OSM) presentation on WP10-89 noted that the Board did not exclude residents of Fort Greely from the customary and traditional use determinations for caribou in Units 20D and 20E, and Moose in 20D when the Board assumed management of the subsistence uses of wildlife on Federal public lands in 1990 (FSB 2010). OSM also noted that "the Board has not made it a [general] practice to exclude residents of military bases from customary and traditional use determinations," noting that residents of US Coast Guard bases in Units 4 (Southeast Region) and 8 (Kodiak Islands) were not excluded from customary and traditional use determinations for wildlife in these Units (FSB 2010: 359). OSM's preliminary conclusion was to oppose WP10-89 because Fort Greely was a "rural community", and its residents exhibited a history of harvesting caribou and moose in the Units under question (FSB 2010: 360). The Ahtna Customary and Traditional Council supported the WP10-89 for the reasons stated in the proposal (FSB 2010). Board member Charlie Bunch from the US Bureau of Indian Affairs also supported the WP10-89, noting that the standard tour of duty for an unaccompanied soldier at Fort Greely was 13 months, and this did not allow for the establishment of a long-term consistent pattern of use by individual service members (FSB 2010). The Board, however, did not adopt WP10-89. The Board noted that removing residents of Fort Greely from the customary and traditional determinations for caribou and moose would be detrimental to the subsistence of the federally qualified rural residents stationed at Fort Greely, and that there was a documented history of the residents of Fort Greely engaging in subsistence practices in the areas under question (FSB 2010).

### **Community Characteristics**

The Kodiak Coast Guard Base is a 3,000-acre military installation. It forms part of the larger Kodiak Station Census Designated Place (CDP), which encompasses approximately 22,000 acres of military

property on the northeastern end of Kodiak Island (Marchioni et al. 2016). This area was originally developed in 1939, as a US Navy base (Mishler et al. 1995). The site was turned over to the US Coast Guard in 1972 (see **Figure 2**). Kodiak Station CDP is now one of the named communities located along the road system within the Kodiak Island Borough. Kodiak City, Womens Bay, and Chiniak are the other road-connected communities in the Borough (Brown et al. 2021). Named communities located off the road system within the Kodiak Island Borough include Akhiok, Aleneva CDP, Karluk, Larsen Bay, Old Harbor, Ouzinkie, and Port Lions (Brown et al. 2021). Residents of the Kodiak Coast Guard Base are active-duty Coast Guard service members and their families (USFWS 2004). However, many Kodiak Coast Guard personnel also live off base, at one of the two military provided off-base housing communities in Kodiak Station (see **Figure 2 and Table 3**), or in the surrounding road accessible zone of Kodiak Island (USFWS 2004). The relationship between the Kodiak Coast Guard Base and Kodiak Station is an issue that complicates analysis because subsistence harvest data is often reported for Kodiak Station as a whole.

A baseline investigation of Kodiak Island economic practices conducted by ADF&G in 1991 estimated the population of Kodiak Coast Guard Base proper to include 611 individuals living in 169 single-family housing units (Mishler et al. 1995). An additional 453 service members were estimated to live in group quarters on base in 1990, but individuals living in group quarters were not included in ADF&G's study survey (Mishler et al. 1995).

In 1991, single-family Kodiak Coast Guard households were composed of an average of 3.6 individuals. These households were often young families with small children (Mishler et al. 1995). The vast majority of Kodiak Coast Guard residents were under 40 years old, and roughly 54% percent of the population was male in 1991 (Mishler et al. 1995). The heads of Kodiak Coast Guard households had typically been residents of the Kodiak Area for an average of 2.3 years (Mishler et al. 1995). In contrast, heads of household in Kodiak City and the Kodiak Road Zone had been resident in the area for an average of 14.8 and 15.2 years, respectively (Mishler et al. 1995). At the time, Kodiak Coast Guard personnel were typically transferred off the island and replaced about every 3 years (Mishler et al. 1995). This finding was significant as Mishler and colleagues noted (1995: X-20), "In our experience, newcomers do not participate as much in traditional subsistence activities as long-term residents. It generally requires two or three years to get acquainted with harvest methods and gear types and to become familiar with the seasonal locations of available wild resources." In the early 1990s, the populations of Kodiak City and the Kodiak Road Zone also included a significantly greater percentage of residents aged 40 years and older (Mishler et al. 1995).

Commercial fishing and processing have long been the principal economic industries in the Kodiak Area (Mishler et al. 1995; USFWS 2004). Tourism; the service industry; logging; and local, state, federal, and tribal government compose key secondary economic sectors (USFWS 2004). The commercial fishing industry has also been important to subsistence users in the Kodiak Area, as many commercial harvesters bring home or give away part of their surplus commercial catch for local subsistence use (Mishler et al. 1995). In 1991, about 15% of all resources harvested by Kodiak Area residents came from fish and marine invertebrates removed from commercial catches (Mishler et al. 1995). Overall, sharing of subsistence resources and gear has long been a key part of social life within the entire Kodiak Area. As

one long-term resident explained, sharing “helps build friendships and community” (Mishler et al. 1995: X-23).

According to data gathered in the study by ADF&G, the subsistence salmon use and harvesting efforts of Kodiak Station households were fairly similar to the efforts of their neighbors in Kodiak City and the Kodiak Road Zone in the early 1990s (Mishler et al. 1995). However, Kodiak Station households harvested less salmon overall than households in other road connected communities (ADF&G 1995a, 1995b, 1995c). Kodiak Station households also only reported using rod’n’reel as a harvesting method, while households in Kodiak City and the Kodiak Road Zone reported using multiple harvesting methods (ADF&G 1995a, 1995b, 1995c). Kodiak Station households also reported sharing salmon slightly less than their neighbors in Kodiak City and the Kodiak Road Zone (ADF&G 1995a, 1995b, 1995c). More information about salmon use, harvest, and reciprocity in these communities is displayed in **Table 1** below.

**Table 1.** Salmon Use Practices in Three Kodiak Island Communities in the early 1990s (ADF&G 1995a, 1995b, 1995c)

Practices	Kodiak Station	Kodiak Road Zone	Kodiak City
Residents Using Salmon	97%	91%	93%
Residents Attempting to Harvest Salmon	93%	85%	73%
Residents Harvesting Salmon	90%	80%	69%
Residents Giving Salmon	55%	60%	61%
Residents Receiving Salmon	45%	59%	73%
Average Household Salmon Harvest (lbs.)	118	209	145
Average per Capita Harvest (lbs.)	33	61	48

More recent data on salmon use and salmon harvests by Kodiak Station households and/or Kodiak Coast Guard households is spotty. For 1999, it was reported that “military” households on Kodiak Island returned 43 subsistence permits, harvesting a total of 886 salmon (Fall et al. 2001: 96). This harvest level per permit was well below that reported for communities located off the road system like Port Lions and Ouzinkie (Fall et al. 2001). However, the average number of salmon harvested per Kodiak Coast Guard permit was similar to that reported for residents of other communities located along the road system like Kodiak City and Chiniak (Fall et al. 2001). In 2001, Kodiak Coast Guard households returned 74 subsistence permits, harvesting a reported total of 1,346 salmon (Fall et al. 2003). This harvest level per permit was slightly lower than that reported for 1999. However, the average number of salmon harvested per Kodiak Coast Guard household was still comparable to that reported for households in Kodiak City and Chiniak (Fall et al. 2003). Still, it should be noted that, as a percentage of total community population, residents of Kodiak City and Chiniak have been significantly more active in the State’s subsistence fishery than residents of the Kodiak Coast Guard Base, in the years where comparable data exists (Mishler et al. 1995, Fall et al. 2001, Fall et al. 2003). Unfortunately, 2001 appears to be the last time that ADF&G published specific information on salmon harvested by Kodiak Coast Guard households or Kodiak Station.

ADF&G presented preliminary data from a new, comprehensive subsistence study of the Kodiak Area at the KARAC meeting on September 21, 2022. This presentation focused on the subsistence harvest and use data gathered from Kodiak Station households in 2021. ADF&G researchers surveyed 31 out of 387 eligible households at Kodiak Station (KARAC 2022). Approximately two-thirds of the surveyed households were located on the Kodiak Coast Guard Base, while the remaining surveyed households were located off base, in housing communities like Aviation Hill and Lake Louise (KARAC 2022) (see **Table 3**). In this preliminary data, the average age of the sampled Kodiak Station population was approximately 21 years old, with an average length of residency of 2.9 years (KARAC 2022). The average Kodiak Station household was composed of 3.6 individuals, with household heads resident for an average of 5.3 years (KARAC 2022).

The average Kodiak Station household reported using 5.8 subsistence resources, while attempting to harvest 4.8 subsistence resources in 2021 (KARAC 2022). Salmon were the most regularly used subsistence resource among these households. The average Kodiak Station household reported harvesting approximately 166 pounds of salmon in 2021, with coho (56%) and sockeye salmon (23%) combining to compose 79% of this harvest (KARAC 2022).

Additional preliminary data on Kodiak Station household subsistence practices in 2021 is presented in **Table 2**. Overall, the percentage of Kodiak Station households using salmon, attempting to harvest salmon, and harvesting salmon was comparable to households in other road-connected communities in 2021 (KARAC 2020). However, the percentage of Kodiak Station households giving salmon away in 2021 is significantly lower than that reported for households in Kodiak City and the Kodiak Road Zone (KARAC 2022). It is also significantly lower than what was reported for Kodiak Station during the 1991 study year (Mishler et al 1995). Unfortunately, a full analysis of the 2021 Kodiak Area subsistence study is not yet available.

**Table 2.** Preliminary Data on the Subsistence Practices of Kodiak Station Households in 2021 (KARAC 2022)

<b>Subsistence Resources</b>	<b>Using</b>	<b>Attempting to Harvest</b>	<b>Harvesting</b>	<b>Giving Resource</b>	<b>Receiving Resource</b>
Salmon	87%	81%	71%	16%	48%
Non-Salmon Fish	68%	39%	39%	-	-
Large Land Mammals	39%	29%	19%	-	-
Small Land Mammals	3%	3%	3%	-	-
Birds and Eggs	10%	10%	10%	-	-
Vegetation	77%	71%	71%	-	-

The total estimated population of the Kodiak Coast Guard Base was 1,673 in 2020 (US Census 2020a). Similar to 1991, approximately 80% of Kodiak Coast Guard Base residents were less than 40 years old in 2020 (US Census 2020a). However, in contrast to earlier studies, roughly 60% of Kodiak Coast Guard Base residents were female in 2020 (State of Alaska 2021d). The median household income for Kodiak Coast Guard service members was \$87,050 during the five-year period between 2016 and 2020 (US Census 2020a). The median household income for the entire Kodiak Island Borough was \$79,173 during

this five-year span (US Census 2020b). However, the median household income for residents of Kodiak Island communities located off the Kodiak road system was \$43,750 during this same time period (State of Alaska 2021a, 2021b, 2021c, 2021e, 2021f, 2021g, 2021h).

The US Coast Guard currently provides over 360 family housing units to its Kodiak service members with families. It also provides barracks-style housing units for unaccompanied service members. These housing units are located both on and off base (see **Table 2** and **Figure 2**).

**Table 3.** Kodiak Coast Guard Housing Units (from USCG Base Kodiak Housing Office)

Housing Community	Number of Housing Units	Location
Aviation Hill	120+	~ 1 mile Off Base
Lake Louise	85+	~ 3 miles Off Base
Upper Government	90+	On Base
Lower Government	75+	On Base
Unaccompanied Housing	Barracks	On Base

### **Eight Factors for Determining Customary and Traditional Use**

A community or area's customary and traditional use is generally exemplified through eight factors: (1) a long-term, consistent pattern of use, excluding interruptions beyond the control of the community or area; (2) a pattern of use recurring in specific seasons for many years; (3) a pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics; (4) the consistent harvest and use of fish or wildlife as related to past methods and means of taking: near, or reasonably accessible from the community or area; (5) a means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate; (6) a pattern of use which includes the handing down of knowledge of fishing and hunting skills, values, and lore from generation to generation; (7) a pattern of use in which the harvest is shared or distributed within a definable community of persons; and (8) a pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area.

The Board makes customary and traditional use determinations based on a holistic application of these eight factors (50 CFR 100.16(b) and 36 CFR 242.16(b)). In addition, the Board takes into consideration the reports and recommendations of any appropriate Regional Advisory Council regarding customary and traditional use of subsistence resources (50 CFR 100.16(b) and 36 CFR 242.16(b)). The Board makes customary and traditional use determinations for the sole purpose of recognizing the pool of users who generally exhibit some or all of the eight factors. The Board does not use such determinations for resource management or restricting harvest. If a conservation concern exists for a particular population, the Board addresses that concern through the imposition of harvest limits or season restrictions rather than by limiting the customary and traditional use finding.

In 2010, the Secretary of the Interior asked the Board to review, with Regional Advisory Council input, the customary and traditional use determination process, and present recommendations for regulatory changes. In June 2016, the Board clarified that the eight-factor analysis applied when considering customary and traditional use determinations is intended to protect subsistence use, rather than limit it.



The Board stated that the goal of the customary and traditional use determination analysis process is to recognize customary and traditional uses in the most inclusive manner possible.

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 from spawning areas (Clark 1998: 176). Salmon remain one of the primary components of subsistence diets for rural residents in this region (Wolfe 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).

The Kodiak Island Borough had a population of 13,101 residents in 2020 (US Census Bureau 2020b). 1,673 of these residents lived at the Kodiak Station, near the Buskin River and Womens Bay (US Census 2020a). 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). 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.” Residents of the Kodiak Island Borough accounted for about 97% of the salmon harvested in 2018, while permit holders from other areas harvested the remaining 3% (Brown et al. 2021).

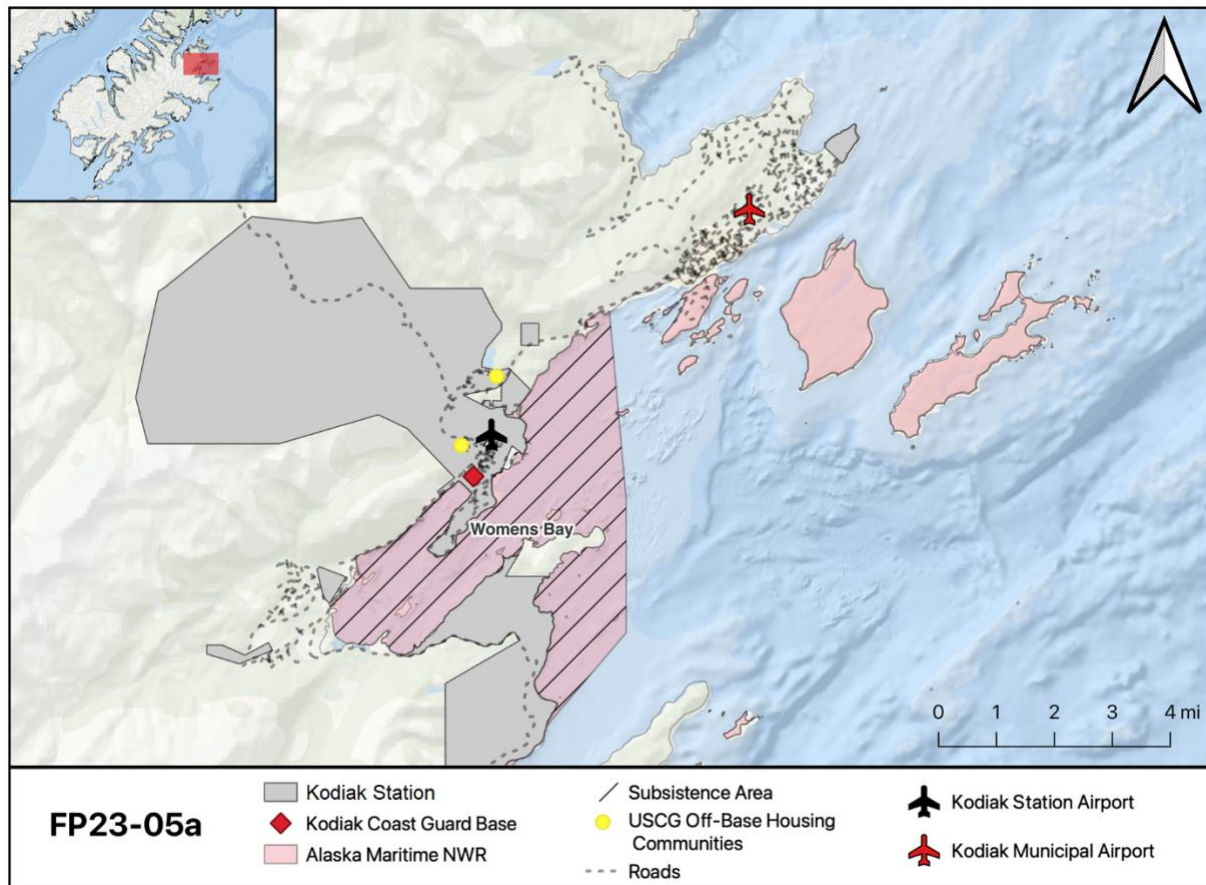
US Coast Guard service members have been based on Kodiak Island since the 1940s, and the entire military installation was turned over to the Coast Guard in 1972. Kodiak Coast Guard personnel engage in a variety of occupations related to maritime safety, security, law enforcement, and environmental protection. The documented information currently available for Kodiak Station residents shows a history of using, harvesting, and sharing salmon taken from Kodiak fisheries that traces back to at least the early 1990s (Mishler et al. 1995). Kodiak Station households also have a documented history of harvesting non-salmon fish and seafood, deer and other wildlife, and plants and berries for subsistence purposes that can be traced back to the early 1990s (see **Table 4**) (Mishler et al. 1995). However, Kodiak Station households generally harvested smaller amounts and varieties of these subsistence resources and shared them slightly less than their neighbors in the Kodiak Road Zone and Kodiak City (Mishler et al. 1995).



**Table 4.** Key Average Household Subsistence Resource Harvests in Three Kodiak Island Communities in the early 1990s (ADF&G 1995a, 1995b, 1995c)

Subsistence Resources Harvested (lbs.)	Kodiak Station	Kodiak Road Zone	Kodiak City
Salmon	118	209	145
Non-Salmon Fish	200	223	182
Land Mammals	61	82	71
Marine Invertebrates	27	47	29
Vegetation	10	17	30
Average Total Household Harvest	416	580	459
Average Total per Capita Harvest	115	168	151

A 2012 survey conducted by Marchioni and colleagues (2016: 37) found that many newer Kodiak residents who came to Kodiak Island for jobs in the fishing industry or with the Coast Guard “often go fishing with long-time Kodiak residents knowledgeable about subsistence gear and permits. Survey participants also explained that subsistence gear is expensive, and Kodiak is a welcoming community, so many families share gear.” This information, combined with the long-term presence of the base, and the foundational investigation of Kodiak Station households in 1991, suggests that there is a history of Kodiak Coast Guard personnel engaging in fishing and related subsistence activities in the Kodiak Area. It is also important to note that Federal subsistence priority is supposed to extend to any rural resident of Alaska under the framework of ANILCA. According to the Code of Federal Regulations, an Alaskan resident is defined as “any person who has his or her primary, permanent home for the previous 12 months within Alaska and whenever absent from this primary, permanent home, has the intention of returning to it” (50 CFR §100.4). A person’s residence is considered rural when it occurs in any community or area of Alaska determined by the [Federal Subsistence] Board to qualify as such” under the Rural Determination Process (50 CFR §100.4). The Kodiak Island Borough is recognized as a rural area (50 CFR §100.23). Therefore, many of the Kodiak Coast Guard Base residents would meet the qualification for Federal subsistence priority if not for the current exception in the Kodiak Area customary and traditional use determination noted above. Furthermore, Kodiak Coast Guard service members who happen to reside off base can already qualify for Federal subsistence salmon harvest opportunities after achieving Alaskan residency status. Nearly half of the military-provided housing units for active-duty Kodiak Coast Guard service members and support personnel are technically located off-base (see **Table 3**).



