

FP25-12 Executive Summary

General Description	Proposal FP25-12 requests to repeal the requirement to remove the caudal or dorsal fin from salmon harvested in the Togiak River drainage. <i>Submitted by: Bristol Bay Native Association.</i>
Proposed Regulation	<p>§ __.27(e)(5) <i>Bristol Bay Area</i></p> <p>...</p> <p>(xii) In the Togiak River drainage:</p> <p style="padding-left: 40px;">(A) You may not possess coho salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.</p> <p style="padding-left: 40px;">(B) You may not possess salmon taken with a drift gillnet under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.</p>
OSM Conclusion	Support
Bristol Bay Subsistence Regional Advisory Council Recommendation	Support
Interagency Staff Committee Comments	The Interagency Staff Committee found the analysis to be a thorough and accurate evaluation of the proposal and that it provides sufficient basis for the Regional Advisory Council recommendation and the Federal Subsistence Board action on this proposal.
ADF&G Comments	None
Written Public Comments	None

**STAFF ANALYSIS
PROPOSAL FP25-12**

ISSUES

Proposal FP25-12, submitted by the Bristol Bay Native Association, requests to repeal the requirement to remove the caudal or dorsal fin from salmon harvested in the Togiak River drainage.

DISCUSSION

The proponent states that removal of the caudal or dorsal fin is not a common practice or tradition in the Togiak River subsistence salmon fishery and the regulation should be repealed.

Existing Federal Regulation

§ __.27(e)(5) Bristol Bay Area

...

(xii) In the Togiak River drainage:

(A) You may not possess coho salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.

(B) You may not possess salmon taken with a drift gillnet under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.

Proposed Federal Regulation

§ __.27(e)(5) Bristol Bay Area

...

~~(xii) In the Togiak River drainage:~~

~~(A) You may not possess coho salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.~~

~~(B) You may not possess salmon taken with a drift gillnet under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.~~

Existing State Regulation

5 AAC 01.340. Marking of subsistence-taken salmon

In the Togiak River drainage, a person may not possess

(1) coho salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed;

(2) salmon taken under authority of a subsistence fishing permit with a drift gillnet unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.

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 Togiak River drainage is comprised of Federal public waters that are within and adjacent to the Togiak National Wildlife Refuge. On general domain lands managed by the Bureau of Land Management in the Bristol Bay Area Federal subsistence regulations apply only to non-navigable waters (**Figure 1**). The Togiak Commercial Salmon District is not in Federal fisheries management jurisdiction.

Customary and Traditional Use Determinations

Residents of the Togiak District, freshwater drainages flowing into the district, and the community of Manokotak have a customary and traditional use determination for salmon in the Togiak District, including drainages flowing into the district (**Figure 2**).

Regulatory History

Background

People did not commercial fish in Togiak Bay until buyers became active in the area after World War II and really took off when a cannery was built at Togiak in the 1950s providing a steady buyer. Many people from Togiak and Twin Hills became involved in commercial fishing in the Togiak area (Wolfe et al. 1984).

The history of Federal and State regulations intended to prevent large quantities of subsistence-harvested salmon from entering commercial markets goes back over a century in the Bristol Bay Area. In the 1950s salmon for local food requirements or for use as dog food (called “personal use” in U.S. Fish and Wildlife Service regulations) was not prohibited in any way. However, all subsistence fishing in the commercial district was “tied” to open commercial periods, that is, personal use fishing in the commercial district was only permitted during open commercial periods. The commercial fishery was managed on a fixed schedule of four to five days per week with necessary adjustments for more or less time on a weekly basis as dictated by run strength as the season progressed (Middleton 1983).