**Figure 2.** Kodiak Coast Guard Base Vicinity Map

**Effects of the Proposal**

If the Board adopts this proposal, members of the US Coast Guard stationed at the Kodiak base would gain the opportunity to harvest salmon under Federal subsistence management regulations on Federal public waters in the Kodiak Area, if they meet the Alaskan residency requirements for Federal subsistence priority. This would provide these Kodiak Coast Guard base residents with access to Federal subsistence salmon fisheries in the Kodiak Area. It is unclear whether adoption of this proposal would significantly increase subsistence salmon harvests in the area, as it is currently unclear how many Kodiak Coast Guard Base residents meet the residency requirements for Federal subsistence priority.

If the Board does not adopt this proposal, Coast Guard members residing on the Kodiak base will continue to be excluded from Federal subsistence salmon fisheries in the Kodiak Area. However, Coast Guard members residing on base will be able to continue harvesting salmon in the Kodiak Area according to the State of Alaska’s subsistence or sport fishing regulations.

**OSM PRELIMINARY CONCLUSION**

**Support** Proposal FP23-05a **with modification** to the proposed customary and traditional use area descriptors as shown below:

## Proposed Federal Regulation

### Kodiak Area – Salmon

*Kodiak Archipelago: All waters of and around the islands of the Kodiak Archipelago. Except the Mainland District, all waters along the south side of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°51.10' North latitude) mid-stream Shelikof Strait, north and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57°10.34' North latitude, 156°20.22' West longitude)*

*Residents of the Kodiak Area Island Borough, except those residing on the Kodiak Coast Guard Base.*

*Kodiak Mainland District: All freshwaters along the southside Alaska Peninsula bounded by the latitude of Cape Douglas (58°51.10' North latitude) mid-stream Shelikof Strait, north and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57° 10.34' North latitude, 156° 20.22' West longitude)*

*All rural residents*

### Justification

Removing the exclusion of Kodiak Coast Guard Base residents from the customary and traditional use determination for salmon in the Kodiak Area would provide greater access to subsistence opportunities for Kodiak Coast Guard Base residents who meet the residency requirements for federally qualified subsistence users. It would also end the inconsistent practice of providing Federal subsistence salmon harvest opportunities to Kodiak Coast Guard service members who reside off base, while excluding Kodiak Coast Guard members who reside on base from the same opportunities. The data currently available shows that Kodiak Station households have a history of engaging in salmon fisheries and other subsistence practices in the Kodiak Islands since at least the early 1990s. Supporting this proposal is in keeping with the Board's stated goal from 2016 to recognize customary and traditional uses in the most inclusive manner possible. If necessary, a Section 804 Subsistence User Prioritization Analysis could be conducted in the future in the event of salmon declines. Changing the area descriptors for the customary and traditional use determination zones within the Kodiak Islands should clarify the areas under regulation and reduce administrative complexity.

## ANALYSIS ADDENDUM

### OSM CONCLUSION

**Oppose** FP23-05a.

### Justification

New information regarding the Kodiak Coast Guard Base and FP23-05a was presented and discussed at the September 2022 KARAC meeting (KARAC 2022). Much of this new information is located in the "Community Characteristics" and "Eight Factors for Determining Customary and Traditional Use"

sections of the analysis above. This new information, combined with further analysis and discussion since the KARAC meeting, has motivated OSM to change its conclusion on this proposal. While it is clear that Kodiak Coast Guard service members have a history of harvesting and using salmon in the Kodiak Area that dates back at least to the 1990s, it is not clear that Kodiak Coast Guard Base residents harvest and use salmon in the same ways, and for the same subsistence-oriented purposes as other residents of the Kodiak Area. Part of this issue stems from the tendency to report subsistence use data on Kodiak Station as a whole, without specifying possible differences between Kodiak Coast Guard Base residents and other residents of the larger Kodiak Station CDP.

The data currently available suggests that most Kodiak Coast Guard Base residents are not stationed in the area long enough to learn and pass down the same degree of local, subsistence-oriented knowledge and cultural values as their neighbors living in other parts of the road-connected Kodiak Area. Coast Guard Base residents are generally transferred off the island about every three years, whereas full-time residents of Kodiak City and the Kodiak Road Zone typically exhibit significantly longer periods of residence. Likewise, current information shows that residents of Kodiak City and the Kodiak Road Zone engage multiple methods of fishing such as gillnet, seine, and home-pack that exhibit a higher efficiency of effort than the rod'n'reel methods that were used exclusively by the Kodiak Station households surveyed in 1991 (Mishler et al. 1995). Kodiak City and Kodiak Road Zone residents also tend to use a wider diversity of subsistence resources and share these resources to a greater extent than Kodiak Coast Guard Base residents. Kodiak Coast Guard Base residents' access to commissary and related benefits also suggests that they may not be as reliant upon the same diversity of subsistence resources as other residents of the Kodiak Area. At this time, OSM also does not have the information needed to show that distinctive subsistence knowledge, values, and practices have been developed and passed down at the Kodiak Coast Guard Base over the course of this community's existence.

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## SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATION

### **Kodiak-Aleutians Subsistence Regional Advisory Council:**

**Oppose** FP23-05a. The Council was concerned that adding more users to the customary and traditional use determination for salmon in the Kodiak Area would potentially cause conservation issues for the limited salmon resources in the Buskin River. The Council was also concerned that adding the Kodiak Coast Guard Base to this customary and traditional use determination might lead to a change in the rural status of the Kodiak Area. They additionally noted the disparity in resources available to residents of the Kodiak Coast Guard Base compared to other residents of the Kodiak Area. They also did not feel that Kodiak Coast Guard Base residents met the factors for eligibility for Customary and Traditional Use, and that the culture of how Base residents hunt and fish is different than that of other groups living in the Kodiak Area.

### 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 FP23-05a**

This proposal would modify the customary and traditional (C&T) use determination for salmon in the Kodiak area to include residents of Coast Guard Base Kodiak.

#### **Position**

The Alaska Department of Fish and Game (ADF&G) is **NEUTRAL** on eligibility requirements for participation in the federal subsistence program provided under the Alaska National Interest Lands Conservation Act (ANILCA). ADF&G recommends the Federal Subsistence Board (FSB) thoroughly and carefully review the data relevant to the 8 criteria for this community to see if they support separating residents of the Coast Guard base from the rest of the Kodiak Road system community.

#### **Background**

Salmon are harvested in Kodiak waters for home use under state regulations and federal regulations. Most harvest in the Kodiak area takes place in marine waters under state regulations. Permits are required for both federal and state subsistence salmon fisheries. Federal regulations for subsistence salmon fishing generally mirror state subsistence regulations already in place for those waters. The two exceptions are that rod and reel is recognized as legal subsistence gear under federal regulations and federally qualified users (FQU) may fish 24 hours per day, whereas state subsistence salmon fisheries are open between 6:00am and 9:00pm.

Federal C&T use determinations were largely adopted from the state's C&T findings, which were crafted when the state's subsistence law recognized a rural priority. In 1988, the Alaska Board of Fisheries (BOF) found positive C&T uses of salmon for residents domiciled in the Kodiak borough, excluding those

domiciled on the Coast Guard base. At the time, the BOF evaluated evidence of long-term Alaska residents or multi-generational families being involved in a fishery to support a positive C&T finding, a requirement that was later invalidated by *Payton v. State of Alaska*. In 1992, when the state subsistence law was amended to not have a basis in residency requirements, the C&T finding for Kodiak area waters became applicable to all Alaska residents, including those residing on the Coast Guard base.

Subsistence Section researchers, in collaboration with the Sun'aq Tribe of Kodiak and the Kodiak National Wildlife Refuge, recently completed household subsistence harvest surveys of Kodiak City and the connected road system areas, as well as of the Coast Guard base.

### **Impact on Subsistence Users**

If adopted, this proposal would increase the pool of subsistence users eligible to participate in salmon harvesting opportunities provided under ANILCA. It is not clear how many people would become eligible if this proposal were adopted, as not all Coast Guard families living on base meet the general eligibility requirements for federal subsistence.

### **Impact on Other Users**

If adopted, impact on other users would depend on future actions taken by the FSB or the BOF.

### **Opportunity Provided by State**

**State customary and traditional use findings:** The BOF has made positive customary and traditional use findings for salmon in the Kodiak area, except waters of the Mainland District (along the shoreline of the Alaska Peninsula; 5 AAC 18.200(g)).

**Amounts Reasonably Necessary for Subsistence (ANS):** 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.

An 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 in the Kodiak Area, except waters of the Mainland District, is 26,800 – 44,700 fish.

### **Conservation Issues**

If this proposal is passed it would increase the pool of people eligible to fish under federal subsistence fishing regulations which unless managed correctly would lead to overharvest.

### **Enforcement Issues**

There are no enforcement issues directly related to this proposal.



<b>FP23-05b Executive Summary</b>	
<b>General Description</b>	FP23-05b requests a change in the description of a Kodiak Island fishing area. <i>Submitted by: Kodiak National Wildlife Refuge.</i>
<b>Proposed Regulation</b>	<p>§ __.27(e)(9)(v)(A) Kodiak Area</p> <p><i>The annual limit for a subsistence salmon fishing permit holder is as follows:</i></p> <p style="padding-left: 40px;"><i>(A) In the <del>Federal public waters of Kodiak Island</del>, <b>road-accessible Zone (Northeastern Kodiak Island)</b>, 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.</i></p> <p style="padding-left: 40px;"><i>(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.</i></p>
<b>OSM Conclusion</b>	<b>Support</b>
<b>Kodiak/Aleutians Subsistence Regional Advisory Council Recommendation</b>	<b>Oppose</b>
<b>Interagency Staff Committee Comments</b>	<p>The Interagency Staff Committee acknowledges that the original intent of this proposal submitted by the Kodiak National Wildlife Refuge (Kodiak Refuge) was to clarify the description under regulation of where people can fish in the Kodiak area and to reduce confusion for the public and Kodiak National Wildlife Refuge staff.</p> <p>In review of the proposal the Kodiak Aleutians Subsistence Regional Advisory Council (Council) noticed an error in the current regulatory language describing the area. The Council made and supported a modification to address this, and, upon further review, the Office of Subsistence Management realized they can implement this modification as a matter of housekeeping. While this error in the</p>

<b>FP23-05b Executive Summary</b>	
	current regulatory language was addressed by the Council recommendation, the original intent of gaining clarity by the Kodiak Refuge on where people can fish in the Kodiak area may benefit from further discussion with the Council.
<b>ADF&amp;G Comments</b>	<b>Neutral</b>
<b>Written Public Comments</b>	<b>None</b>

**STAFF ANALYSIS**  
**FP23-05b**

**ISSUES**

FP23-05b, submitted by the Kodiak National Wildlife Refuge, requests a change in the description of a Kodiak Island fishing area.

**DISCUSSION**

The proponents state that this description change is necessary to clarify the area under regulation and to reduce confusion for the public and Kodiak National Wildlife Refuge staff.

FP23-05a, also submitted by the Kodiak National Wildlife Refuge, requests adding residents of the Kodiak Coast Guard Base to the Customary and Traditional Use Determination for salmon for the Kodiak Area. The proponents are also requesting to change the area descriptors for the customary and traditional use determination areas within the Kodiak Area.

**Existing Federal Regulation**

§\_\_\_\_.27(e)(9)(v)(A) Kodiak Area

*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.*

**Proposed Federal Regulation**

§\_\_\_\_.27(e)(9)(v)(A) Kodiak Area

*The annual limit for a subsistence salmon fishing permit holder is as follows:*

*(A) In the ~~Federal public waters of Kodiak Island~~, **road-accessible Zone (Northeastern 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.*

## **Existing State Regulation**

### *5 AAC 64.001 Application of this chapter*

*This chapter applies to sport fishing in the Kodiak Area*

### *5 AAC 64.005 Description of the Kodiak Area*

*(1) Kodiak Road Zone: all fresh waters of Kodiak Island that are east of a line extending south from Crag Point on the west side of Anton Larsen Bay to the westernmost point of Saltery Cove, including the waters of Woody and Long Islands, and including all salt waters inside or landward of the following lines:*

*(A) Anton Larsen Bay south and east of a line from Crag Point at 57\_ 52.83' N. lat., 152\_ 40.42' W. long., to Kizhuyak Point at 57\_ 55.04' N. lat., 152\_ 38.13' W. long.;*

*(B) from the outermost points of Shakmanof Cove at 57\_ 55.31' N. lat., 152\_ 36.96' W. long., to 57\_ 55.55' N. lat., 152\_ 35.36' W. long.;*

*(C) from the easternmost point of Shakmanof Cove at 57\_ 55.55' N. lat., 152\_ 35.36' W. long., to Otmeloi Point at 57\_ 54.56' N. lat., 152\_ 30.95' W. long.;*

*(D) from the Course Point near Split Rock at 57\_ 53.53' N. lat., 152\_ 27.94' W. long., to Termination Point at 57\_ 51.37' N. lat., 152\_ 24.11' W. long.;*

*(E) from Termination Point at 57\_ 51.37' N. lat., 152\_ 24.11' W. long., to Miller Point at 57\_ 50.24' N. lat., 152\_ 21.16' W. long.;*

*(F) from Miller Point at 57\_ 50.24' N. lat., 152\_ 21.16' W. long., to Spruce Cape at 57\_ 49.55' N. lat., 152\_ 19.62' W. long.;*

*(G) from Spruce Cape at 57\_ 49.55' N. lat., 152\_ 19.62' W. long., to the northern tip of Woody Island at 57\_ 47.82' N. lat., 152\_ 19.61' W. long.;*

*(H) from the southern tip of Woody Island at 57\_ 45.63' N. lat., 152\_ 21.18' W. long., to Cliff Point at 57\_ 43.51' N. lat., 152\_ 26.62' W. long.;*

(I) from Cliff Point at 57\_ 43.51' N. lat., 152\_ 26.62' W. long., to Broad Point at 57\_ 41.27' N. lat., 152\_ 23.77' W. long.;

(J) from Broad Point at 57\_ 41.27' N. lat., 152\_ 23.77' W. long., to the western tip of Cape Chiniak at 57\_ 37.47' N. lat., 152\_ 11.75' W. long.;

(K) from Cape Greville at 57\_ 35.31' N. lat., 152\_ 9.37' W. long., to the eastern tip of Narrow Cape at 57\_ 25.92' N. lat., 152\_ 19.11' W. long.;

(L) from the southernmost part of Narrow Cape at 57\_ 25.28' N. lat., 152\_ 20.98' W. long., to Pasagshak Point at 57\_ 25.27' N. lat., 152\_ 29.00' W. long.;

(M) north and east of a line from the outermost points of Pasagshak Bay at 57\_ 25.27' N. lat., 152\_ 29.00' W. long., to 57\_ 25.98' N. lat., 152\_ 31.13' W. long.;

(N) from the westernmost point of Pasagshak Bay at 57\_ 25.98' N. lat., 152\_ 31.13' W. long., to Shark Point at 57\_ 26.77' N. lat., 152\_ 31.18' W. long.;

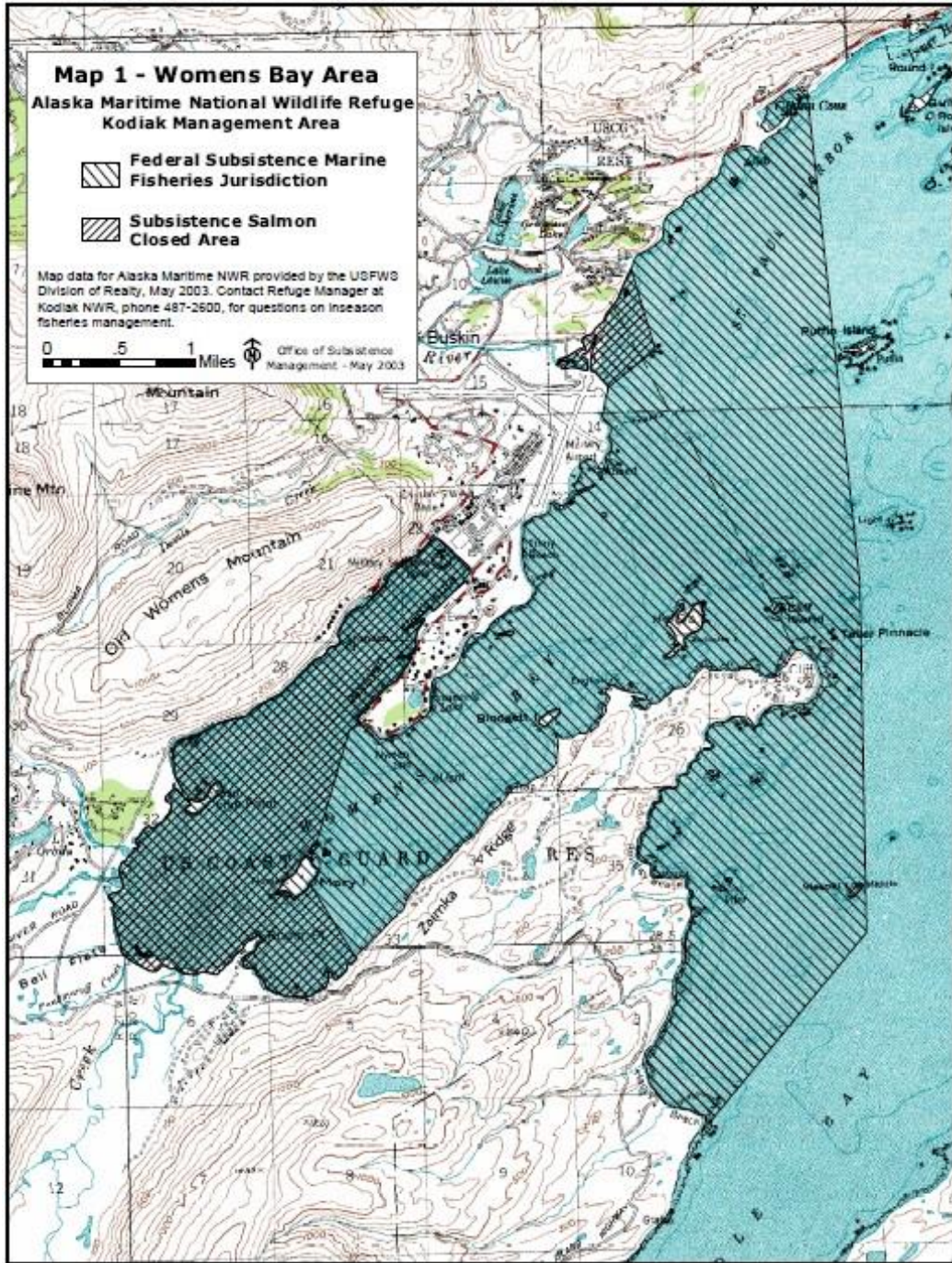
(O) from Shark Point at 57\_ 26.77' N. lat., 152\_ 35.18' W. long., to the westernmost point of Portage Bay at 57\_ 27.98' N. lat., 152\_ 41.14' W. long.;

(P) from the westernmost point of Portage Bay at 57\_ 27.98' N. lat., 152\_ 41.14' W. long., to the westernmost point of Saltery Cove at 57\_ 29.62' N. lat., 152\_ 48.160' W. long.;

(2) Kodiak Remote Zone: all other waters of the Kodiak Area that are not within the Kodiak Road Zone.

### **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. Federal public waters comprise marine waters within Womens Bay (**Figure 1**). There are no inland Federal Public Waters in the Kodiak road system area.



**Figure 1.** Womens Bay Federal jurisdiction marine waters in the Kodiak Area.

**Customary and Traditional Use Determinations**

Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base, have a customary and traditional use determination for salmon in the Kodiak Area, except the Mainland District located on the Alaska Peninsula.

Residents of the Kodiak Area have a customary and traditional use determination for fish other than rainbow/steelhead trout and salmon in the Kodiak Area.

### **Regulatory History**

This area description was adopted from the State at the outset of Federal subsistence fisheries management. There have been no regulatory changes associated with area descriptions in the Kodiak Area.

### **Current Events**

The proponent of this proposal has also submitted a request to add residents of the Kodiak Coast Guard Base to the Customary and Traditional Use Determination for salmon for the Kodiak Area. As part of that request, the proponent wishes to change the area descriptors for the customary and traditional use determination zones within the Kodiak Area to clarify the areas in regulation and reduce administrative complexity for anyone interpreting the regulations. These changes are analyzed in FP23-05a.

### **Biological Background**

The primary subsistence fishery in this area targets Buskin River Sockeye Salmon in the marine waters of Womens Bay (**Figure 1**).

### **Effects of the Proposal**

The proposed amendment to the area description would provide a degree of clarity to federally qualified subsistence users and reduce confusion for anyone interpreting Federal subsistence fishing regulations in this area. The proposed amendment would have no other effects.

### **OSM CONCLUSION**

**Support** Proposal FP23-05b

### **Justification**

This area description change is likely to clarify the area specified in regulations and would cause no negative impact to federally qualified subsistence users or the fisheries resource.

## ADDENDUM

The area description currently in regulation, that was proposed to be modified, is inaccurate. The current description describes marine waters where Federal subsistence regulations do not apply and omits some areas where Federal subsistence regulations do apply. This inaccuracy is the primary reason the Council opposed this proposal, and it will need to be corrected through the regulatory process at some point. We made the necessary adjustments to the area description and OSM remains in support of this proposal with the additional corrections to the area description as follows:

### Current Regulation with Necessary Corrections

*(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 **Spruce**, Woody and Long Islands, and the **Federal marine salt** waters of and around Womens Bay 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.*

### Updated Proposed Federal Regulation

*(A) In the ~~Federal public waters of Kodiak Island~~ **road-accessible Zone (Northeastern Kodiak Island)**, east of the line from Crag Point south to the westernmost point of Saltery Cove, including the waters of **Spruce**, Woody and Long Islands, and the **Federal marine salt** waters of and around Womens Bay 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.*



**SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS****Kodiak Aleutians Subsistence Regional Advisory Council**

**Oppose** FP23-05b. The Council supported the intent of the proposal but had concerns about the current area description not matching the area that is eligible for harvest of fish under Federal subsistence regulations.

**INTERAGENCY STAFF COMMITTEE COMMENTS**

The Interagency Staff Committee acknowledges that the original intent of this proposal submitted by the Kodiak National Wildlife Refuge (Kodiak Refuge) was to clarify the description under regulation of where people can fish in the Kodiak area and to reduce confusion for the public and Kodiak National Wildlife Refuge staff.

In review of the proposal the Kodiak Aleutians Subsistence Regional Advisory Council (Council) noticed an error in the current regulatory language describing the area. The Council made and supported a modification to address this, and, upon further review, the Office of Subsistence Management realized they can implement this modification as a matter of housekeeping. While this error in the current regulatory language was addressed by the Council recommendation, the original intent of gaining clarity by the Kodiak Refuge on where people can fish in the Kodiak area may benefit from further discussion with the Council.

**ALASKA DEPARTMENT OF FISH AND GAME COMMENTS**

Neutral

<b>FCR23-19 Executive Summary</b>	
<b>General Description</b>	FCR23-19 is a routine review of the closure to harvest of salmon by federally qualified subsistence users in the closed waters of Selief Bay Creek.
<b>Current Regulation</b>	<p><b>Kodiak Area - Salmon</b></p> <p><b>§ __.27(e)(9) Kodiak Area</b></p> <p>***</p> <p><i>(iii) You may not subsistence fish for salmon in the following locations:</i></p> <p>***</p> <p><i>(C) All waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek</i></p>
<b>OSM Conclusion</b>	<b>Rescind</b>
<b>Kodiak/Aleutians Subsistence Regional Advisory Council Recommendation</b>	<b>Rescind</b>
<b>Interagency Staff Committee Comments</b>	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.
<b>ADF&amp;G Comments</b>	<b>Rescind</b>
<b>Written Public Comments</b>	<b>None</b>

**FEDERAL FISHERIES CLOSURE REVIEW**  
**FCR23-19**

**Issue**

FCR23-19 is a standard review of a Federal fishery closure to salmon fishing near the mouth of Selief Bay 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. When considering where the closure occurs, there does not seem to be any Federal jurisdiction and is believed to be an error from when the regulations were carried over. This administrative change would remove the language specifying the closure area.

**Closure Location:** Selief Bay Creek - Salmon

**Current Federal Regulation****Kodiak Area - Salmon****§ \_\_.27(e)(9) Kodiak Area**

\*\*\*

*(iii) You may not subsistence fish for salmon in the following locations:*

\*\*\*

*(C) All waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay 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:*

*(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;*

### **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 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 100 yards seaward of the terminus of Selief Bay Creek (**Figure 1**). During review of the closure area, it appears that there is no Federal jurisdiction in these waters. If the terminus is where freshwater meets saltwater at mean high tide, there are no Federal public waters that fit within the closure area definition. Seaward of the Selief Bay Creek terminus is state managed waters, and inland of the terminus is outside of the State commercial closed marine waters described in the closure.



**Figure 1.** Selief Bay closure area near the terminus of Selief Bay Creek located on Raspberry Island.

### **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 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 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**

Very little information is available on the fish species of Selief Bay Creek and their associated run timing or abundance. The Alaska Department of Fish and Game Anadromous Fish Catalog indicates Chum Salmon, Coho Salmon, Pink Salmon, Sockeye Salmon, Dolly Varden and Steelhead inhabit Selief Bay Creek. Abundance of these species is unknown; however, the runs are likely small. Hatchery or wild origins of the salmon are also unknown however a majority of the fish caught in the nearshore of Selief Bay are likely hatchery origin fish bound for Selief Bay Creek or other nearby systems.

### **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 in 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; 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). 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.”

**Harvest History**

Very little information is available for the harvest of salmon in the vicinity of Selief Bay Creek. Annual rod and reel harvest surveys are completed under State Sport Fish Division and are tracked through a statewide mail-out survey of a random sample of sport fish license holders. Harvest for the Afognak area indicate annual harvest of salmon can vary year to year with a low harvest of 1,081 salmon in 2018 and a high harvest of 8,209 salmon in 2013. Coho Salmon are considered the primary harvest of sport anglers. Chinook and Sockeye salmon are harvested in smaller numbers (**Table 1**). Federal subsistence permits are needed to harvest salmon in the Federal public waters. In 2021, 18 Federal permits were issued from the Kodiak National Wildlife Refuge, and 4 permits were returned reporting a harvest of 81 Sockeye and 24 Chinook salmon.

**Table 1.** Kodiak sport fish harvest estimates for boat based anglers on Afognak Island Area from 2010 to 2019.

<b>Species</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Chinook Salmon	709	316	410	1501	1063	1056	1026	423	236	925
Coho Salmon	3857	2536	2211	4594	1915	1879	609	961	845	2584
Sockeye Salmon	250	492	1166	1760	526	501	272	369	0	384
Pink Salmon	400	129	189	295	140	381	439	18	0	626
Chum Salmon	50	0	59	59	0	196	89	0	0	0
<b>Salmon Total</b>	<b>5266</b>	<b>3473</b>	<b>4035</b>	<b>8209</b>	<b>3644</b>	<b>4013</b>	<b>2435</b>	<b>1771</b>	<b>1081</b>	<b>4519</b>

**Effects**

If the closure is rescinded, all erroneous language regarding Selief Bay Creek closure would be removed from the regulations to reduce user confusion.

If the closure is retained, the jurisdictional issue would remain in the Federal regulations.

**OSM CONCLUSION**

**\_ Retain the Status Quo**

- X 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:*

~~(C) All waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek.~~

### **Justification**

The Selief Bay Creek area closure has been found to be erroneous as there is no Federal jurisdiction in this location. This is the first time that this closure has been under review since its adoption and it should be removed from the regulations.

### **Literature Cited**

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- Marchioni, M.A., J.A. Fall, B. Davis, and G. Zimpleman. 2016. Kodiak City, Larsen Bay and Old Harbor: An ethnographic study of traditional subsistence salmon harvests and uses. ADF&G, Division of Subsistence Tech. Paper 418. Anchorage, AK. 192 pp.

Wolfe, R.J., and R.J. Walker. 1987. Subsistence economies in Alaska: Productivity, geography, and development impacts. *Arctic Anthropology* 24(2): 56-81.

## **SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS**

### **Kodiak/Aleutians Subsistence Regional Advisory Council**

**Rescind the closure** on FCR23-19. The Council believes that rescinding the closure will bring the Federal subsistence regulations into compliance as there are no Federal public waters in this location.

### **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 FCR23-19**

This is a routine closure review to determine if the current federal subsistence fisheries for salmon in Selief Bay Creek still warranted.

#### **Position**

The Alaska Department of Fish and Game (ADF&G) **SUPPORTS** rescinding this closure. This closure refers to an area that does not fall within federal public waters and therefore the Federal Subsistence Board (FSB) has no jurisdiction over its management.

#### **Background**

Selief Creek is the major drainage in Selief Bay on Raspberry Island and empties into Raspberry Strait. While there is a nearby federal subsistence fishery that extends to the midway point of Raspberry Strait from the shoreline of Afognak Island, this does not include the waters around Selief Creek. All waters of Selief Bay and Raspberry Strait from the shoreline of Raspberry Island to the midpoint of Raspberry Straights fall under state jurisdiction for all fisheries.

In addition, closed waters for subsistence fishing around the mouth of Selief Creek are intended to provide a buffer of protection for salmon congregating in the area given the liberal gear types and harvest limits allowed in the subsistence fishery. There are existing sport fisheries in the area that target Selief Creek coho salmon that can use one line and no more than two hooks and have a daily bag limit of five coho salmon per day. While state subsistence fisheries can use a gillnet of up to 50 fathoms and there is no harvest limit.

#### **Impact on Subsistence Users**

There is no impact to subsistence users as people will continue to fish under state regulations.

#### **Impact on Other Users**

There is no impact to any other users as they will continue to fish under state regulations.

#### **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**

This proposal would create a conservation concern for Selief Creek as the currently closed area is intended to create a buffer zone where the liberal gear and limits associated with subsistence fisheries are not allowed. Salmon often congregate near the creek mouth and harvest potential would be greatly increased by this proposal.

#### **Enforcement Issues**

If this closure is rescinded, then the level of confusion would diminish over who has jurisdiction and what regulations users would need to follow.

<b>FP23-08/09/12 Executive Summary</b>	
<b>General Description</b>	Proposal FP23-08/09/12 requests that the Federal Subsistence Board recognize the customary and traditional use of all fish in the Kenai Peninsula District, waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest by residents of Moose Pass.
<b>Proposed Regulation</b>	<p><b>Customary and Traditional Use Determination—All Fish</b></p> <p>COOK INLET AREA</p> <p>Kenai Peninsula District – <i>Residents of the communities of Cooper Landing, Hope, Moose Pass, and Ninilchik.</i> Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest</p>
<b>OSM Conclusion</b>	<b>Support</b>
<b>Southcentral Alaska Subsistence Regional Advisory Council Recommendation</b>	<b>Support</b> FP23-08 and <b>take no action</b> on FP23-09/12
<b>Interagency Staff Committee Comments</b>	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.
<b>ADF&amp;G Comments</b>	<b>Neutral</b>
<b>Written Public Comments</b>	<b>None</b>

## STAFF ANALYSIS

### FP23-08/09/12

#### ISSUES

Proposal FP23-08/09/12, submitted by Daniel Krueger, Sarah Schuh, and Claire Shipton of Moose Pass, respectively, requests that the Federal Subsistence Board (Board) recognize the customary and traditional use of all fish in the Kenai Peninsula District, waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest by residents of Moose Pass.

#### DISCUSSION

The proponent of FP23-08 notes that the Board designated Moose Pass as “rural” in 2021. He states that Moose Pass has historically relied on subsistence hunting and fishing in the surrounding National Forest. Based on this history, as well as recent customary and traditional use determinations for Moose Pass for wildlife, the proponent believes that residents should be eligible for subsistence fishing under Federal regulations along the Kenai River and its tributaries, including the Russian River.

The proponent of FP23-09 states that she and other residents of Moose Pass rely heavily on harvests of local fish, game, and forage. She asks the Board to extend the same subsistence rights afforded to Cooper Landing and Hope to Moose Pass so that residents can subsistence fish along the Kenai River and its tributaries such as the Russian River.

The proponent of FP23-12 states that he and his family fish on the Russian River and Kenai River each year for salmon. He would like an opportunity to stock up on fish in proximity to his community. Being able to take 40 sockeye salmon on the Russian River would free up time that would otherwise be spent trying to harvest salmon by other means.

#### Existing Federal Regulation

##### Customary and Traditional Use Determination—All Fish

###### COOK INLET AREA

*Kenai Peninsula District – Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest*

*Residents of the communities of Cooper Landing, Hope, and Ninilchik.*



## Proposed Federal Regulation

### Customary and Traditional Use Determination—All Fish

#### COOK INLET AREA

*Kenai Peninsula District – Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest*

*Residents of the communities of Cooper Landing, Hope, **Moose Pass**, and Ninilchik.*

### 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.

The areas affected by this proposal include the Federal public waters in the Cook Inlet Area north of and including the Kenai River drainage, within the exterior boundaries of the Kenai National Wildlife Refuge and the Chugach National Forest (referred to as the Kenai River area in this analysis). See **Map 11, Cook Inlet Area** in the 2021-2023 Federal Subsistence Management Regulations for the Harvest of Fish and Shellfish.

### 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]). 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]).

In 2001, the Board considered Proposal FP02-11a, submitted by Ninilchik Traditional Council, Stephen Vanek and Fred H. Bahr, which requested a customary and traditional use determination for all fish and all shellfish in the Cook Inlet Area for residents of the Kenai Peninsula District, defined as “all freshwater drainages of the Kenai Peninsula west of a line from Cape Fairfield to the west bank of the mouth of Ingram Creek, excluding Ingram Creek” (OSM 2001). The Board deferred making decisions on the use of fish in the Cook Inlet Area until the completion of an Office of Subsistence Management funded study, “Cook Inlet Customary and Traditional Subsistence Fisheries Assessment” (Fall et al. 2004), because the Board felt that community-specific harvest use information was needed to properly analyze customary and traditional patterns of use in the Cook Inlet region.

In January 2006, the Board considered Proposal FP06-09, the deferred proposal from the 2002 regulatory cycle, Proposal FP02-11a. Proposal FP06-09 was submitted by NTC, Stephen Vanek and Fred H. Bahr and requested a customary and traditional use determination for all fish and all shellfish in the Cook Inlet Area for residents of the Kenai Peninsula District. The Board made a customary and traditional use determination for: 1) Hope and Cooper Landing for all fish in the Federal public waters of the Kenai

Peninsula District, north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest; and 2) Ninilchik for all fish in the Federal public waters of the Kasilof River drainage. Moose Pass was not considered rural by the Board at this time and was not included in Fall et al.'s 2004 study.

In May of 2006, the State and Ninilchik Traditional Council submitted requests for reconsideration (FRFR06-02/03/08) of the Board's customary and traditional use determinations made in January 2006. The Board revisited its decision in a work session in November 2006 and added Ninilchik to the customary and traditional use determination for all fish in the Kenai River area.

In May 2007, the Board rejected FP07-28, submitted by the Kenai River Sportfishing Association, which requested that the customary and traditional use determinations for all fish in the Kenai Peninsula District for residents of Hope, Cooper Landing, and Ninilchik be rescinded and that there be no Federal subsistence priority. Also in May 2007, the Board rejected FRFR06-09, submitted by the State, requesting that the Board rescind its November 2006 decision on FRFR06-02/03/08, which added Ninilchik to the customary and traditional use determination for all fish in the Kenai River area.

In September 2007, the Board met in a work session to correct a voting error on FRFR06-09 from the May 2007 meeting that did not comply with Robert's Rules of Order. The Board modified the existing Kenai River area determination through a new motion that found a customary and traditional use determination for the community of Ninilchik only for salmon in the Kenai River area, thus rescinding Ninilchik's customary and traditional use determination for resident fish species in the area. The customary and traditional use determination for Hope and Cooper Landing residents for all fish in the Kenai River area remained in place.

In January of 2009, the Board rejected FP09-07, submitted by Ninilchik Traditional Council, which requested that Ninilchik be added to the customary and traditional use determination for all fish, rather than only salmon, in the Kenai River area. The proposal was rejected due to insufficient evidence of customary and traditional use of resident fish species by residents of Ninilchik. As a result, Ninilchik Traditional Council submitted a request for reconsideration (RFR09-01), which the Board considered in November 2010. The Board reversed its earlier decision on FP09-07 and added residents of Ninilchik to the customary and traditional use determination for all fish in the Kenai River area. Thus, the customary and traditional use determination for all fish in the Kenai River area has been in place in its current form since 2010.

Moose Pass was designated "non-rural" by the Board in 1990. In 2021, the community of Moose Pass (defined as including the census designated places (CDPs) of Moose Pass, Crown Point, and Primrose) received rural status when the Board adopted Proposal RP19-01.

Moose Pass' customary and traditional use of wildlife has recently been recognized within Unit 7, 15A, and 15B on the Kenai Peninsula. In 2021, multiple proposals were submitted requesting customary and traditional use determinations for wildlife in all or portions of Units 7 and 15 for residents of Moose Pass. In April 2022, the Board considered WP22-16/17/18/19/21/22/23/24/26a and adopted WP22-16/17/18/21/23/26a, adopted WP22-22 and WP22-24 with modification to remove Unit 15C, and rejected

WP22-19. As a result, Moose Pass received customary and traditional use determinations for moose in Units 7, 15A, and 15B, caribou in Units 7 and 15B, and goats in Unit 7 remainder and Units 15A and 15B. This decision was consistent with the recommendations of the Southcentral Alaska Subsistence Regional Advisory Council.

### **Community Characteristics**

The Moose Pass area is situated within the traditional territory of the Lower or Outer Cook Inlet Dena'ina Athabaskans on the Kenai Peninsula (see **Map 11, Cook Inlet Area** in the 2021-2023 Federal Subsistence Management Regulations for the Harvest of Fish and Shellfish). Not far from the Moose Pass area, Dena'ina people fished and hunted within the Kenai River watershed. The Alutiiq or Sugpiaq traditional territory bordered the southeastern portion of the peninsula.

The contemporary town of Moose Pass is in the western extent of the Chugach National Forest. The community includes the CDPs of Crown Point, Moose Pass, and Primrose. Moose Pass was settled during the developmental phase of mining and railway construction on the Kenai Peninsula, which began in the early 1900s (Barry 1976, Rakestraw 2002). The community's name is said to derive from an encounter between a mail carrier traveling by dog team and a moose (DCRA 2021). The population in Moose Pass experienced growth during the 1970s and 1980s as workers with the oil industry and government agencies moved into the area. Since that time, tourism and recreation industries have continued to bring in more people to the community and surrounding area (Whitmore-Painter 2002). In 2019, the estimated population was 391 (ADLWD 2020).

### **Eight Factors for Determining Customary and Traditional Use**

A community or area's customary and traditional use is generally exemplified through the eight factors: (1) a long-term, consistent pattern of use, excluding interruptions beyond the control of the community or area; (2) a pattern of use recurring in specific seasons for many years; (3) a pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics; (4) the consistent harvest and use of fish or wildlife as related to past methods and means of taking: near, or reasonably accessible from the community or area; (5) a means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate; (6) a pattern of use which includes the handing down of knowledge of fishing and hunting skills, values, and lore from generation to generation; (7) a pattern of use in which the harvest is shared or distributed within a definable community of persons; and (8) a pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area.

The Board makes customary and traditional use determinations based on a holistic application of these eight factors (50 CFR 100.16(b) and 36 CFR 242.16(b)). In addition, the Board takes into consideration the reports and recommendations of any appropriate Regional Advisory Council regarding customary and traditional use of subsistence resources (50 CFR 100.16(b) and 36 CFR 242.16(b)). The Board makes

customary and traditional use determinations for the sole purpose of recognizing the pool of users who generally exhibit some or all of the eight factors. The Board does not use such determinations for resource management or restricting harvest. If a conservation concern exists for a particular population, the Board addresses that concern through the imposition of harvest limits or season restrictions rather than by limiting the customary and traditional use finding.