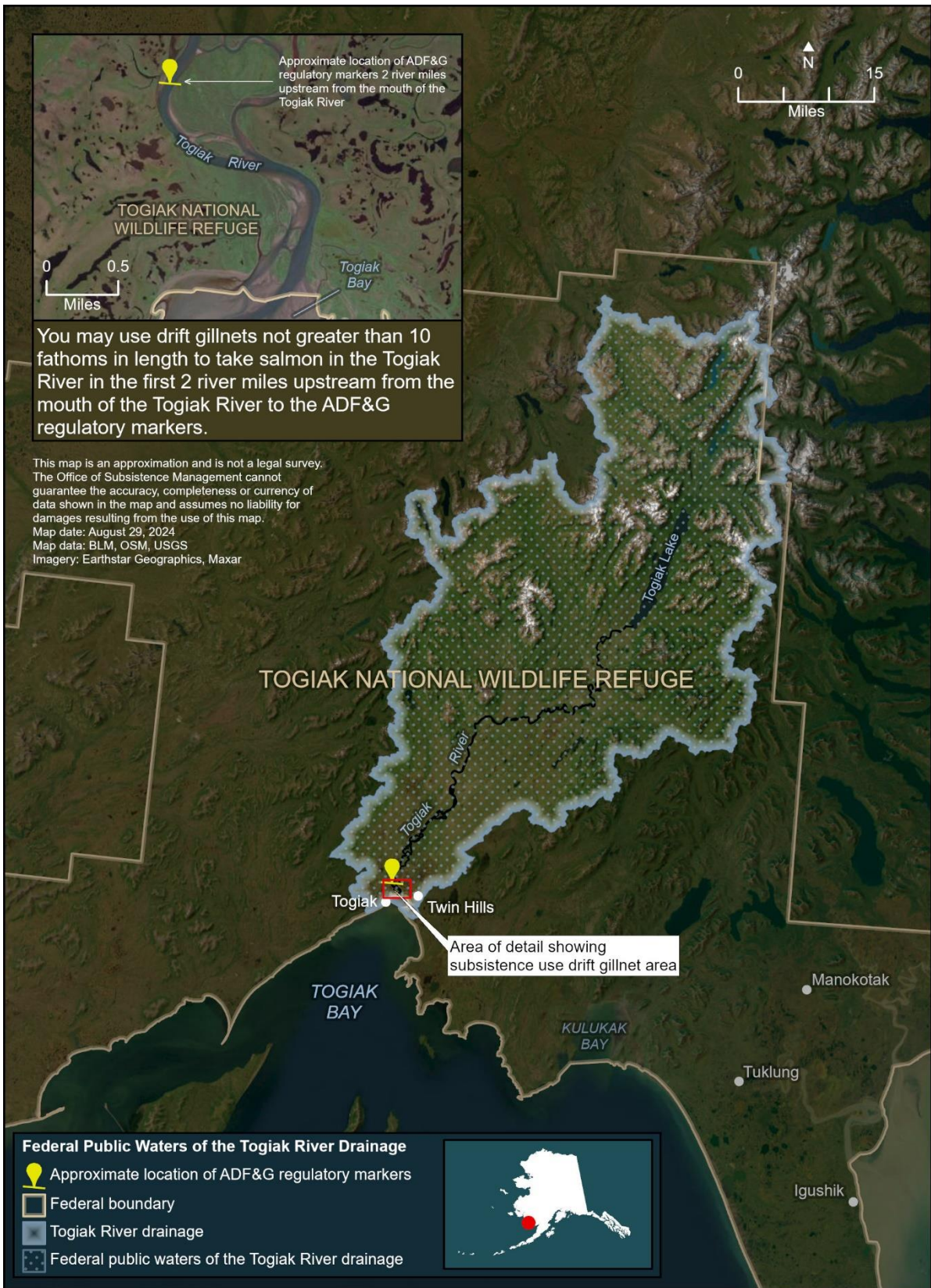


Figure 1. Map of the Togiak River drainage.