In 2010, the Secretary of the Interior asked the Board to review, with Regional Advisory Council input, the customary and traditional use determination process and present recommendations for regulatory changes. In June 2016, the Board clarified that the eight-factor analysis applied when considering customary and traditional use determinations is intended to protect subsistence use, rather than limit it. The Board stated that the goal of the customary and traditional use determination analysis process is to recognize customary and traditional uses in the most inclusive manner possible.

It is worth noting, as Fall et al. observed, that “Identification of [customary and traditional] uses of fish in federal waters...for Kenai Peninsula stocks poses a challenge because of the area’s complex history, economy, and demography” (2004: 1). All subsistence fishing in freshwater streams and lakes was closed in 1952, while rod and reel fishing remained open. A dip net personal use fishery on the Kenai River was first opened in 1981 (Fall et al. 2004).

Broad use of wild resources by Moose Pass residents was demonstrated through public testimony during consideration of Rural Proposal RP19-01 in October 2019 (OSM 2019). During the public hearing for that proposal, many residents of Moose Pass reported the value of being able to harvest resources outside their backdoor, but also related their willingness to travel as far as necessary to take advantage of all opportunities to hunt and fish. Also important for almost all who provided testimony was the ability and commitment to feed their family with wild foods that are available locally. “We’ve fed our children moose, black bear, goat, sheep, salmon and trout throughout the years” (OSM 2019). Throughout the public hearing, multiple residents stated their practice of fishing for food in areas surrounding Moose Pass. One resident remembered fishing the Russian River while growing up and living in Moose Pass.

The community’s broad use of wild resources was also documented by a comprehensive subsistence survey conducted by the Alaska Department of Fish and Game (ADF&G) Division of Subsistence for the period April 2000 to March 2001 (Davis et al. 2003). All households in the community were invited to participate in the study; 99 households (66.9% of all households) were interviewed. Results indicated that 99% of surveyed households used wild foods, and 92% harvested resources, resulting in 87 pounds of wild food per person (Davis et al. 2003).

#### Fish harvest by Moose Pass residents

During the 2000 to 2001 ADF&G Division of Subsistence study period, salmon was the single most important resource harvested by residents of Moose Pass in terms of pounds of edible weight, accounting for 32 pounds of food per person, or 37% of all wild foods harvested by the community. Sockeye Salmon contributed most to the total salmon harvest, followed by Coho Salmon, then Chinook Salmon. In 2000 to 2001, Moose Pass harvested 76% of its salmon by rod and reel, 16% by dipnet, and 8% by setnet (Davis et al. 2003).

During the study year, residents of Moose Pass also harvested nonsalmon freshwater fish. Rainbow Trout was the most significant nonsalmon freshwater fish harvested, both in terms of pounds of edible weight per person and the percentage of surveyed Moose Pass households attempting to harvest them. Lake Trout and Dolly Varden were also harvested. Overall, these three species provided 3.5 pounds of food per person. Smaller amounts of Arctic Grayling, Northern Pike, other species of trout, and whitefish were also harvested (Davis et al. 2003).

#### Fish harvest locations

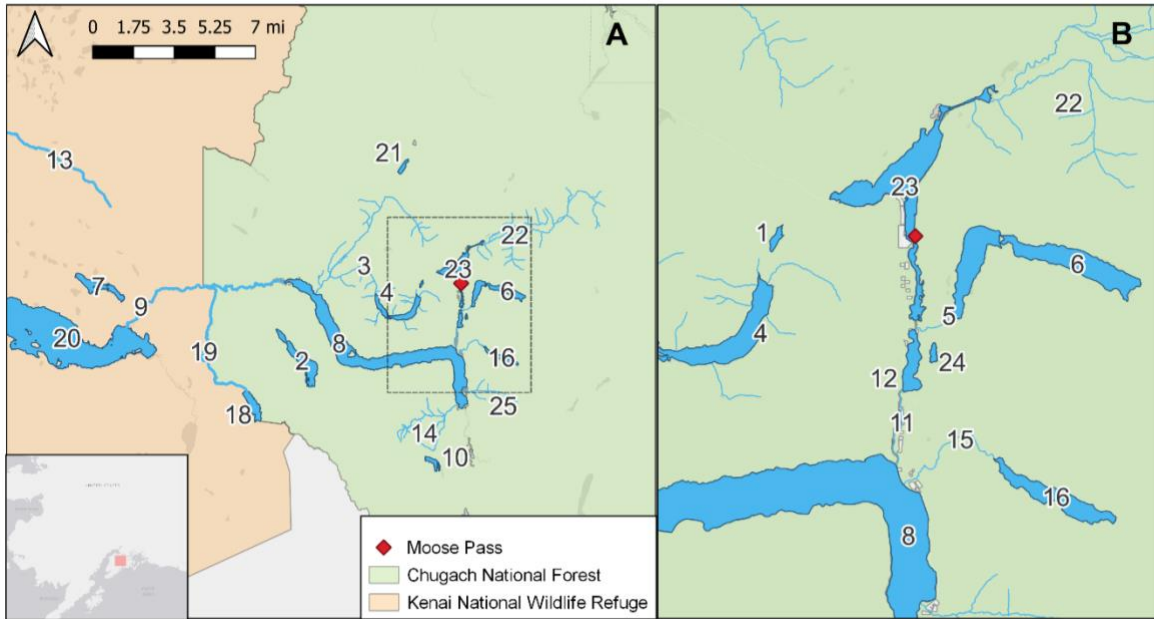
As part of their subsistence survey, Davis et al. (2003) also mapped Moose Pass' fish harvest locations over the previous ten years. Use areas should not be considered exhaustive but do provide valuable information on confirmed areas of search and use for wild resources. The geographical data demonstrate a preference for intensive local land and water use as opportunities are available, typical of a subsistence practice characterized by efficiency of effort and cost. Residents traveled farthest to harvest salmon, marine fish, and marine invertebrates (Davis et al. 2003).

The most important location for Sockeye salmon fishing by residents of Moose Pass within the area under consideration was the confluence of the Kenai and the Russian rivers, followed by the lower Kenai River and the Kenai River's confluence with the Funny River. Those surveyed had also fished for Sockeye Salmon at the Kenai River above Skilak Lake and around Copper Creek and Kenai Lake (Davis et al. 2003).

Residents of Moose Pass fished for Coho Salmon on the Kenai River between Skilak Lake and Kenai Lake, including the Russian River and the Kenai, Moose, and Funny rivers below Skilak Lake. Salmon other than Sockeye or Coho were fished in the waters of Kenai River downstream from the Funny River confluence and other areas on the Kenai River (Davis et al. 2003).

Moose Pass residents fished for Rainbow Trout in Grant, Lower Trail, Vagt, Ptarmigan, Upper Trail, Kenai, Carter, Crescent, Russian, Cooper, Lost, Summit, and Johnson lakes, and in streams around these lakes. They also fished for Rainbow Trout in Grant, Trail, Ptarmigan, and Victor creeks. Finally, they fished for Rainbow Trout in the Kenai River from Kenai Lake to Skilak and Hidden lakes and in the Russian River, as well as in the low-lying areas of the western Kenai Peninsula around Swanson and Moose rivers (Davis et al. 2003, **Map 1**).

Dolly Varden fishing areas included Lower Trail Lake and the outlet of Grant Lake, as well as Ptarmigan, Upper Trail, and Kenai lakes. Moose Pass residents also fished for Dolly Varden in Trail, Ptarmigan, Primrose, Victor, Quartz, and Crescent creeks, and in the Russian and Kenai rivers. Nonsalmon freshwater fish other than Rainbow Trout and Dolly Varden were fished in Crescent, Carter, Grant, Lower Trail, Kenai, Lost, and Johnson lakes, and in Quartz, Grant, Lower Trail, and Upper Trail creeks (Davis et al. 2003, **Map 1**).



**Map 1.** Map “A” shows local waters used for nonsalmon fishing by Moose Pass residents from 1991 to 2001, as reported in Davis et al. 2003. Map “B” is an inset of the area indicated by dotted line in Map A. Note that this map does not include the Swanson and Moose Rivers, areas in the western Kenai Peninsula that were also used by Moose Pass residents to fish for Rainbow Trout. Further, residents fished for Dolly Varden in the “Kenai River,” but fishing locales for this species on the river were not further specified (Davis et al. 2003). Nonsalmon species harvested include Dolly Varden<sup>a</sup>, Rainbow Trout<sup>b</sup>, and other nonsalmon fish excluding Dolly Varden and Rainbow Trout<sup>c</sup>.

Key: 1= Carter Lake<sup>b,c</sup>, 2= Cooper Lake<sup>b</sup>, 3= Crescent Creek<sup>a</sup>, 4=Crescent Lake<sup>b, c</sup>, 5=Grant Creek<sup>b,c</sup>, 6=Grant Lake<sup>a,b,c</sup>, 7=Hidden Lake<sup>b</sup>, 8=Kenai Lake<sup>a,b,c</sup>, 9=Kenai River<sup>a,b</sup>, 10=Lost Lake<sup>b,c</sup>, 11=Lower Trail Creek<sup>a,b,c</sup>, 12=Lower Trail Lake<sup>a,b,c</sup>, 13=Moose River<sup>a</sup>, 14=Primrose Creek<sup>a</sup>, 15=Ptarmigan Creek<sup>a,b</sup>, 16=Ptarmigan Lake<sup>a,b</sup>, 17=Quartz Creek<sup>a</sup>, 18=Russian Lake<sup>b</sup>, 19=Russian River<sup>b</sup>, 20=Skilak Lake<sup>b</sup>, 21=Summit Lake<sup>b</sup>, 22=Upper Trail Creek<sup>a,b,c</sup>, 23=Upper Trail Lake<sup>a,b</sup>, 24=Vagt Lake<sup>b</sup>, 25=Victor Creek<sup>b</sup>.

Participation in State personal use and sport fishing in the Kenai River area

Until 1952, freshwater streams in the Kenai Peninsula were open to subsistence fishing. In 1952, all streams and lakes of the Kenai Peninsula were closed to subsistence fishing under Territory of Alaska regulations, and only rod and reel or hook and line were allowed. A personal use dip net fishery was initiated on the Kenai River in 1981 (Fall et al. 2004).

Moose pass residents can currently fish in the Kenai River area under State personal use and sport fishing regulations, but only sport fishing opportunities are available in the immediate vicinity of Moose Pass. The Kenai River dipnet (personal use) fishery is located in Kenai, approximately 75 miles from Moose

Pass, and is open from July 10 to July 31. Only one Chinook 20 inches or greater in length, and no more than 10 Chinook under 20 inches in length, may be retained per household (ADF&G 2020).

**Table 1** shows that over the last 10 years, Moose Pass residents were issued a total of 177 Kenai dip net fishery permits, 120 of which were fished, resulting in a total ten-year harvest of 1,679 Sockeye Salmon, as well as small amounts of other species.

**Table 1.** Number of Kenai dip net fishery permits issued, fished, and reported catch by species from 2012 to 2021. Source: St.Saviour 2022, pers. comm.

Year	Permits issued	Permits fished	Sockeye Salmon	Chinook Salmon	Coho Salmon	Pink Salmon	Chum Salmon	Flounder
2021	8	6	102	0	0	1	0	0
2020	11	8	129	0	0	8	0	0
2019	9	8	126	0	0	1	0	0
2018	11	7	43	0	0	9	0	1
2017	16	13	104	1	0	5	0	0
2016	19	13	108	0	0	4	0	2
2015	23	14	285	0	1	2	0	5
2014	33	18	301	0	0	7	0	6
2013	22	16	214	0	0	4	0	0
2012	25	17	267	0	0	0	0	0
<b>Total</b>	<b>177</b>	<b>120</b>	<b>1679</b>	<b>1</b>	<b>1</b>	<b>41</b>	<b>0</b>	<b>14</b>

**Table 2** delineates sport fishing opportunities for salmon on the Kenai River. During the 2000 to 2001 ADF&G Division of Subsistence study period, Moose Pass harvested 76% of its salmon by rod and reel (Davis et al. 2003) under State sport fishing regulations. In the 2000 to 2001 subsistence survey, Moose Pass residents were most likely to fish for salmon at the confluence of the Russian and Kenai Rivers (Davis et al. 2003), which is in the upper Kenai River, shown as one of the three areas in **Table 2**. Currently, Moose Pass residents are only able to fish for salmon on the Russian River under State sport fishing regulations. However, angler survey data specific to Moose Pass' sport fishing on the Kenai and Russian Rivers are not available.

**Table 2.** Current salmon fishing opportunity under State sport fishing regulations for the Kenai River. Source: ADF&G 2022. See State regulations for additional stipulations. These regulations are described to contextualize Moose Pass' use of salmon on the Kenai River.

	<b>Sockeye and Chum</b>	<b>Coho</b>	<b>Chinook*</b>
<b>From the mouth of the Kenai River to 300 yards below Slikok Creek</b>	Year-round: 16-inches or longer: three per day, six in possession in combination  Year-round: less than 16 inches: 10 per day, 10 in possession in combination	Dec 1-Jun 30: no retention of Coho Salmon.  Jul 1-Aug 31: two per day, two in possession, in combination with Sockeye or Chum Salmon  Sep 1-Nov 30: three per day, six in possession in combination	Jan 1-Jun 30: one per day, one in possession, and fish must be less than 34 inches in length  Jul 1-July 31: one per day, one in possession with no size limit
<b>From 300 yards below Slikok Creek to the outlet of Skilak Lake</b>			Jan 1-Jul 31: one per day, one in possession, and fish must be less than 34 inches in length
<b>The mainstem Kenai River from waters of Skilak Lake within a ½ mile radius of the river inlet upstream to the Sterling Highway bridge at the outlet of Kenai Lake, including the Russian River drainage (Upper Kenai)</b>	Jun 11- Apr 30: 16 inches or longer: three per day, six in possession; only two per day, two in possession may be Coho Salmon through Aug 31  Jun 11- Apr 30: Less than 16 inches: 10 per day, 10 in possession, in combination		Closed

\* There is a combined annual limit of five Chinook salmon 20 inches or longer from waters of multiple Southcentral areas combined, and of these five Chinook, no more than two may be taken from the Kenai River.

**Effects of the Proposal**

If these proposals are adopted, residents of Moose Pass would 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 drainage within the Kenai National Wildlife Refuge and the Chugach National Forest. This would allow them to harvest fish under Federal subsistence regulations for this area. If the proposal is rejected, residents of Moose Pass could continue to fish in the Kenai River area under State personal use and sport fishing regulations.

**OSM CONCLUSION**

**Support** FP23-08/09/12.



## Justification

Moose Pass residents' patterns of fishing exhibit the characteristics of customary and traditional use in the Kenai Peninsula District, waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest. The Board has previously recognized Moose Pass' customary and traditional uses of other wild resources on portions of the Kenai Peninsula, including moose in Units 7, 15A, and 15B, caribou in Units 7 and 15B, and goats in Unit 7 remainder and Units 15A and 15B. Use of fish by Moose Pass residents within the Kenai River area has been documented through community testimony related to Moose Pass' recent rural designation, an ADF&G subsistence survey, and reported harvests from the Kenai River State personal use dip net fishery.

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## **SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS**

### **Southcentral Alaska Subsistence Regional Advisory Council**

**Support** FP23-08 and **take no action** on FP23-09/12. The Council supported in part because Moose Pass was recently granted rural status and customary and traditional use determinations for multiple wildlife species. The Council noted that residents of Moose Pass generally lead a rural lifestyle. One member of the Council also noted that the probability of conservation concerns was low due to the characteristics of the Russian River fishery and the low population of Moose Pass. The Council took no action on FP23-09/12 based on the recommendation for FP23-08.

### **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 Proposals FP23-8/9/10/11/12/13**

These proposals would add residents of Moose Pass to the current customary and traditional (C&T) use determination for all fish in the Kenai Peninsula District, waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest by residents of Moose Pass.

#### **Position**

The Alaska Department of Fish & Game (ADF&G) is **NEUTRAL** on eligibility requirements for participation in the subsistence program provided under ANILCA and encourages the Federal Subsistence Board (FSB) conduct additional subsistence harvest and use research for Kenai Peninsula residents to provide adequate data when assessing subsistence harvest needs.

#### **Background**

Currently, residents of Cooper Landing, Hope, and Ninilchik have a C&T use determination for all fish in the Kenai Peninsula District – waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest. Fisheries proposals FP23-8, FP23-9, FP23-10, FP23-11, FP23-12, and FP23-13 all request adding Moose Pass residents to the existing C&T determination.

Under state regulations, most of the Kenai Peninsula is classified as a nonsubsistence area (5 AAC 99.015(3)). However, subsistence fishing opportunities are available for rural residents of the Kenai Peninsula under federal regulation on Chugach National Forest and Kenai National Wildlife Refuge

lands. In 2006, the FSB considered FP06-09 and made two positive customary and traditional use determinations: (1) for residents of Hope and Cooper Landing for all fish in the Federal public waters of the Kenai Peninsula District, north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest, and (2) for residents of Ninilchik for all fish in the Federal public waters of the Kasilof River drainage. Later in 2006 at its November work session, the FSB added Ninilchik to the C&T use determination for all fish in the Kenai River area, then in September 2007 rescinded Ninilchik's determination for resident species in the Kenai River area, leaving the community with a determination for salmon only. In November 2010, the FSB again added residents of Ninilchik to the C&T use determination for all fish in the Kenai River Area. The community of Moose Pass only received rural status in January 2021 when the FSB adopted RP19-01. Prior to this status change, Moose Pass residents were not federally qualified to participate in federal subsistence fisheries.

ADF&G Subsistence Section has only one year of comprehensive subsistence harvest data for Moose Pass, for the 12-month period of April 1, 2000-March 31, 2001. The Division conducted the survey in 2001 under a cooperative agreement between ADF&G and the Chugach National Forest. The study interviewed 203 households of Moose Pass and Seward to collect information about the harvest and uses of wild fish, game, and plant resources; demography; and aspects of the local cash economy such as employment and income. Results indicate that 99% of Moose Pass households used wild foods, 92% harvested resources, 87% reported receiving resources from others, and 60% of households reported sharing their harvested resources with others (Davis et al. 2003). Moose Pass residents harvested an average of 87 pounds of wild foods per person (236 pounds per household) and used an average of 7.9 resources per household. For comparison, Seward residents (who are classified as nonrural residents) harvested 97 pounds per person and used an average of 7.5 resources per household, while Ninilchik residents harvested 164 pounds per person in the most recent study year (Fall et al. 2000).

Salmon composed 37% of the total pounds of subsistence foods harvested by Moose Pass residents. During the study period, 60% of Moose Pass households attempted to harvest salmon, 56% harvested salmon, and 85% used salmon. The community harvested 12,839 pounds of salmon, resulting in 31.9 pounds of salmon per capita (Davis et al. 2003). Salmon were shared with other households, where 57% of households received salmon, and 31% of households gave it away (Davis et al. 2003). Mapping of subsistence search and harvest locations demonstrates a preference for intensive local land and water use, with most of the harvest coming from the confluence of the Kenai and Russian rivers, the waters of Resurrection Bay, the beaches stretching between Kenai and Homer and the waters out into Cook Inlet.

Residents of Moose Pass can fish in the Kenai River area under state personal use and sport fishing regulations.

### **Impact on Subsistence Users**

Recognizing the C&T use of all fish for residents of Moose Pass would expand the pool of federally qualified users (FQU) who can fish in federal public waters. This would limit the current opportunities and success level for current FQUs by increasing competition for fish in waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest. If the

proposal is rejected, residents of Moose Pass could continue to fish for salmon and nonsalmon fish under state sport and personal use regulations in this area.

### **Impact on Other Users**

If adopted, impact on other users would depend on future actions taken by the FSB.

### **Opportunity Provided by State**

**State customary and traditional use findings:** The Joint Board of Fisheries and Game declared the majority of the Kenai Peninsula to be a nonsubsistence area (5 AAC 99.015(3)). As such, the BOF cannot find C&T uses for any fish in the 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. However, because there can be no C&T finding for fish in a nonsubsistence area, there is no ANS for salmon and nonsalmon fish in the Kenai Peninsula nonsubsistence area.

### **Conservation Issues**

There would only be conservation concerns if the FSB and federal in-season managers allowed these additional FQUs to overharvest fish populations in a given area.

### **Enforcement Issues**

There are no known enforcement issues directly related to this proposal.

<b>FP23–20 Executive Summary</b>																					
<b>General Description</b>	<p>Proposal FP23-20 requests the Federal Subsistence Board to recognize the customary and traditional uses of shellfish in Southeast Alaska by rural residents of Southeast Alaska. <i>Submitted by: Southeast Alaska Subsistence Regional Advisory Council.</i></p>																				
<b>Proposed Regulation</b>	<p><b><i>Customary and traditional use determinations—Shellfish</i></b></p> <p><b><i>Southeastern Alaska-Yakutat Area</i></b></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;"><i>All districts</i></td> <td style="width: 33%;"><i>All shellfish</i></td> <td style="width: 33%;"><i>Residents of Southeastern Alaska and Yakutat Fishery Management Areas</i></td> </tr> <tr> <td><i>Section 1E south of the latitude of Grant Island light</i></td> <td><i>Shellfish, except shrimp, king crab, and Tanner crab</i></td> <td><i>Residents of the Southeast Area</i></td> </tr> <tr> <td><i>Section 1F north of the latitude of the northernmost tip of Mary Island, except waters of Boca de Quadra</i></td> <td><i>Shellfish, except shrimp, king crab, and Tanner crab</i></td> <td><i>Residents of the Southeast Area</i></td> </tr> <tr> <td><i>Section 3A and 3B</i></td> <td><i>Shellfish, except shrimp, king crab, and Tanner crab</i></td> <td><i>Residents of the Southeast Area</i></td> </tr> <tr> <td><i>District 13</i></td> <td><i>Dungeness crab, shrimp, abalone,</i></td> <td></td> </tr> <tr> <td><i>Remainder Area</i></td> <td><i>All shellfish</i></td> <td><i>All rural residents</i></td> </tr> </table>			<i>All districts</i>	<i>All shellfish</i>	<i>Residents of Southeastern Alaska and Yakutat Fishery Management Areas</i>	<i>Section 1E south of the latitude of Grant Island light</i>	<i>Shellfish, except shrimp, king crab, and Tanner crab</i>	<i>Residents of the Southeast Area</i>	<i>Section 1F north of the latitude of the northernmost tip of Mary Island, except waters of Boca de Quadra</i>	<i>Shellfish, except shrimp, king crab, and Tanner crab</i>	<i>Residents of the Southeast Area</i>	<i>Section 3A and 3B</i>	<i>Shellfish, except shrimp, king crab, and Tanner crab</i>	<i>Residents of the Southeast Area</i>	<i>District 13</i>	<i>Dungeness crab, shrimp, abalone,</i>		<i>Remainder Area</i>	<i>All shellfish</i>	<i>All rural residents</i>
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<b>OSM Conclusion</b>	<b>Support</b>																				
<b>Southeast Alaska Subsistence Regional Advisory Council Recommendation</b>	<b>Support</b>																				

<b>FP23-20 Executive Summary</b>	
<b>Interagency Staff Committee Comments</b>	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.
<b>ADF&amp;G Comments</b>	<b>Neutral</b>
<b>Written Public Comments</b>	<b>1 oppose</b>

**STAFF ANALYSIS  
FP23-20**

**ISSUES**

Proposal FP23-20, submitted by the Southeast Alaska Subsistence Regional Advisory Council (Council), requests the Federal Subsistence Board (Board) to recognize the customary and traditional uses of shellfish in Southeast Alaska by rural residents of Southeast Alaska.

**DISCUSSION**

The proponent states that in 2010 the Secretary of the Interior asked the Board to review, with Regional Advisory Council input, the customary and traditional use determination process and present recommendations for regulatory changes (Salazar 2010). During the Southeast Alaska Council’s review in 2016, it requested, among other things, that the Board adopt customary and traditional use determinations broadly (Bangs 2016). The Council requested the Board in the future to recognize customary and traditional uses of all fish and wildlife in Southeast Alaska that have been taken for food or other purposes, including handicrafts, ceremonies, and customary trade. The Council said its recommendations to the Board in the future would tend to include residents of all rural Southeast communities and areas, and the three criteria in Section 804 of the Alaska National Interest Lands Conservation Act (ANILCA) was the regulatory process the Board should use to allocate resources, when necessary, and not customary and traditional use determinations. The Council intended to submit regulatory proposals to the Board requesting to broaden the complex web of customary and traditional use determinations that currently existed in Southeast Alaska (Bangs 2016). The Board responded that the Southeast Alaska Council’s recommendation regarding customary and traditional use determinations aligned well with the current process followed statewide in the Federal Subsistence Management Program (Towarak 2016:5). Since then, the Council has requested, and the Board has adopted, customary and traditional use determinations for fish, deer, moose, brown bear, and black bear that include all rural residents of Southeast Alaska. This has greatly simplified these determinations that were originally adopted from State regulations at the formation of the Federal Subsistence Management Program in 1992.

**Existing Federal Regulation**

**Customary and traditional use determinations—Shellfish**

**Southeastern Alaska-Yakutat Area**

<i>Section 1E south of the latitude of Grant Island light</i>	<i>Shellfish, except shrimp, king crab, and Tanner crab</i>	<i>Residents of the Southeast Area</i>
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<i>Section 1F north of the latitude of the northernmost tip of Mary Island, except waters of Boca de Quadra</i>	<i>Shellfish, except shrimp, king crab, and Tanner crab</i>	<i>Residents of the Southeast Area</i>
<i>Section 3A and 3B</i>	<i>Shellfish, except shrimp, king crab, and Tanner crab</i>	<i>Residents of the Southeast Area</i>
<i>District 13</i>	<i>Dungeness crab, shrimp, abalone, sea cucumbers, gum boots, cockles, and clams, except geoducks</i>	<i>Residents of the Southeast Area</i>
<i>Remainder area</i>	<i>All shellfish</i>	<i>All rural residents</i>

**Proposed Federal Regulation**

**Customary and traditional use determinations—Shellfish**

**Southeastern Alaska-Yakutat Area**

<i>All districts</i>	<i>All shellfish</i>	<i>Residents of Southeastern Alaska and Yakutat Fishery Management Areas</i>
<del><i>Section 1E south of the latitude of Grant Island light</i></del>	<del><i>Shellfish, except shrimp, king crab, and Tanner crab</i></del>	<del><i>Residents of the Southeast Area</i></del>
<del><i>Section 1F north of the latitude of the northernmost tip of Mary Island, except waters of Boca de Quadra</i></del>	<del><i>Shellfish, except shrimp, king crab, and Tanner crab</i></del>	<del><i>Residents of the Southeast Area</i></del>
<del><i>Section 3A and 3B</i></del>	<del><i>Shellfish, except shrimp, king crab, and Tanner crab</i></del>	<del><i>Residents of the Southeast Area</i></del>

<i>District 13</i>	<i><del>Dungeness crab, shrimp, abalone, sea cucumbers, gum boots, cockles, and clams, except geoducks</del></i>	<i><del>Residents of the Southeast Area</del></i>
<i>Remainder area</i>	<i>All shellfish</i>	<i>All rural residents</i>

**Relevant Federal Regulations**

**36 FR 242.24 Customary and traditional use determinations**

*(a) . . . When there is a determination for specific communities or areas of residence in a Unit, all other communities not listed for that species in that Unit have no Federal subsistence priority for that species in that Unit. If no determination has been made for a species in a Unit, all rural Alaska residents are eligible to harvest fish or wildlife under this part.*

**36 CFR 242.4 Definitions**

*The following definitions apply to all regulations contained in this part:*

...

*Inland Waters means, for the purposes of this part, those waters located landward of the mean high tide line or the waters located upstream of the straight line drawn from headland to headland across the mouths of rivers or other waters as they flow into the sea. Inland waters include, but are not limited to, lakes, reservoirs, ponds, streams, and rivers.*

...

*Marine Waters means, for the purposes of this part, those waters located seaward of the mean high tide line or the waters located seaward of the straight line drawn from headland to headland across the mouths of rivers or other waters as they flow into the sea.*

**36 CFR 242.25 Subsistence taking of fish, wildlife, and shellfish: general regulations**

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

...

*Fresh water of streams and rivers means the line at which fresh water is separated from saltwater at the mouth of streams and rivers by a line drawn headland to headland across the mouth as the waters flow into the sea.*

**Note:** The Board's authority to manage shellfish exists only in Federal marine waters that are described in regulation (see **Extent of Federal Public Waters**, below).

### **Extent of Federal Public 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.

For the Yakutat Area, these regulations apply on inland fresh water, both navigable and non-navigable, within and adjacent to the exterior boundaries of Wrangell-St. Elias National Park and Preserve, Glacier Bay National Preserve, and Tongass National Forest and exclude marine waters (see **Yakutat Area Map**).

In order to engage in subsistence in Wrangell-St. Elias National Park, the National Park Service requires that subsistence users either live within the park resident zone (36 CFR 13.430, 36 CFR 13.1902) or have a subsistence permit (36 CFR 13.440) issued by the Park Superintendent. Yakutat is the only Southeast Alaska community within the Wrangell-St. Elias National Park resident zone.

For the Southeastern Alaska Area, these regulations apply on inland fresh water, both navigable and non-navigable, within and adjacent to the exterior boundaries of Tongass National Forest, Admiralty Island National Monument, Misty Fjords National Monument, Maritime National Wildlife Refuge (inland fresh waters of Forrester Island, Hazy Island, and Saint Lazaria Island) and exclude marine waters except in the following areas: Makhnati Island (**Figure 1**), Beacon Point on Kupreanof Island in Frederick Sound, Bushy Island in Snow Passage, Cape Strait on Kupreanof Island in Frederick Sound, Point Colpoys in Sumner Strait, Vank Island in Stikine Strait, High Point on Woronkofski Island, Key Reef in Clarence Strait, Low Point on Zarembo Island, McNamara Point on Zarembo Island, Mountain Point in Wrangell Narrows, Angle Point on Bold Island in Revillagigedo Channel, Cape Chacon on Prince of Wales Island in Dixon Entrance, Lewis Reef in Tongass Narrows, Lyman Point in Clarence Strait, Narrow Point on Prince of Wales Island in Clarence Strait, Niblack Point on Cleveland Peninsula in Clarence Strait, Rosa Reef in Tongass Narrows, Ship Island in Clarence Strait, Spire Island Reef in Revillagigedo Channel, Surprise Point in Nakat Inlet, Caamano Point on Cleveland Peninsula in Clarence Strait, Meyers Chuck in Clarence Strait, Round Island in Cordova Bay, Mary Island, and Tree Point (36 CFR §242.3(b)(5)(i) and 50 CFR §100.3(b)(5)(i)) (see **Appendix 1** and **Southeastern Alaska Area Maps**)

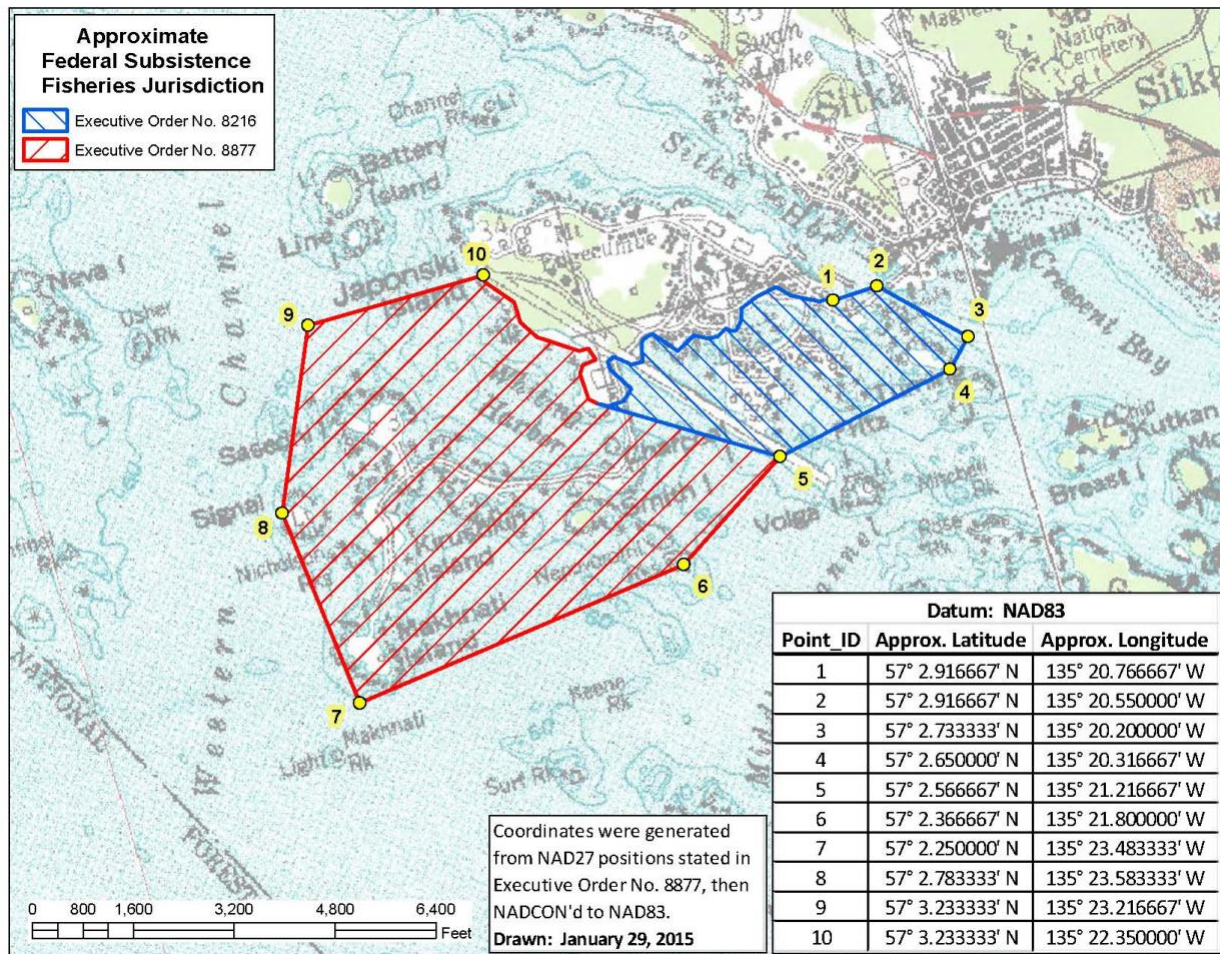
Glacier Bay National Park is closed to subsistence taking of fish and wildlife.

### **Regulatory History**

In 1992, the Federal Subsistence Management Program first issued hunting, trapping, and fishing regulations. No customary and traditional use determinations for shellfish in the Southeast Alaska Region were adopted, and no marine waters were identified under the Federal Program’s jurisdiction in Southeast Alaska (57 Fed. Reg. 104, 22940–22964 [May 29, 1992]).

In 1999, the Board adopted the current customary and traditional use determination for shellfish in Southeast Alaska as it revised determinations for fish and shellfish statewide to incorporate past Alaska Board of Fisheries customary and traditional use determinations that were in compliance with Title VIII of ANILCA (January 1990) and the determinations that the Board of Fisheries had made since 1990 where they applied on Federal public waters and were consistent with Title VIII of ANILCA (64 Fed. Reg. 64; 1279-1284 [January 8, 1999]).

In 2006, the Board added marine waters in the Makhnati Island area to Federal subsistence management jurisdiction (**Figure 1**, 71 Fed. Reg. 164, 49997-49999 [August 24, 2006]). In 2018, the Board further added multiple small areas of marine waters, listed above in Extent of Federal Public Waters and in **Appendix 1** (83 Fed. Reg. 100, 23813-23819 [May 23, 2018]). More small areas of marine waters in Southeast Alaska are pending to be included in Federal subsistence management jurisdiction (87 Fed. Reg. 92, 29061-29078 [May 12, 2022]).



**Figure 1.** Map of Federal public marine waters in the Makhnati Island area near Sitka, Alaska (Source: OSM 2022).

## Background

The rural area of Southeast Alaska encompasses about 32 small to medium sized communities, ranging in population from 25 or less (Point Baker, Elfin Cove, and Game Creek) to over 8,000 (Sitka) (**Table 1**). Many were established by Tlingit people and are situated at historical village sites or were established by Haida (Hydaburg and Kasaan) or Tsimshian (Metlakatla). Population growth in Southeast Alaska during the historical period (beginning in about 1750) has been affected by several waves of immigration. Russian fur traders established Sitka as their headquarters in the late 1700s. After the sale of Alaska to the United States in 1867, new industries (such as commercial fishing, canneries, and mining) and commercial trade were pursued with the associated influx of outsiders (Worl 1990). Beginning in the 1970s, timber logging camps sprang up and some have persisted as new communities, such as Game Creek and Thorne Bay (Ellanna and Sherrod 1986). Many rural communities in Southeast Alaska have at their core a *kwáan* or tribe (Goldschmidt and Haas 1998). Since 1960, the rural population of Southeast Alaska has doubled from 13,102 people in 1960 to 25,900 people in 2020 (**Table 1**). Some of this growth has been from new communities established near logging activities, growth in the recreation industry, and natural population growth (Cervený 2005).

**Table 1.** The number of people living in rural Southeast Alaska communities from 1960 to 2020, by fishing district residency, based on the U.S. Census (Source: ADLWD 2022).

Fishing District	Community	1960	1970	1980	1990	2000	2010	2020
1	Hyder CDP	32	49	77	99	97	87	48
1	Metlakatla CDP	1,135	1,245	1,333	1,464	1,375	1,405	1,454
1	Saxman city	153	135	273	369	431	411	384
2	Hollis CDP	0	0	0	111	139	112	65
2	Kasaan city	36	30	25	54	39	49	30
2	Thorne Bay city	0	443	377	569	557	471	476
3	Craig city	273	272	527	1,260	1,397	1,201	1,036
3	Edna Bay city	135	112	6	86	49	42	25
3	Hydaburg city	251	214	298	384	382	376	380
3	Klawock city	251	213	318	722	854	755	720
3	Naukati Bay CDP	0	0	0	93	135	113	142
5	Point Baker CDP	0	80	90	39	35	15	12
5	Port Protection CDP	0	0	40	62	63	48	36
6	Coffman Cove city	0	0	193	186	199	176	127
6	Petersburg Borough	1,528	2,078	2,868	3,230	3,247	2,975	3,398
6	Whale Pass city	0	0	90	75	58	31	86
8	Wrangell Borough	2,165	2,358	2,658	2,479	2,448	2,369	2,127
9	Kake city	455	448	555	700	710	557	543
9	Port Alexander city	18	36	86	119	81	52	78
12	Angoon city	395	400	465	638	572	459	357
12	Tenakee Springs city	109	86	138	94	104	131	116
13	Sitka Borough	3,237	6,109	7,803	8,588	8,835	8,881	8,458
14	Elfin Cove CDP	0	49	28	57	32	20	24

Fishing District	Community	1960	1970	1980	1990	2000	2010	2020
14	Game Creek CDP	0	0	0	61	35	18	23
14	Gustavus city	107	64	98	258	429	442	655
14	Hoonah city	686	748	680	795	860	760	931
14	Pelican city	135	133	180	222	163	88	98
14	Whitestone CDP	0	0	NA	164	116	114	2
15	Haines Borough	1,000	1,504	1,680	2,117	2,392	2,508	2,080
15	Klukwan CDP	112	103	135	129	139	95	87
15	Skagway Muni	659	675	814	692	862	920	1,240
	Yakutat Borough	230	190	449	534	808	662	662
Total		13,102	17,774	22,284	26,450	27,643	26,343	25,238

### Eight Factors for Determining Customary and Traditional Use

Customary and traditional uses in a community or area is generally exemplified through the eight factors: (1) a long-term, consistent pattern of use, excluding interruptions beyond the control of the community or area; (2) a pattern of use recurring in specific seasons for many years; (3) a pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics; (4) the consistent harvest and use of fish or wildlife as related to past methods and means of taking: near, or reasonably accessible from the community or area; (5) a means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate; (6) a pattern of use which includes the handing down of knowledge of fishing and hunting skills, values, and lore from generation to generation; (7) a pattern of use in which the harvest is shared or distributed within a definable community of persons; and (8) a pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area.