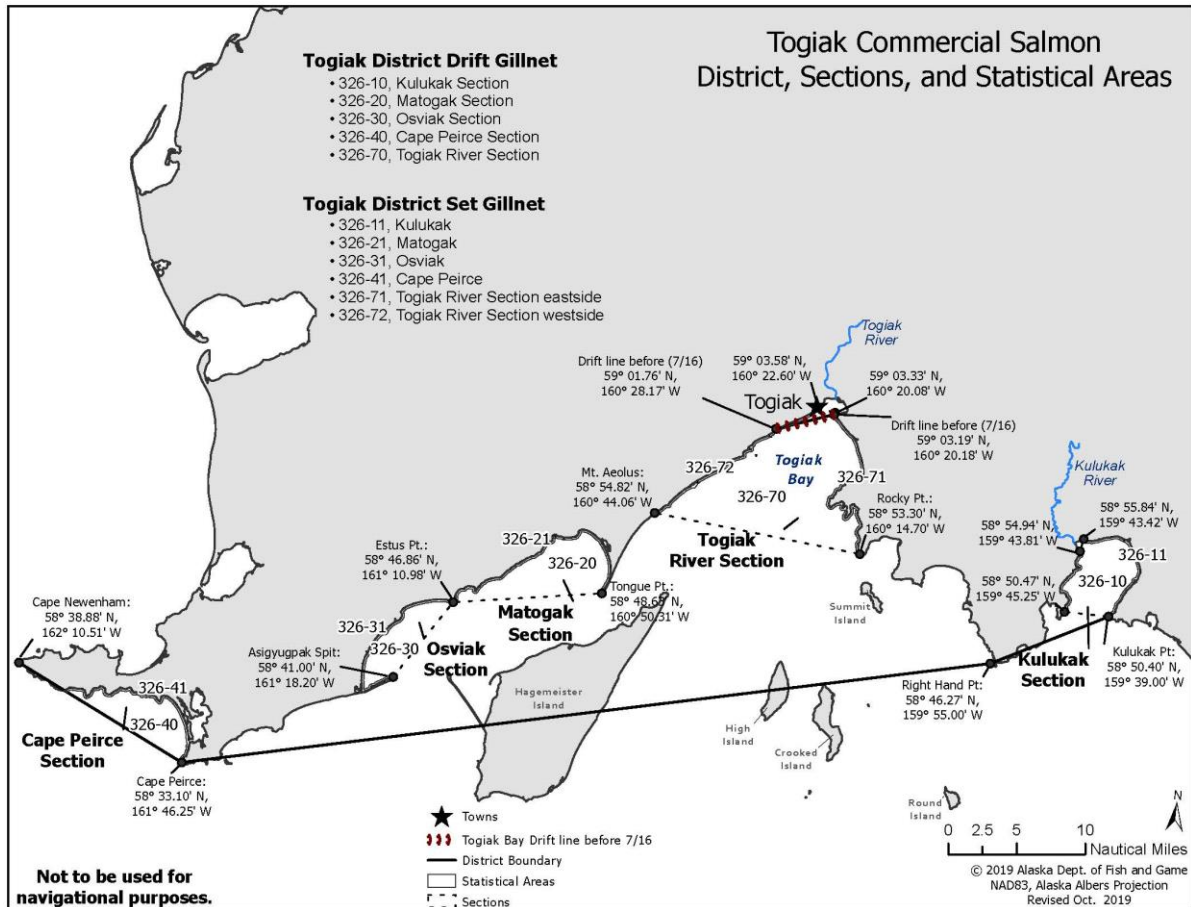


Figure 2. Map of the Togiak Commercial Salmon District, 2024 (ADF&G 2024a).

Concurrently, the U.S. Fish and Wildlife Service began to act on information that the sustainability of salmon runs were being impacted by large commercial harvests, and it began to reduce the amount of commercial fishing time. The exemption was still in place, and residents began informing the Service that they would be fishing with gill nets in the commercial district when it was closed to commercial fishing. The Service did not have the personnel necessary to deal with the multitude of requests to fish for personal use during closed periods in the commercial district and to patrol that these salmon were not being sold. The Service assumed most people were retaining salmon they needed for personal use from their commercial catches. The Service set more restrictions on when people could fish for personal use, and in the commercial district salmon for personal use could only be retained from commercial catches (Nelson 1987, Seitz 1990).

With statehood, in the 1960s the State introduced new personal use regulations, naming it “subsistence.” It allowed the legal harvest of salmon for subsistence uses by only set gillnets in areas outside the commercial district, and with drift and set gillnets in the commercial district when it was open to commercial fishing. Otherwise, the commercial district was closed to subsistence harvest of salmon. A person must take care when subsistence fishing without a commercial fishing license in the

commercial district during a commercial open period so as not to be investigated for adding his or subsistence harvest to commercial catches (Nelson 1987, Seitz 1990).

See more information in the **Background** section under Regulatory History in the analysis of Proposal FP25-11, a request to include drift gillnets, beach seines, and dip nets to legal methods and gear types in the Bristol Bay Area.

Regulations

The Alaska Board of Fisheries passed a regulation in the 1980s with the following language: “*After August 20, you may not possess coho salmon for subsistence purposes in the Togiak River section and the Togiak River drainage unless the head has been immediately removed from the salmon.* The requirement to remove the head made the salmon immediately recognizable as subsistence-harvested salmon and undesirable to buyers (OSM 2000, 2007a; Sands 2024, pers. comm.).

In 1992, the Federal Subsistence Management Program adopted regulations for the harvest of fish for subsistence uses (57 Fed. Reg. 103, 22564 [May 28, 1992]). These regulations incorporated many provisions from State of Alaska subsistence fishing regulations, and the regulation described above entered Federal subsistence regulations in this manner.

In 2000, the Federal Subsistence Board adopted Proposal FP01-12 with the Bristol Bay Subsistence Regional Advisory Council recommended modification. The Bristol Bay Native Association submitted the proposal to repeal the regulation “*After August 20, you may not possess coho salmon for subsistence purposes in the Togiak River section and the Togiak River drainage unless the head has been immediately removed from the salmon*” because the meat of salmon can become contaminated if the head is removed. ADF&G reported there had been no recorded violations of the regulation except that in 1998 the ADF&G commercial fisheries manager closed the Togiak Coho Salmon commercial fishery due to reported illegal fishing activity (Browning 2000, pers. comm.; Cockrell 2000, pers. comm.; in OSM 2000). Subsistence users reported that after salmon are harvested, the customary practice is to carry the whole salmon from the gillnet by the gill opening to the place it will be completely processed. Processing includes removing and often fermenting the head, cleaning and scoring the meat, splitting it to the caudal fin, and hanging it on a rack to dry, or cutting the filets lengthwise into one-inch-wide strips and hanging them to dry (OSM 2000).

The Bristol Bay Council recommended modifying the regulation to requiring removal of both lobes of the caudal fin or the dorsal fin because of concerns that some form of marking subsistence-harvested salmon remain, and the proponent agreed with this change: “*You may not possess coho salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed*” (§____.27(e)(5)(xii)(B); OSM 2000). This is one of the regulations that is the focus of this proposal, FP25-12.

Subsequently, the Alaska Board of Fisheries accepted an agenda change request for its meeting in November 2000 from the Bristol Bay Native Association to have its revised proposal on the agenda (OSM 2000). The Board passed the current State regulation at that time: “*Coho salmon taken under the*

authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed” (5 AAC 01.340(1)).¹

In 2023, a total of 407 Coho Salmon were harvested in the commercial fishery in the Togiak area, and the 20-year annual average was 14,721 fish, compared to a Sockeye Salmon commercial harvest of 443,905 fish in 2023 and a 20-year average annual harvest of 616,763 fish (Elison et al. 2024). The Coho Salmon harvest is about 2% of the Sockeye Salmon harvest, based on the 20-year annual average, and enforcement officers are likely observed more regularly during the Sockeye Salmon fishery than the Coho Salmon fishery. This may be another reason why marking subsistence-harvested Coho Salmon was required while harvests of other salmon species were not.

In December 2006, the Alaska Board of Fisheries took the lead by taking up Proposal 251, which was submitted to the Federal Subsistence Board (Proposal FP07-05) by the Twin Hills Traditional Council. The Board of Fisheries added it to its agenda as a supplementary proposal based on its concern for conservation, enforcement, and regulatory coordination (ADF&G 2006a). Proposal 251 requested to allow the use of drift gillnets not greater than 10 fathoms in length and 15 feet in depth to take salmon in the Togiak River. The Board of Fisheries passed Proposal 251 with amendment (ADF&G 2006b). In January 2007, the Federal Subsistence Board adopted the same language as the Board of Fisheries: *“You may also use drift gillnets not greater than 10 fathoms in length to take salmon in the Togiak River in the first 2 river miles upstream from the mouth of the Togiak River to the ADF&G regulatory markers”* (§__.27(e)(5)(xii)(B)). Additionally, both Boards added marking requirements to the regulation: *“You may not possess salmon taken with a drift gillnet under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed”* (§__.27(e)(5)(iv)(B)). The Bristol Bay Subsistence Regional Advisory Council supported the proposal (FP07-05) with modification to use a drift gillnet 10 fathoms long and 15 fathoms deep, from two river miles upstream from the mouth of the Togiak River (OSM 2007a). The Federal Subsistence Board justified its modification of the proposal with the justification, “. . . Marking all salmon caught with drift gillnets should not be a significant burden . . .” (OSM 2007b:1). This is one of the regulations that is the focus of this proposal, FP25-12.

In 2021, the Federal Subsistence Board agreed with the Bristol Bay Council’s recommendation on Proposal FP21-05 and removed from regulation the requirement that salmon be marked when harvested in the Togiak River Section of the Togiak Commercial Salmon District. The Togiak River Section is entirely encompassed by the marine waters of Togiak Bay, and therefore, is not in Federal subsistence fishery management jurisdiction (**Figure 2**). Removing the Togiak River Section clarified and simplified regulations (OSM 2021).

¹ State of Alaska June 22, 2001, Register 158.

The revised regulation read as follows:

§ __.27(e)(5) Bristol Bay Area

* * *

(xvi)² In ~~the Togiak River section and~~ the Togiak River drainage:

(A) You may not possess coho salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.