The Board makes customary and traditional use determinations based on a holistic application of these eight factors. In addition, the Board takes into consideration the reports and recommendations of any appropriate Regional Advisory Council regarding customary and traditional use of subsistence resources (50 CFR 100.16(b) and 36 CFR 242.16(b)). The Board makes customary and traditional use determinations for the sole purpose of recognizing the pool of users who generally exhibit the eight factors. The Board does not use such determinations for resource management or restricting harvest. If a conservation concern exists for a particular population, the Board addresses that concern through the imposition of harvest limits or season restrictions rather than by limiting the customary and traditional use finding.

## Introduction

Shellfish have been seasonally harvested and used by Tlingit, Haida, and Tsimshian people in the Southeast Alaska Region since well before historical contact and continue to be an important resource as documented in numerous ethnographies (de Laguna 1972, Emmons 1991, Deur et al. 2015) and studies of subsistence uses in the Southeast Alaska Region by Native and non-Native residents (Gmelch and Gmelch 1983; Ellanna and Sherrod 1986; Mills and Firman 1986; Cohen 1989; George and Bosworth 1988; Smythe 1988; Firman and Bosworth 1990; Bosworth 1991; Goldschmidt and Haas 1998; Meuret-Woody et al. 2010; Sill and Koster 2017a, 2017b; and Sill et al. 2017).

Many rural communities in the Southeast Alaska Region are characterized by large extended families with long histories and experience in their local areas and possess considerable depth of knowledge regarding resource skills, values, and cultural connections to shrimp, crabs, clams, cockles, chitons, octopus, and other shellfish (Newton and Moss 2009).

The Tlingit culture has co-evolved with the environment and is well adapted to it. Furthermore, individual kwáans seem to have evolved their cultural adaptations to local environmental conditions (Newton and Moss 2009).

The Tlingit tradition encompasses the wholeness of the natural world and integrates it within the human world. All aspects of culture blend together and incorporate the physical and biological environment so successfully that the division between the “natural” and the human world seems artificial. For example, the *atxaayi*, or lifeway, is not merely the technology of procurement, processing, and storage (Ramos and Mason 2004, Langdon 2007, Newton and Moss 2009). Tlingit describe *atxaayi* as harvesting resources in a way that is “sustainable” in terms of the resiliency of humans, animals, and plants, and “traditional resource harvesting can and should play a role in ecosystem maintenance and conservation” (Deur et al. 2015: 97).

Shellfish are good sources of protein. Gumboots and cockles are high in iron, and gumboots are rich in Vitamin A, riboflavin, and niacin. Shellfish are also relatively low in calories and fat. They are a reliable source of fresh protein and played a prominent role in the traditional diet, especially during late winter and early spring (Hooper 1981 *in* Newton and Moss 2009).

Historically, people used shellfish for other uses besides food. Large clam shells were used as dishes and spoons. Spoons were also made by attaching smaller clam shells and mussel shells to wooden handles. Pieces of shell were used as surgical tools to puncture and drain inflammations. Large mussel shells were made into knives for dressing wildlife and fish, and medium-sized mussel shells were used as tools by basket makers and mat weavers. Shell fragments were inlaid into carvings and scallop shells were used to make rattles. Various species of starfish and jellyfish were used for medicine (Emmons 1991).

Harvest of shellfish for home use continues throughout the region in all communities, depending on species availability, food preferences, and other factors.

### Seasonality

Residents of rural Southeast Alaska lump intertidal plants and animals together as “beach food.” Traditional taxonomies of shellfish used by people in rural Southeast Alaska are described in **Table 2**. Beach food is a good portion of the diet, especially in winter and early spring when little other fresh food is available. In winter, shellfish beds close to villages are harvested for fresh meat as people draw upon their cached provisions. Today, residents of Southeast Alaska are urged to avoid shellfish at certain times of the year because of the danger of paralytic shellfish poisoning (PSP). Many cautionary tales exist among the Tlingit about avoiding shellfish during spring and summer. For example, George Davis, who grew up in Angoon, called April, *Núkt*, the time of year when the grouse hoots and you stop eating clams (Newton and Moss 2009).

**Table 2.** Shellfishes named in English, Latin, Tlingit, Haida, and Tsimshian (Sources: Goldschmidt and Haas 1998, Newton and Moss 2009, Edwards 2009, Roberts 2009, Lacher 2010).

Common Name	Linnaean	Tlingit	Haida	Tsimshian
Abalone	<i>Haliotis kamtschatkana</i>	Gún <sub>x</sub> aa	Gúlaa	Bilha
Chiton, Gumboot	<i>Cryptochiton stelleri</i>	Shaaw	T'a	'Yaansh
Clam		Gáal'		'Dsa'ack
Butter clam	<i>Saxidomus giganteus</i>	Gáal'	K'yúu, K'áag	
Littleneck clam	<i>Protothaca staminea</i>	Tl'ildaaskeit	K'áag	
Razor clam	<i>Siliqua patula</i>	K'alkátsk	K'amahl	
Horse clam	<i>Tresus spp.</i>	Yeis	Skáw	Loan
Slipper	<i>Crepidula spp.</i>	Koow		
Cockle	<i>Clinocardium nuttallii</i>	Yalooleit	Sgyáal	Ggaboack
Crab		S'áaw	K'ust'áan	'Kalmoash
Dungeness crab	<i>Cancer magister</i>	S'áaw		
King crab	<i>Paralithodes spp.</i>	X'éix	Húugaa	
	<i>Lithodes spp.</i>			
Tanner crab	<i>Chionoecetes spp.</i>	S'áaw		
Snow crab				
Box crab	<i>Lopholithodes sp.</i>	X'éix		
Limpet, Raven's hat	<i>Acmaea sp.</i>	Yéil ts'áaxu		
Mussel	<i>Mytilus sp.</i>	Yaak, Yées'	ǵál, sǵáw	Gyelsh, Hagwn
Octopus, Devilfish	<i>Octopus dofleini</i>	Náakw	Núu	Ha'tsal
Sea anemone	<i>Metridium spp.</i>	Tayataayi,	Tl'at'áan,	Da'ka'aaw
			Xáng tl'adáan	
Sea cucumber	<i>Apostichopus californicus</i>	Yéin	Yáanuu	Gyantee
Sea urchin	<i>Strongylocentrotus spp.</i>	Nées', X'waash	Gúudiingaay,	Ashwn
			Stáw	
Shrimp	<i>Pandalus spp.</i>	S'éex'át	Dag	

In the days before pot fishing for crabs, Tlingit used to harvest crabs in the spring and summer by fishing off the beaches in the shallow waters during low tide. King Crabs were also harvested when they moved into shallow water in late winter, where they often stayed until spring. Pot fishing increased seasons that King and Tanner crabs could be harvested (Ober 1973).



Seasonal use is affected by various factors, including species' annual migrations, the weather, tidal fluctuations, other harvesting activities, regulations, and paralytic shellfish-poisoning concerns. Clam harvests are generally avoided during summer months, the season of maximum concern for paralytic shellfish poisoning. Crab and shrimp harvests often occur as a supplemental activity to other boating pursuits or commercial fishing trips (Cohen 1989, Firman and Bosworth 1990).

### Method and Means

Shellfish harvest areas are generally the coastal flats, rocky headlands, and sheltered bays close to communities (Cohen 1989: 79–85; Meuret-Woody et al. 2010)

Historically, Dungeness Crabs were speared or kicked out of the sand or mud at low tide (Jacobs and Jacobs 1982). In some cases, special digging sticks were used for crabs and other shellfish (De Laguna 1972). People traditionally harvested King Crabs at low tide using barbed spears, long poles with loop of twine at the end, or bated lines with or without treble hooks that hung below the bait. King and Tanner crabs were also caught in deeper waters while harvesting other species; crabs would either be tangled in the net or fishing line, or they would grab a baited hook and be taken to the surface. Many species were gathered at low tide. Occasionally King Crabs were also incidentally caught on halibut gear (Ratner and Turek 2009a).

Currently King and Tanner crabs are harvested with pots in the deeper waters of bays and inlets or when they move to shallow water. At these times, pots are set from local docks or in shallow bays to target King and Dungeness crabs. Shrimp and crabs are also removed from commercial catches for home use; however, most marine resources used for home use are harvested under sport, personal use, or subsistence regulations (Smythe 1988; Ratner and Turek 2009a, 2009b).

Many intertidal shellfish including clams, cockles, chitons, sea urchins, and sea cucumbers, continue to be gathered during low tide. Octopuses are found along the shorelines in small underwater caves or rock overhangs from which they can be extricated using a long-handled hook. They are also retained from the bycatch of commercial or personal use shellfish fisheries (Cohen 1989). Abalone are generally picked off rocks at low tide. In some areas, harvesters use diving gear to target shellfish, however the cost of gear and skills required are considerable and limit its use (Ratner and Turek 2009b).

### Preparing, Preserving, and Storing

Historically, Tlingit ate shellfish fresh or strung up and dried them for winter use. Sea urchin roe were scooped out and eaten raw. Crabs were boiled and greatly enjoyed (Emmons 1991). Oberg (1973:67) reported that “on the islands great quantities of clams and mussels are taken and dried, smoked, and packed in airtight boxes or hung in the roof where they keep dry.” Clams were baked.

In more recent times, shellfish are eaten fresh or frozen for later consumption. Clams are occasionally canned. Octopuses are pickled, boiled, or fried for human consumption and are also used as bait for halibut (Ratner and Turek 2009b).

### Harvest and Use Estimates

Annual harvest estimates between the years 1983 and 2015 were collected by the Alaska Department of Fish and Game (ADF&G) Division of Subsistence in collaboration with rural communities in the Southeast Alaska Region. Estimates suggest that shellfish were used by over 70% of households in most communities and ranged from a low of 15% of households using shellfish at Klukwan in 1983 to a high of 100% of households at Beecher Pass (1987), Coffman Cove (1998), Edna Bay (1987), Game Creek (1996), Kasaan (1987, 1998), Point Baker (1996), and Yakutat (1984) (**Table 3** and **Table 4**, ADF&G 2022).

**Table 3.** The estimated percentage of households using, attempting to harvest, harvesting, giving, and receiving shellfish for one year study periods between 1983 and 2015, in rural communities in the Yakutat and Southeastern Alaska areas, based on household surveys. A blank cell=question not asked (Source: ADF&G 2022).

Community	Study Year	Households using shellfish	Households attempting to harvest shellfish	Households harvesting shellfish	Households giving shellfish	Households receiving shellfish
Angoon	1984	87%	84%	84%	45%	58%
Angoon	1987	88%		75%	40%	61%
Angoon	1996	89%	78%	78%	42%	73%
Angoon	2012	82%	53%	51%	49%	69%
Beecher Pass	1987	100%		80%	60%	100%
Coffman Cove	1987	72%		41%	18%	62%
Coffman Cove	1998	100%	78%	78%	42%	76%
Craig	1987	76%		48%	25%	62%
Craig	1997	80%	49%	49%	34%	66%
Edna Bay	1987	100%		90%	60%	85%
Edna Bay	1998	50%	42%	42%	8%	17%
Elfin Cove	1987	92%		62%	39%	92%
Game Creek	1996	100%	75%	58%	67%	100%
Gustavus	1987	90%		72%	41%	68%
Haines	1983	42%	27%	20%	5%	29%
Haines	1987	56%		15%	11%	53%
Haines	1996	77%	26%	26%	19%	68%
Haines	2012	74%	39%	39%	21%	52%
Hollis	1987	93%		75%	33%	63%
Hollis	1998	76%	59%	59%	41%	41%
Hoonah	1985	85%		66%		
Hoonah	1987	87%		60%	42%	81%
Hoonah	1996	78%	61%	61%	52%	68%
Hoonah	2012	84%	52%	52%	48%	70%
Hydaburg	1987	91%		69%	43%	87%
Hydaburg	1997	96%	59%	59%	53%	92%
Hydaburg	2012	96%	65%	65%	63%	83%
Hyder	1987	82%		55%	24%	58%
Kake	1985	94%		71%		
Kake	1987	91%		52%	34%	85%
Kake	1996	86%	49%	48%	38%	78%

Community	Study Year	Households using shellfish	Households attempting to harvest shellfish	Households harvesting shellfish	Households giving shellfish	Households receiving shellfish
Kasaan	1987	100%		100%	64%	86%
Kasaan	1998	100%	79%	79%	57%	93%
Klawock	1984	83%	61%	61%	44%	61%
Klawock	1987	77%		41%	24%	62%
Klawock	1997	76%	49%	47%	31%	59%
Klukwan	1983	15%	12%	9%	3%	9%
Klukwan	1987	36%		10%	7%	34%
Klukwan	1996	77%	36%	36%	42%	74%
Klukwan	2014	50%	8%	8%	17%	50%
Metlakatla	1987	83%		39%	28%	74%
Meyers Chuck	1987	90%		70%	20%	60%
Naukati Bay	1998	84%	62%	62%	40%	70%
Pelican	1987	95%		68%	42%	85%
Petersburg	1987	80%		56%	43%	76%
Petersburg	2000	82%	45%	45%	32%	70%
Point Baker	1987	95%		74%	37%	68%
Point Baker	1996	100%	63%	63%	56%	94%
Port Alexander	1987	86%		71%	33%	65%
Port Protection	1987	92%		84%	60%	60%
Port Protection	1996	92%	84%	84%	48%	72%
Saxman	1987	72%		43%	19%	51%
Saxman	1999	73%	38%	38%	34%	58%
Sitka	1987	45%		45%	0%	0%
Sitka	1996	72%	45%	44%	32%	61%
Sitka	2013	64%	38%	37%	32%	50%
Skagway	1987	76%		20%	10%	71%
Tenakee Springs	1984	96%	67%	67%	42%	79%
Tenakee Springs	1987	94%		64%	45%	74%
Thorne Bay	1987	82%		61%	27%	57%
Thorne Bay	1998	60%	48%	48%	23%	34%
Whale Pass	1987	94%		78%	22%	56%
Whale Pass	1998	93%	53%	53%	33%	80%
Whale Pass	2012	81%	57%	57%	14%	48%
Whitestone	1996	79%	67%	67%	25%	46%
Wrangell	1987	86%		43%	30%	77%
Wrangell	2000	83%	47%	46%	43%	72%
Yakutat	1984	100%	76%	76%	56%	96%
Yakutat	1987	93%		76%	56%	89%
Yakutat	2000	91%	75%	72%	64%	79%

**Table 4.** The estimated harvest of shellfish by edible weight in pounds by rural Southeast Alaska communities for one year study periods between 1983 and 2015 (CI 95%, lower harvest estimate is the lower bound of the estimate or the reported harvest, whichever is larger) (Source: ADF&G 2022).

Community	Study year	Shellfish estimated harvest (in pounds edible weight)	Lower harvest estimate	Upper harvest estimate	Per person harvest
Angoon	1984	8,056	5,281	10,831	13
Angoon	1987	13,510	10,018	17,001	26
Angoon	1996	17,480	13,799	21,161	30
Angoon	2012	7,671	3,774	11,568	22
Beecher Pass	1987	4,100	1,206	8,084	93
Coffman Cove	1987	1,588	1,133	2,044	9
Coffman Cove	1998	10,462	8,256	12,668	49
Craig	1987	33,739	7,953	59,524	29
Craig	1997	50,446	34,643	66,249	29
Edna Bay	1987	4,659	4,437	5,106	67
Edna Bay	1998	864	610	1,480	16
Elfin Cove	1987	1,413	967	2,027	24
Game Creek	1996	2,320	1,856	3,720	36
Gustavus	1987	4,336	3,037	5,636	28
Haines	1983	5,293	1,179	9,484	3
Haines	1987	6,563	800	12,326	4
Haines	1996	22,599	8,828	36,370	11
Haines	2012	22,837	9,135	36,539	12
Hollis	1987	3,910	3,910	3,910	49
Hollis	1998	8,251	6,433	10,620	53
Hoonah	1985	20,090	13,481	26,699	22
Hoonah	1987	34,591	21,966	47,215	49
Hoonah	1996	51,956	32,321	71,590	58
Hoonah	2012	29,803	21,369	38,237	41
Hydaburg	1987	19,512	12,383	26,640	51
Hydaburg	1997	40,694	21,703	59,684	101
Hydaburg	2012	27,630	16,799	38,460	83
Hyder	1987	6,639	5,618	9,205	85
Kake	1985	11,944	8,576	15,312	19
Kake	1987	11,307	7,475	15,139	18
Kake	1996	16,381	5,985	26,777	22
Kasaan	1987	2,745	2,745	2,745	69
Kasaan	1998	2,673	2,079	3,921	61
Klawock	1984	13,353	5,681	21,025	28
Klawock	1987	31,799	15,412	48,186	40
Klawock	1997	31,587	19,042	44,132	37
Klukwan	1983	14	11	24	<1
Klukwan	1987	161	119	204	1
Klukwan	1996	1,557	1,341	2,039	14
Klukwan	2014	319	239	327	5
Metlakatla	1987	22,934	11,219	34,650	15
Meyers Chuck	1987	1,914	1,914	1,914	64
Naukatli Bay	1998	7,852	5,949	9,820	54
Pelican	1987	11,153	11,153	11,153	47

Community	Study year	Shellfish estimated harvest (in pounds edible weight)	Lower harvest estimate	Upper harvest estimate	Per person harvest
Petersburg	1987	144,008	47,626	240,389	39
Petersburg	2000	109,287	46,822	171,751	37
Point Baker	1987	2,323	2,323	2,323	66
Point Baker	1996	2,756	2,321	3,727	58
Port Alexander	1987	3,316	3,078	3,554	31
Port Protection	1987	2,506	2,320	2,745	43
Port Protection	1996	13,604	8,503	19,870	139
Saxman	1987	3,704	1,953	5,455	14
Saxman	1999	13,022	10,219	15,825	23
Sitka	1987	145,433	111,989	178,877	18
Sitka	1996	234,496	156,452	312,541	27
Sitka	2013	146,387	73,926	218,849	19
Skagway	1987	5,224	1,023	9,426	9
Tenakee Springs	1984	5,734	2,978	10,816	61
Tenakee Springs	1987	4,065	3,012	5,118	43
Thorne Bay	1987	11,485	7,086	15,885	24
Thorne Bay	1998	13,692	5,973	21,572	26
Whale Pass	1987	1,702	1,702	1,702	33
Whale Pass	1998	3,092	2,319	5,064	57
Whale Pass	2012	1,316	1,024	1,786	24
Whitestone	1996	3,274	1,916	4,785	23
Wrangell	1987	107,144	37,705	176,582	38
Wrangell	2000	116,768	15,319	230,408	60
Yakutat	1984	24,802	12,264	37,340	46
Yakutat	1987	23,366	17,529	29,203	40
Yakutat	2000	34,447	27,840	41,053	54
Yakutat	2015	6,926	4,772	9,080	12

Shrimp, crabs, and clams are harvested at the highest levels compared to other shellfish. In some communities, cockles, chitons, scallops, and octopi are also harvested at high levels compared to other shellfish. Smaller numbers of geoducks, mussels, scallops, sea cucumbers, abalone, and sea urchins are harvested (ADF&G 2022). While the overall harvest of shellfish is generally high, harvest levels depend on species availability, species migration patterns, food preferences, and other factors (Firman and Bosworth 1990, Smythe 1988, Cohen 1989).