(B) You may not possess salmon taken with a drift gillnet under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.

Current Events Involving the Species

On January 11, 2024, the Wild Fish Conservancy submitted a petition to the U.S. Department of Commerce and National Oceanic Atmospheric Administration (NOAA) to list Alaskan Chinook Salmon as a threatened or endangered species and to designate critical habitat, pursuant to the Endangered Species Act (ESA). The petition cited the effects of roads, mining, pollutants, and other habitat degradation, overutilization for commercial and recreational purposes, and disease and predation as primary factors that warranted listing. The petition also claimed existing regulatory mechanisms may be inadequate to protect Chinook Salmon populations that enter the marine environment of the Gulf of Alaska.

On May 24, 2024, the National Marine Fisheries Service (NMFS) published in the Federal Register their 90-day finding and determined the petition contained substantial information indicating the petitioned action may be warranted (89 Fed. Reg. 102, 45815 [May 24, 2024]).³ This 90-day finding moved the petition forward to a 12-month status review process, which is a comprehensive review of the best available scientific and commercial information. The finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage.⁴

² The regulation has been moved to *(xii)*.

³ <https://www.federalregister.gov/documents/2024/05/24/2024-11381/endangered-and-threatened-wildlife-90-day-finding-on-a-petition-to-list-gulf-of-alaska-chinook>

⁴ Information on the status of this review process can be found by going to www.regulations.gov and searching for agency docket # 240520-0140. For additional information contact Julie Scheurer, NMFS Alaska Region, Julie.scheurer@noaa.gov, (907) 586-7111; or Heather Austin, NMFS, Office of Protected Resources, heather.austin@noaa.gov, (301) 427-8422.

Biological Background

There are numerous fish stocks in the Bristol Bay Area that are targeted by subsistence, sport, and commercial fisheries. In general, all salmon stocks are in a productive period. There are only a few major monitoring projects for in-season abundance in freshwater and other run indicators used by commercial harvest in marine waters. There are no specific conservation concerns to report at this time for Sockeye, Pink, Chum, and Coho salmon; however, some runs of Chinook Salmon have been depressed for many years.

The Togiak District 2024 inshore run report from ADF&G Division of Commercial Fisheries calls for a run of 680,000 Togiak River Sockeye Salmon with a potential surplus of 520,000 fish (ADF&G 2024b).

Cultural Knowledge and Traditional Practices

Community Background

See the **Community Background** section under Cultural Knowledge and Traditional Practices in the analysis of Proposal FP25-14, a request to include snagging (with a handline or rod and reel), cast net, spear, bow and arrow, and capturing by bare hand to methods and gear types for legally harvesting salmon for subsistence within and adjacent to the exterior boundaries of the Togiak National Wildlife Refuge within the Bristol Bay Area.

Salmon Subsistence Fishing Patterns

The villages of Manokotak, Togiak, and Twin Hills historically have been heavily reliant on locally harvested salmon for home use, and this reliance is well-documented (Wolfe et al. 1984, Schichnes and Chythlook 1988, Wolfe 1989, Gross 1991, Coiley-Kenner et al. 2003, Fall et al. 2012, Holen et al. 2012, Jones et al. 2019). Togiak and Twin Hills live adjacent to and are the most heavily reliant on subsistence-caught salmon in the Togiak River drainage.

Salmon commercial and subsistence fisheries are inter-twined. Gear in one can be used in the other, necessary skills are similar, and people involved with commercial fishing are also subsistence harvesters. Some of the salmon harvested for home use is retained from commercial catches. Those who are not involved with commercial fishing harvest salmon for home use primarily from the Togiak River. Salmon subsistence fishing occurs most often in the lower reaches of the river, within the first 10-miles, by people searching for firmer, fresher Sockeye Salmon. Much of this fishing effort is by elders and children who are not commercial fishing, though others participate too. Togiak Bay is also used for subsistence salmon harvesting. “Extended families had evolved specialized and complementary work roles during early summer: the older men assisted by grandchildren commonly fished for subsistence salmon, women processed the subsistence salmon by drying and smoking, and active adult men produced the family’s income by commercial fishing” (Wolfe 1989: 8). Fishing continues after the commercial fishery has closed for the season. In late summer and early fall, Coho

Salmon and spawning Sockeye Salmon are harvested from Togiak Lake (Gross 1991, Coiley-Kenner et al. 2003, Fall et al. 2012, Jones et al. 2019).