### Sharing

Traditionally and historically, environmental and seasonal variations have significant influence on the Tlingit people, their relationship to their territory, and with one another. Kwáans are composed of a number of clans each of which travelled seasonally to subsistence camps but returned to a permanent winter village to join the other clans belonging to that kwáan. Clan ties extend beyond circumscribed local areas; many clans are represented by people living in the permanent villages of several kwáans. At another level of organization, clans are grouped together to form the Raven and Eagle and in some

places the Wolf moieties. These nested relationships mean that everyone has some kind of relative in each community, and this greatly facilitates trade. Island residents might visit their mainland relatives and exchange herring eggs, seal oil, seaweed, dried venison or shellfish for mainland furs, eulachon grease, or mountain goat wool. Both the uneven distribution of the various natural resources and the complexity of social relationships encourages the long-distance travel and trade for which the Tlingit are famous (Newton and Moss 2009).

Shellfish were and continue to be distributed through kin and community networks. People sharing their harvests of wild resources is a predominant feature of subsistence economies in Alaska. **Table 5** indicates that high levels of sharing occur in rural Southeast Alaska communities. A large majority of households share, either through giving or receiving, based on household surveys conducted since the 1980s (ADF&G 2022).

**Table 5.** The estimated percentage of households using, attempting to harvest, harvesting, giving, and receiving wild resources for one year study periods between 1983 and 2015 in rural Southeast Alaska communities, based on household surveys (Source: ADF&G 2022).

Community	Study year	Households using wild resources	Households harvesting wild resources	Households giving wild resources	Households receiving wild resources
Angoon	1984	97%	97%	74%	87%
Angoon	1987	100%	99%	84%	93%
Angoon	1996	97%	93%	68%	95%
Beecher Pass	1987	100%	100%	100%	100%
Coffman Cove	1987	97%	88%	53%	90%
Coffman Cove	1998	100%	98%	78%	86%
Craig	1987	97%	91%	70%	88%
Craig	1997	99%	90%	16%	91%
Edna Bay	1987	100%	100%	100%	100%
Edna Bay	1998	100%	100%	58%	58%
Elfin Cove	1987	100%	100%	92%	100%
Game Creek	1996	100%	100%	83%	100%
Gustavus	1987	100%	100%	90%	90%
Haines	1983	97%	88%	42%	78%
Haines	1987	93%	83%	67%	85%
Haines	1996	98%	91%	72%	97%
Haines	2012	99%	90%	71%	90%
Hollis	1987	100%	88%	59%	93%
Hollis	1998	96%	91%	67%	74%
Hoonah	1987	100%	95%	84%	100%
Hoonah	1996	97%	95%	78%	90%
Hoonah	2012	98%	90%	85%	96%
Hoonah	2016	100%	94%	88%	98%
Hydaburg	1987	100%	91%	75%	93%
Hydaburg	1997	100%	90%	80%	100%
Hydaburg	2012	100%	98%	90%	98%
Hyder	1987	97%	91%	33%	76%
Kake	1987	97%	91%	66%	91%
Kake	1996	99%	85%	75%	96%
Kasaan	1987	100%	100%	86%	100%

Community	Study year	Households using wild resources	Households harvesting wild resources	Households giving wild resources	Households receiving wild resources
Kasaan	1998	100%	100%	93%	100%
Klawock	1984	100%	97%	83%	81%
Klawock	1987	100%	96%	62%	83%
Klawock	1997	100%	91%	77%	94%
Klukwan	1983	100%	97%	64%	70%
Klukwan	1987	100%	95%	74%	100%
Klukwan	1996	100%	94%	90%	100%
Klukwan	2014	100%	79%	100%	88%
Metlakatla	1987	100%	77%	53%	99%
Meyers Chuck	1987	100%	100%	60%	80%
Naukati Bay	1998	98%	94%	66%	90%
Pelican	1987	100%	92%	78%	99%
Petersburg	1987	97%	94%	87%	93%
Petersburg	2000	94%	78%	55%	87%
Point Baker	1987	100%	100%	90%	95%
Point Baker	1996	100%	100%	75%	100%
Port Alexander	1987	100%	100%	86%	94%
Port Protection	1987	100%	100%	80%	96%
Port Protection	1996	100%	92%	76%	96%
Saxman	1987	97%	83%	45%	95%
Saxman	1999	97%	79%	70%	92%
Sitka	2013	99%	91%	76%	92%
Skagway	1987	96%	68%	38%	93%
Tenakee Spr	1984	96%	88%	79%	92%
Tenakee Spr	1987	100%	90%	68%	97%
Thorne Bay	1987	100%	97%	66%	87%
Thorne Bay	1998	93%	91%	61%	57%
Whale Pass	1987	100%	100%	72%	67%
Whale Pass	1998	100%	100%	80%	100%
Whale Pass	2012	100%	100%	67%	76%
Whitestone	1996	100%	96%	50%	67%
Wrangell	1987	95%	80%	63%	90%
Wrangell	2000	94%	81%	65%	89%
Yakutat	1984	100%	98%	86%	98%
Yakutat	1987	96%	96%	99%	93%
Yakutat	2000	100%	95%	89%	99%
Yakutat	2015	99%	93%	87%	97%

### Reliance upon a Wide Diversity of Fish and Wildlife

Most communities in Southeast Alaska rely on a wide variety of wild resources. These resources comprise a substantial portion of dietary intake. The Alaska Department of Fish and Game Division of Subsistence household surveys conducted between 1983 and 2015 demonstrate this variety of use. Harvest level estimates are described in categories such as salmon, nonsalmon fish, land mammals, marine mammals, birds and eggs, shellfish, and plants and berries in pounds edible weight annually. Overall annual harvest rates above 200 pounds per person are common. In general, rural Southeast

Alaska communities harvest fish at the highest rates and land mammals, such as deer and moose, and shellfish are also harvested at high rates. Marine mammals, birds, and plants and berries compose smaller portions of annual harvests but are important components of the diet (**Table 5**, ADF&G 2022).

**Table 5.** The estimated harvest of wild resources for subsistence, in pounds of edible weight per person, in rural Southeast Alaska communities for one year study periods between 1983 and 2015, based on household surveys (Source: ADF&G 2022).

Community	Study year	Salmon	Nonsalmon fishes	Land mammals	Marine mammals	Birds and eggs	Shellfish	Plants and berries	Total
Angoon	1984	74	46	58	17	1	13	8	216
Angoon	1987	71	35	73	32	1	26	7	244
Angoon	1996	82	48	51	9	0	30	4	224
Angoon	2012	37	53	51	5	0	22	13	183
Beecher Pass	1987	131	108	109	0	23	93	13	477
Coffman Cove	1987	52	56	60	1	1	9	5	183
Coffman Cove	1998	63	83	66	1	3	49	11	276
Craig	1987	40	62	42	5	1	29	6	185
Craig	1997	65	63	47	10	1	29	19	232
Edna Bay	1987	99	135	147	0	4	67	26	479
Edna Bay	1998	55	186	90	0	0	16	36	383
Elfin Cove	1987	81	59	72	0	0	24	27	263
Game Creek	1996	27	54	47	0	3	36	20	187
Gustavus	1987	55	82	64	0	2	28	10	241
Haines	1983	46	33	34	1	3	3	5	126
Haines	1987	28	37	23	0	1	4	5	97
Haines	1996	58	81	29	1	1	11	15	196
Haines	2012	47	38	28	0	1	12	10	135
Hollis	1987	44	35	42	0	1	49	11	183
Hollis	1998	40	31	40	0	0	53	6	169
Hoonah	1985	47	40	58	21	1	22	21	210
Hoonah	1987	100	78	90	53	1	49	13	385
Hoonah	1996	113	67	81	23	1	58	30	372
Hoonah	2012	72	120	52	13	2	41	44	343
Hydaburg	1987	137	83	43	7	1	51	14	336
Hydaburg	1997	117	109	35	3	1	101	19	384
Hydaburg	2012	214	133	68	5	0	83	27	531
Hyder	1987	121	86	32	8	6	85	7	345
Kake	1985	69	46	27	26	1	19	29	218
Kake	1987	35	33	39	23	1	18	15	163
Kake	1996	44	42	52	10	1	22	9	179
Kasaan	1987	32	32	40	2	0	69	6	182
Kasaan	1998	93	184	70	25	0	61	19	452
Klawock	1984	69	58	36	14	1	28	18	223
Klawock	1987	75	72	47	5	1	40	7	247
Klawock	1997	105	78	54	21	1	37	24	320
Klukwan	1983	114	33	14	2	1	0	6	170
Klukwan	1987	124	81	14	8	1	1	10	238
Klukwan	1996	267	252	28	3	1	14	45	608
Klukwan	2014	299	101	26	4	1	5	16	452



Community	Study year	Salmon	Nonsalmon fishes	Land mammals	Marine mammals	Birds and eggs	Shellfish	Plants and berries	Total
Metlakatla	1987	20	17	11	1	1	15	5	70
Meyers Chuck	1987	105	174	48	0	9	64	14	414
Naukati Bay	1998	49	73	51	1	2	54	12	242
Pelican	1987	60	119	111	8	1	47	9	355
Petersburg	1987	45	44	57	0	4	39	9	198
Petersburg	2000	60	42	17	0	1	37	4	161
Point Baker	1987	89	66	101	0	3	66	20	346
Point Baker	1996	82	89	47	0	0	58	12	289
Prt Alexander	1987	70	70	108	3	1	31	28	312
Prt Protection	1987	111	88	41	0	2	43	19	304
Prt Protection	1996	59	111	101	9	2	139	30	451
Saxman	1987	33	19	20	2	0	14	4	94
Saxman	1999	84	47	29	12	0	23	23	217
Sitka	1987	39	43	38	1	1	18	5	145
Sitka	1996	58	54	51	7	1	27	7	205
Sitka	2013	46	68	26	3	0	19	12	175
Skagway	1987	18	16	4	0	0	9	2	48
Tenakee Spr	1984	71	42	65	4	0	61	7	250
Tenakee Spr	1987	49	82	135	8	2	43	11	330
Thorne Bay	1987	48	73	40	0	1	24	4	189
Thorne Bay	1998	62	37	36	11	1	26	6	179
Whale Pass	1987	41	37	60	2	1	33	5	179
Whale Pass	1998	28	36	51	0	0	57	13	185
Whale Pass	2012	52	76	80	0	13	24	3	247
Whitestone	1996	21	71	57	0	1	23	5	178
Wrangell	1987	30	43	32	7	1	38	4	155
Wrangell	2000	26	34	39	0	1	60	8	168
Yakutat	1984	129	82	52	24	10	46	26	369
Yakutat	1987	216	77	15	31	2	40	17	398
Yakutat	2000	145	87	34	35	3	54	27	386
Yakutat	2015	93	47	49	33	4	12	25	262

### Effects of the Proposal

If Proposal FP23-20 is adopted, then rural residents of the Southeastern Alaska-Yakutat Areas will be eligible to harvest shellfish under Federal regulations in the future; no Federal shellfish regulations exist in Southeast Alaska at this time. If adopted, these regulations will cover shellfish harvesting in the Makhnati Island area near Sitka, primarily. Additionally, other rural residents of Alaska, outside of Southeast Alaska, will no longer be eligible to harvest shellfish in the remainder area of Southeast Alaska. Effects on shellfish populations are anticipated to be minimal.

If Proposal FP23-20 is not adopted, then status quo is maintained. The Board recognizes customary and traditional uses of some but not all shellfish species by rural residents of Southeast Alaska in all or parts

of Districts 1, 3 and 13 (including Federal public waters of the Makhnati Island Area). Effects on other uses and shellfish populations are not anticipated.

## **OSM CONCLUSION**

**Support** Proposal FP23-20.

### **Justification**

The harvest and use of shellfish by rural residents of Southeast Alaska exemplify customary and traditional uses even though few marine waters are currently under Federal jurisdiction. Marine waters currently under Federal jurisdiction are in the Makhnati Island area near Sitka, primarily. The Southeast Alaska Council's stated intent is to request the Board to recognize customary and traditional uses of all fish and wildlife in Southeast Alaska that have been taken for food or other purposes, including handicrafts, ceremonies, and customary trade. The Council said its recommendations to the Board are intended to include residents of all rural Southeast communities and areas, and the three criteria in Section 804 of ANILCA is the regulatory process the Board should use to allocate resources, when necessary, and not customary and traditional use determinations. This will greatly simplify the patchwork of determinations.

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## SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATIONS

### Southeast Alaska Subsistence Regional Advisory Council

**Support** FP23-20. The Council stated that there is more than substantial evidence that every village in the Southeast Alaska region has used shellfish and other “beach foods.” The Council believes that this customary and traditional use determination will be beneficial to the people of Southeast Alaska when regulations on shellfish are put into place.

### 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

This proposal would modify the customary and traditional (C&T) use determination for all shellfish in the Southeast Alaska and Yakutat areas to include all rural residents of the Southeast Alaska and Yakutat areas.

#### Position

The Alaska Department of Fish & Game (ADF&G) is **NEUTRAL** on eligibility requirements for participation in the federal subsistence program provided under Alaska National Interest Lands Conservation Act (ANILCA). ADF&G recommends the Federal Subsistence Board (FSB) thoroughly and carefully review the data relevant to the 8 criteria for those communities that currently lack a C&T finding.

#### Background

Throughout Southeast Alaska, people have traditionally harvested many types of shellfish as an important component of their diet and seasonal round. Shellfish were, and still are, harvested year-round in a variety of locations utilizing multiple methods. They continue to be part of a wide range of resources relied upon. Most shellfish are harvested in marine waters, and the majority of marine waters in Southeast Alaska are under state jurisdiction, therefore contemporary shellfish harvests take place under state subsistence regulations.

Permits are generally not required to harvest shellfish under state subsistence regulations, with the exception of shrimp. Regulations providing limitations on gear, possession limits, and/or minimum sizes exist for shrimp, Dungeness crab, king crab, Tanner crab, geoducks and razor clams, abalone, and scallops in the Southeast Alaska-Yakutat area. Shellfish are also harvested under personal use, sport, and commercial fisheries. Currently there are no existing federal subsistence shellfish regulations specific to this area.

Federal C&T use determinations were adopted from a portion of the state's shellfish C&T findings in place in at the time the federal subsistence management program began. Those state C&T findings were crafted when the state's subsistence law recognized a rural priority, and so took into account a community's traditional use areas. State C&T findings have been modified and expanded since that time. Federally qualified users (FQU) are also subsistence users under state regulations and are able to harvest shellfish in any state subsistence fishery.

### **Impact on Subsistence Users**

If adopted, this proposal would increase the pool of subsistence users eligible to participate in subsistence shellfish harvesting opportunities provided under ANILCA.

### **Impact on Other Users**

If adopted, the impact of this proposal to other users would depend on future actions taken by the Federal Subsistence Board or the Alaska Board of Fisheries to provide opportunities to a larger pool of users eligible for fishing under ANILCA.

### **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 various shellfish stocks found throughout the Southeast and Yakutat areas. The C&T findings are listed below.

**Amounts Reasonably Necessary for Subsistence:** The BOF has not determined an amount necessary for subsistence for any shellfish populations in the Southeastern Alaska-Yakutat area.

State C&T use findings for the Southeastern Alaska-Yakutat area outside of the Juneau and Ketchikan nonsubsistence areas:

- (1) District 1: shellfish, except shrimp, king crab, and Tanner crab, in the waters of
  - (A) Section 1-E south of the latitude of Grant Island Light;
  - (B) Section 1-F north of the latitude of the northernmost tip of Mary Island, except the waters of Boca de Quadra;
- (2) District 2: shellfish, except shrimp, king crab, and Tanner crab, in the waters north of the latitude of the northernmost tip of Chasina Point and west of a line from the northernmost tip of Chasina Point to the easternmost tip of Grindall Island to the easternmost tip of the Kasaan Peninsula;
- (3) District 3: shellfish, except shrimp, king crab, and Tanner crab, in the waters of Section 3-A and Section 3-B;
- (4) District 5: shellfish, except shrimp, king crab, and Tanner crab, in the waters of District 5 that are
  - (A) except as specified in (B) of this paragraph, north of a line from Point St. Albans to Cape Pole; and
  - (B) north of 56\_ 40' N. lat.;
- (5) District 6: shellfish, except shrimp, king crab, and Tanner crab, in the waters of
  - (A) Section 6-A west of a line from Macnamara Point to Mitchell Point; and

- (B) Section 6-B west of the longitude of Macnamara Point;
- (6) District 7: shellfish, except king crab and Tanner crab, in the waters of District 7;
- (7) District 8: shellfish, except king crab and Tanner crab, in the waters of District 8;
- (8) District 9: shellfish, except shrimp, king crab, and Tanner crab, in the waters of Section 9-B north of the latitude of Point Ellis;
- (9) District 10: shellfish, except shrimp, king crab, and Tanner crab, in the waters of District 10 west of a line from Pinta Point to Point Pybus;
- (10) District 12: shellfish, except shrimp, king crab, and Tanner crab, in the waters of District 12 between the latitude of Parker Point and the latitude of Point Caution;
- (11) District 13, as follows:
  - (A) except as specified in (B) of this paragraph, Dungeness crab, shrimp, abalone, sea cucumbers, gum boots, cockles, and clams, except geoducks, in the waters of District 13;
  - (B) shellfish, except shrimp, king crab, and Tanner crab, in the waters of Section 13-C east of the longitude of Point Elizabeth;
- (12) District 14: shellfish, except shrimp, king crab, and Tanner crab, in the waters of District 14 east of the longitude of Point Dundas;
- (13) District 15: shellfish, except king crab and Tanner crab, in the waters of Section 15-A;
- (14) Yakutat District: shellfish in the waters of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Russell Fjord, within a line from the westernmost point of Point Manby to the southernmost point of Ocean Cape.

### **Conservation Issues**

There are no known conservation concerns directly related to this proposal. Conservation concerns could occur if the FSB and federal in-season managers do not adequately consult with state biologists over the status of shellfish stocks in Southeast Alaska.

### **Enforcement Issues**

There could possibly be enforcement issues if the FSB adopts any federal subsistence regulations for the harvest of shellfish in these marine waters that do not align with the state's subsistence regulations. In addition, the maps that are currently being provided of current federal marine waters and the potential additional waters the United States Forest Service are looking to adopt are either not readable at all or at best difficult for people to read.

## WRITTEN PUBLIC COMMENTS

July 25, 2022

TO Theo Matuskowitz, [subsistence@fws.gov](mailto:subsistence@fws.gov)  
 FROM Tongass Women's Earth & Climate Action Network,  
 SUBJECT FP 23-20 ANILCA Title VIII Sec. 804 Customary & Traditional Use

**Expanding** Federal Qualified Subsistence Users **during shortages** makes no sense, and is contradictory to the original intent of the law of protecting Alaska Native cultural existence.

Broadening CTU of Shellfish and Fish to "*greatly simplify*" such determination by reverting to the state of Alaska's outdated 1992 version opposes the original 1980 intent of the law and the FSB. The state of Alaska's 1959 shortsighted constitution is out of Federal compliance to ANILCA's regulatory allocation process of natural resources when shortages call for ANILCA's Title VIII PRIORITY USE.

State of Alaska carelessly co-manages with the FSB for CTU subsistence puts Alaska Natives in harms way to the state courts without the opportunity of "*due process*" under the law through appropriate legal counsel. State court records are self-indicting.

This issue goes deeper than the mere "*taking*" of wild resources categories to sustain and protect continued Alaska Native cultural existence and traditions into the future. This issue bumps into the element of EMINENT DOMAIN claimed by the U.S. when Alaska Natives gained permission by the **U.S. Court of Claims** to file suit against the U.S. government – not the territory of Alaska, not the state of Alaska.

REALITY: The U.S. compensated for ANCSA under the concept of EMINENT DOMAIN – not the state of Alaska claiming everyone as "*equal*" under state law to use and access all resources for commercial use – **while pointedly not recognizing 229 ALASKA NATIVE VILLAGE GOVERNMENTS and populations.**

**EMINENT DOMAIN** of the United States is the right to take, or authorize the "*taking*" of private property for public use – with **just compensation** = Alaska Native Claims Settlement Act (ANCSA), it took decades for this accomplishment!

Include the term of "*simplicity*" to examine the word **EMINENT**:

1. Rising above other things, places, high, lofty stature.
2. Projecting as prominent, protruding.
3. Standing high above others, exalted, renowned.
4. Outstanding, remarkable, noteworthy, good sense.

**WIKIPEDIA:** *The power of a state, provincial, or national government to take private property for public use. It does not include taking or transferring ownership to another private property owner (like the state of Alaska), without valid public purpose.*



Eminent Domain can be legislatively delegated by state government to local municipalities, governments, subdivisions, private persons and corporations. . . when legislatively / legally authorized to exercise such functions of public character, for public utilities, and associated roads (i.e., The Roadless Rule), government buildings, redevelopment of blighted or impediment property based on principles of negative impact for original owners – later expanding to a 3<sup>rd</sup> party owner development to increase tax revenue to any / state government.

A taking must accompany “just compensation” to the former owners. Whether the taking is through legislative action or court decision, Constitutional law must weigh in.

#### **RECOMMENDATION:**

For the purposes of simplicity, begin at the top. **The Secretaries of the Interior and Agriculture** must unite efficiently and effectively for the focus of “*subsistence management*” through the FSB. Each are legally intertwined with the capacity to do this.

Expand Customary and Traditional Use DEFINITION to include **the list of 229 Alaska Federally Recognized Tribes and Tribal Governments** – in accordance with P.L. 93-638 Indian Self-Determination Act of 1976 administered by the **DOI-Bureau of Indian Affairs**.

Surviving “*Indian country*” recognition in Alaska after ANCSA exterminations is Annette Island Tsimshian Reservation near Ketchikan; and Indian Townsite and Native Allotment deeded lands and properties whose boundaries are still under the authority of the **DOI-Bureau of Land Management** and trespass protections by the **BIA**.

The above mentioned **DOI agencies** must become visibly present and active on the FSB structure – as must the **SOI National Park Service**. And, the **SOI Fish & Wildlife Service** must begin actively managing their subsistence protection duties on behalf of coastal villages and transboundary fish and wildlife species.

The **SOA-Forest Service** has this year met with the Indigenous and local communities of the Tongass Forest to strategize how their agencies can work together effectively and efficiently providing their program services during today’s economic down turn and global warming and health crises.

The SOA has taken the lead to efficiency and effectiveness.

#### **WHY NOT TO EXPAND CTU:**

INDIGENOUS Alaska Natives are produced, born, and grown naturally to specific habitats, found nowhere else in the world; native, innate, inherent, inborn to the land.

CUSTOMARY laws are established by rooted practices and proven usage of social convention, TRADITIONAL origin, orally handed up through stories, symbolism, customs, and beliefs through generations of time.

CTU is in by nature self-managing for times of plenty and extreme shortages. This unique way of life is substantiated through reports and studies of federal, state, private, and scientific interests. And through the words of Indigenous ancestors.

Expanding CTU to all colonial-based settlements is oil to water, a contaminant against historic pre-existence to favor U.S. laws and its "union" spawn. Apples and oranges, circles and squares, pristine and polluted.

2011 Federal Register expanded the FSB from 5 to 7.

It would have been managerially simpler to expand the Regional Advisory Councils from 10 to 12 complying with the Alaska Native Claims Settlement Act (ANCSA)'s 12 corporate regions - rather than plastering to the Alaska Department of Fish and Game's 10 game units.

Such would have been a natural draw for the 12 AK Native Regional Business Corporations to take an interest into the important management of "subsistence" and use of natural resources on Alaska Native-owned private property.

The federal law recognizes tribes and corporations but provides no connective foothold or guidance through the FSB process for this expanded responsibility to grow from.

This is all about clearly identifying numerous perimeters and the enjoining of both Indigenous and colonial grassroot thinking with pertinent laws that are already or should be married to each other. Then WECAN all move forward individually and cumulatively with the simplicity of common sense from the ground up, the inside out, in unison.

There absolutely is no such thing as one size fits all in today's reality.

Wanda J Culp, Coordinator, Juneau, Alaska, [wandajculp@yahoo.com](mailto:wandajculp@yahoo.com)  
Rebekah Contrarez, Representative, Hoonah, Alaska  
Kari Ames, Representative, Hoonah, Alaska  
Adrien Lee, Representative, Juneau, Alaska  
Mamie Williams, Representative, Hoonah, Alaska  
Yolanda Fulmer, Representative, Juneau, Alaska

## APPENDIX 1

### SOUTHEAST ALASKA FEDERAL PUBLIC WATERS—MARINE WATERS

#### § 100.3 Applicability and scope.

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*(b) The regulations contained in this part apply on all public lands, including all inland waters, both navigable and non-navigable, within and adjacent to the exterior boundaries of the following areas, and on the marine waters as identified in the following areas:*

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*(5) Southeastern Alaska, including the:*

*(i) Makhnati Island Area: Land and waters beginning at the southern point of Fruit Island, 57°02'35" north latitude, 135°21'07" west longitude as shown on United States Coast and Geodetic Survey Chart No. 8244, May 21, 1941; from the point of beginning, by metes and bounds; S 58° W, 2,500 feet, to the southern point of Nepovorotni Rocks; S 83° W, 5,600 feet, on a line passing through the southern point of a small island lying about 150 feet south of Makhnati Island; N 6° W, 4,200 feet, on a line passing through the western point of a small island lying about 150 feet west of Makhnati Island, to the northwestern point of Signal Island; N 24° E, 3,000 feet, to a point, 57°03'15" north latitude, 134°23'07" west longitude; East, 2,900 feet, to a point in course No. 45 in meanders of U.S. Survey No. 1496, on west side of Japonski Island; southeasterly, with the meanders of Japonski Island, U.S. Survey No. 1,496 to angle point No. 35, on the southwestern point of Japonski Island; S 60° E, 3,300 feet, along the boundary line of Naval reservation described in Executive Order No. 8216, July 25, 1939, to the point of beginning, and that part of Sitka Bay lying south of Japonski Island and west of the main channel, but not including Aleutski Island as revoked in Public Land Order 925, October 27, 1953, described by metes and bounds as follows: Beginning at the southeast point of Japonski Island at angle point No. 7 of the meanders of U.S. Survey No. 1496; thence east approximately 12.00 chains to the center of the main channel; thence S 45° E. along the main channel approximately 20.00 chains; thence S 45° W, approximately 9.00 chains to the southeastern point of Aleutski Island; thence S 79° W, approximately 40.00 chains to the southern point of Fruit Island; thence N 60° W, approximately 50.00 chains to the southwestern point of Japonski Island at angle point No. 35 of U.S. Survey No. 1496; thence easterly with the meanders of Japonski Island to the point of beginning including Charcoal, Harbor, Alice, Love, and Fruit islands and a number of smaller unnamed islands.*

*(ii) Tongass National Forest:*

*(A) Beacon Point, Frederick Sound, and Kupreanof Island are shown on the U.S. Coast and Geodetic Survey Chart No. 8210 - Sheet No. 16. The reference location is marked as 57 south, 79 east, CRM, SEC 8, U.S. Survey No. 1604. The point begins on the low-water line at N 63° W, true and approximately 1,520 feet from Beacon Point beacon; thence due south true 1,520 feet; thence true East 1,800 feet, more or less to an intersection with a low-water line; thence following, is the low-water line round the point to point of the beginning (Approx. Long. 133°00' W, Lat. 56°56 1/4' N).*

*(B) Bushy Island and Snow Passage are shown on the U.S. Coast and Geodetic Survey Chart, labeled No. 8160 - Sheet No. 12. The reference location is marked as 64 south, 80 east, CRM, SEC. 31/32 on the map labeled, USS 1607. The point begins on a low-water line about 1/4 nautical miles and southwesterly from the northwest point of the island, from which a left tangent to an island that is 300 yards in diameter and 100 yards offshore, bears the location - N 60° W, true; thence S 60° E, true and more or less 2,000 feet to an intersection with a low-water line on the easterly side of the island; thence forward along the winding of the low-water line northwesterly and southwesterly to the point of the beginning, including all adjacent rocks and reefs not covered at low water (Approx. Long. 132°58' W, Lat. 56°16 1/2' N).*

*(C) Cape Strait, Frederick Sound, and Kupreanof Island are shown on the U.S. Coast and Geodetic Survey Chart No. 8210 - Sheet No. 16. The reference location is marked as 56 south, 77478 east, CRM, on the map labeled as USS 1011. It begins at a point on a low-water line that is westerly from the lighthouse and distant 1,520 feet in a direct line from the center of the concrete pier upon which the light tower is erected; thence South 45° E, true by 1,520 feet; thence east true by 1,520 feet, more or less to an intersection with the low-water line; thence north-westerly and westerly, following the windings of the low-water line to the point of beginning (Approx. Long. 133°05' W, Lat. 57°00' N).*

*(D) Point Colpoys and Sumner Strait are shown on the U.S. Coast and Geodetic Survey Chart No. 8160 - Prince of Wales Island - Sheet No. 12. The reference location is marked as 64 south, 78 east, CRM, SECs. 10, 11, 12 on the map labeled as USS 1634. Location is north of a true east-and-west line running across the point to 1,520 feet true south from the high-water line at the northernmost extremity. Map includes all adjacent rocks and ledges not covered at low water and also includes two rocks awash about 1 1/4 nautical miles east and South and 75° East, respectively, from the aforementioned point (Approx. Long. 133°12' W, Lat. 56°20' N).*

*(E) Vank Island and Stikine Strait are shown on the U.S. Coast and Geodetic Survey Chart No. 8160 - Sheet No. 18. Located at 62 south, 82 east, CRM, SEC 34, on the map labeled as USS 1648. This part of the island is lying south of a true east-and-west line that is drawn across the island from low water to low water. Island is 760 feet due North from the center of the concrete pier upon which the structure for the light is erected (Approx. Long. 132°35' W, Lat. 56°27' N).*

(F) High Point, and Woronkofski Island, Alaska, are shown on the U.S. Coast and Geodetic Survey Chart No. 8160 - Sheet No. 18. The location begins at a point on low water at the head of the first bight easterly of the point and about 1/8 nautical mile distant therefrom; thence south true 1,520 feet; thence west true 1,100 feet, more or less to an intersection with the low-water line; thence northerly and easterly, following the windings of the low-water line to point of the beginning (Approx. Long. 132°33' W, Lat. 56°24' N).

(G) Key Reef and Clarence Strait are shown on the U.S. Coast and Geodetic Survey Chart No. 8160 - Sheet No. 11. The reef lies 13/4 miles S. 80° E, true, from Bluff Island and becomes awash at extreme high water. Chart includes all adjacent ledges and rocks not covered at low water (Approx. Long. 132°50' W, Lat. 56°10' N).

(H) Low Point and Zarembo Island, Alaska, are shown on U.S. Coast and Geodetic Survey Chart No. 8160 - Sheet No. 22. The location begins at a point on a low-water line that is 760 feet in a direct line, easterly, from the center of Low Point Beacon. The position is located on a point of shoreline about 1 mile easterly from Low Point; thence S. 35° W, true 760 feet; thence N 800 feet and W 760 feet, more or less, to an intersection with the low-water line to the point of beginning (Approx. Long. 132°55 1/2' W, Lat. 56°27 1/2' N).

(I) McNamara Point and Zarembo Island, Alaska, are shown on U.S. Coast and Geodetic Survey Chart No. 8160 - Sheet No. 25. Location begins at a point on a low-water line that is 1,520 feet in a direct line, northerly, from McNamara Point Beacon - a slatted tripod structure; thence true east 1,520 feet; thence true south, more or less, 2,500 feet to an intersection with the low-water line; thence northwesterly and northerly following the windings of the low-water line to the point of the beginning (Approx. Long. 133°04' W, Lat. 56°20' N).

(J) Mountain Point and Wrangell Narrows, Alaska, are shown on the U.S. Coast and Geodetic Survey Chart No. 8170 - Sheet No. 27. The location begins at a point on a low-water line southerly from the center of Mountain Point Beacon and distant there from 1,520 feet in a direct line; thence true west 1,520 feet; thence true north, more or less, 3,480 feet to an intersection with the low-water line; thence southeasterly and southerly following the windings of the low-water line to the point of the beginning (Approx. Long. 132°57 1/2' W, Lat. 56°44' N).

(K) Angle Point, Revillagigedo Channel, and Bold Island are shown on the U.S. Coast and Geodetic Survey Chart No. 8075 - Sheet No. 3. The reference location is marked as 76 south, 92 east, CRM, USS 1603. The location begins at a point on a low-water line abreast of the lighthouse on Angle Point, the southwestern extremity of Bold Island; thence easterly along the low-water line to a point that is 3,040 feet in a straight line from the beginning point; thence N 30° W, True 3,040 feet; thence true west to an intersection with the low-water line, 3,000 feet, more or less; thence southeasterly along the low-water line to the point of the beginning (Approx. Long. 131°26' W, Lat. 55°14' N).

(L) Cape Chacon, Dixon Entrance, and Prince of Wales Island are shown on the U.S Coast and Geodetic Survey Chart No. 8074 - Sheet No. 29. The reference location is marked as 83 south, 89 and 90 east, CRM, USS 1608. The location begins at a point at the low-water mark on the shore line of Dixon Entrance from which the southern extremity of Cape Chacon bears south  $64^{\circ}$  true East and approximately  $3/4$  nautical miles; thence N  $45^{\circ}$  true East and about 1 nautical mile, more or less, to an intersection with a low-water line on the shore of Clarence Strait; thence southerly, following the meanderings of the low-water line of the shore, to and around Cape Chacon, and continuing to the point of the beginning. Reference includes all adjacent islands, islets, rocks, and reefs that are not covered at the low-water line (Approx. Long  $132^{\circ}$  W, Lat.  $54^{\circ}42'$  N).

(M) Lewis Reef and Tongass Narrows are shown on the U.S Coast and Geodetic Survey Chart No. 8094 - Sheet No. 71. The reference location is marked as 75 south, 90 east, CRM, SEC 9. The area point begins at the reef off of Lewis Point and partly bare at low water. This part of the reef is not covered at low water and lies on the northeast side of a true northwest-and-southeast line that is located 300 feet true southwest from the center of the concrete pier of Lewis Reef Light (Approx. Long.  $131^{\circ}44\frac{1}{2}'$  W, Lat.  $55^{\circ}22'25''$  N).

(N) Lyman Point and Clarence Strait are shown on the U.S Coast and Geodetic Survey, Chart No. 8076 - Sheet No. 8. The reference location is marked as 73 south, 86 east, CRM, SEC 13, on a map labeled as USS 2174 TRC. It begins at a point at the low-water mark. The aforementioned point is 300 feet in a direct line easterly from Lyman Point light; thence due south 300 feet; thence due west to a low-water mark 400 feet, more or less; thence following the winding of the low-water mark to place of beginning (Approx. Long.  $132^{\circ}18'$  W, Lat.  $35^{\circ}35'$  N).

(O) Narrow Point, Clarence Strait, and Prince of Wales Island are shown on the U.S. Coast and Geodetic Survey Chart No. 8100 - Sheet No. 9. The reference location is marked as 70 south, 84 east, CRM, on a map labeled as USS 1628. The point begins at a point on a low-water line about 1 nautical mile southerly from Narrow Point Light, from which point a left tangent to a high-water line of an islet about 500 yards in diameter and about 300 yards off shore, bears south  $30^{\circ}$  true East; thence north  $30^{\circ}$  W, true 7,600 feet; thence N  $60^{\circ}$  E, 3,200 feet, more or less to an intersection with a low-water line; thence southeasterly, southerly, and southwesterly, following the winding of the low-water line to the point of the beginning. The map includes all adjacent rocks not covered at low water (Approx. Long.  $132^{\circ}28'$  W, Lat.  $55^{\circ}47\frac{1}{2}'$  N).

(P) Niblack Point, Cleveland Peninsula, and Clarence Strait, Alaska, are shown on the U.S. coast and Geodetic Survey Chart No. 8102 - Sheet No. 6, which is the same sheet used for Caamano Point. The location begins at a point on a low-water line from which Niblack Point Beacon, a tripod anchored to three concrete piers, bears southeasterly and is 1,520 feet in a direct line; thence true northeast 1,520 feet; thence true southeast 3,040 feet; thence true southwest at 600 feet, more or less, to an intersection with a low-water line; thence northwesterly following the windings of the low-water line to the point of the beginning (Approx. Long.  $132^{\circ}07'$  W, Lat.  $55^{\circ}33'$  N).

(Q) Rosa Reef and Tongass Narrows are shown on the U.S. Coast and Geodetic Survey Chart No. 8094 - Sheet No. 71. The reference location is marked as 74 south, 90 east, CRM, SEC 31. That part of the reef is not covered at low water and lies east of a true north-and-south line, located 600 feet true west from the center of the concrete pier of Rosa Reef Light. The reef is covered at high water (Approx. Long. 131°48' W, Lat. 55°24' 15" N).

(R) Ship Island and Clarence Strait are shown on the U.S. Coast and Geodetic Survey Chart No. 8100 - Sheet No. 9. The reference location is marked as south, 8 east, CRM, SEC 27. The point begins as a small island on the northwesterly side of the Clarence Strait, about 10 nautical miles northwesterly from Caamano Point and 1/4 mile off the shore of Cleveland Peninsula. The sheet includes all adjacent islets and rocks not connected to the main shore and not covered at low water (Approx. Long. 132°12' W, Lat. 55°36' N).

(S) Spire Island Reef and Revillagigedo Channel are shown on the U.S. Coast and Geodetic Survey Chart No. 8075 - Sheet No. 3. The reference location is marked as 76 south, 92 east, CRM, SEC 19. The detached reef, covered at high water and partly bare at low water, is located northeast of Spire Island. Spire Island Light is located on the reef and consists of small houses and lanterns surmounting a concrete pier. See chart for "Angle Pt." (Approx. Long 131°30' W, Lat. 55°16' N).

(T) Surprise Point and Nakat Inlet are shown on the U.S. Coast and Geodetic Survey Chart No. 8051 - Sheet No. 1. The reference location is marked as 80 south, 89 east, CRM. This point lies north of a true east-and-west line. The true east-and-west line lies 3,040 feet true south from the northernmost extremity of the point together with adjacent rocks and islets (Approx. Long. 130°44' W, Lat. 54°49' N).

(U) Caamano Point, Cleveland Peninsula, and Clarence Strait, Alaska, are shown on the U.S. Coast and Geodetic Survey Chart No. 8102 - Sheet No. 6. Location consists of everything apart of the extreme south end of the Cleveland Peninsula lying on a south side of a true east-and-west line that is drawn across the point at a distance of 800 feet true north from the southernmost point of the low-water line. This includes off-lying rocks and islets that are not covered at low water (Approx. Long. 131°59' W, Lat. 55°30' N).

(V) Meyers Chuck and Clarence Strait, Alaska, are shown on the U.S. and Geodetic Survey Chart No. 8124 - Sheet No. 26. The small island is about 150 yards in diameter and located about 200 yards northwest of Meyers Island (Approx. Long. 132°16' W, Lat. 55°44 1/2' N).

(W) Round Island and Cordova Bay, Alaska, are shown on the U.S coast and Geodetic Survey Chart No. 8145 - Sheet No. 36. The Southwestern Island of the group is about 700 yards long, including off-lying rocks and reefs that are not covered at low water (Approx. Long. 132°30 1/2' W, Lat. 54°46 1/2' N).

(X) Mary Island begins at a point that is placed at a low-water mark. The aforementioned point is southward 500 feet from a crosscut on the side of a large rock on the second point below Point Winslow and Mary Island; thence due west 3/4 mile, statute; thence due north to a low-water mark; thence following the winding of the low water to the place of the beginning (Approx. Long. 131°11' 00" W, Lat. 55°05' 55" N).

*(Y) Tree Point starts a point of a low-water mark. The aforementioned point is southerly 1/2 mile from extreme westerly point of a low-water mark on Tree Point, on the Alaska Mainland; thence due true east, 3/4 mile; thence due north 1 mile; thence due west to a low-water mark; thence following the winding of the low-water mark to the place of the beginning (Approx. Long. 130°57' 44" W, Lat. 54°48' 27" N).*





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