Harvest History

The recent 5-year average salmon subsistence harvest estimate of 4,587 salmon in the Togiak area is close to the historical average of 5,013 fish (**Table 1**). Residents of Togiak and Twin Hills are the main participants in the subsistence fishery on the Togiak area. By far, most of the harvest is Sockeye Salmon, followed by Chinook and then Coho Salmon. Chum and Pink Salmon are taken in lesser numbers. These estimates are based on the results of the Bristol Bay Subsistence Salmon Harvest Permit System (Jones and Neufeld 2022). One quarter to one third of Chinook and Sockeye salmon are retained from commercial catches based on periodic household surveys. Most of both species are harvested with subsistence gillnets, and rod and reel is used to a lesser degree to harvest salmon. Salmon comprises about one third of the harvest of wild resources for home use by weight (Coiley-Kenner et al. 2003, Fall et al. 2012, Jones et al. 2019).

Table 1. The estimated harvest of salmon, by species, for subsistence purposes in the Togiak area, based on the ADF&G salmon permit system (Jones and Neufeld 2022).

Year ⁵	Permits Issued	Sockeye Harvest	Chinook Harvest	Coho Harvest	Chum Harvest	Pink Harvest	Total Harvest
1985	51	3,400	600	1,000	100	1,500	6,600
1986	29	2,400	700	800	100	500	4,500
1987	46	3,600	700	1,000		1,600	6,900
1988	29	2,413	429	716	45	792	4,395
1989	40	2,825	551	891	112	976	5,355
1990	37	3,689	480	786	60	1,111	6,126
1991	43	3,517	470	553	27	1,238	5,805
1992	40	3,716	1,361	626	135	1,231	7,069
1993	38	2,139	784	571	8	743	4,245
1994	25	1,777	904	398	77	910	4,066
1995	22	1,318	448	425	0	703	2,894
1996	19	662	471	285	59	199	1,676
1997	31	1,440	667	380	0	260	2,747
1998	42	2,211	782	412	76	310	3,791
1999	76	3,780	1,244	479	84	217	5,804
2000	54	3,013	1,116	569	90	342	5,130
2001	92	4,162	1,612	367	61	388	6,590
2002	36	2,319	703	605	10	241	3,878
2003	92	4,403	1,208	483	451	883	7,428
2004	46	1,795	1,094	383	108	204	3,584
2005	45	2,299	1,528	301	26	295	4,448
2006	61	2,728	1,630	492	354	408	5,612
2007	48	2,548	1,234	420	19	110	4,332

⁵ 2020 and 2021 data are preliminary. The ADF&G Division of Subsistence and Togiak village conducted household surveys of the harvest of salmon for subsistence for 2016 and 2017 and issued subsistence salmon harvest permits to people who reported harvesting salmon, resulting in a higher distribution of permits than in other years (Jones et al. 2019).

Year ⁵	Permits Issued	Sockeye Harvest	Chinook Harvest	Coho Harvest	Chum Harvest	Pink Harvest	Total Harvest
2008	91	3,770	1,337	701	114	541	6,463
2009	40	2,220	827	365	5	272	3,689
2010	64	3,256	1,162	735	113	514	5,779
2011	68	3,462	966	497	42	545	5,512
2012	53	5,265	933	764	84	293	7,339
2013	64	3,695	691	375	33	208	5,002
2014	59	4,586	607	669	190	486	6,539
2015	48	2,387	876	312	23	650	4,249
2016	70	3,780	1,141	377	198	521	6,017
2017	70	5,163	959	544	131	545	7,341
2018	34	2,326	481	192	85	181	3,264
2019	28	1,779	599	143	26	98	2,645
2020	32	2,333	672	314	17	333	3,670
2021	34	3,159	114	72	20	585	3,949
5-yr average (2016-2020)	47	3,076	770	314	91	336	4,587
10-yr average (2011-2020)	53	3,478	792	419	83	386	5,158
Historical ave. (1985-2020)	49	2,949	888	526	88	565	5,013

Effects of the Proposal

If Proposal FP25-12 is adopted, federally qualified subsistence users will no longer have to remove the dorsal fin or both lobes of the caudal fin from salmon they harvest from the Togiak River. There are no anticipated effects on the resource or to nonsubsistence users.

If Proposal FP25-12 is not adopted, federally qualified subsistence users will continue to be required to remove the dorsal or both lobes of caudal fins from Coho Salmon and from all salmon species harvested with a drift gillnet in the Togiak River drainage.

OSM CONCLUSION

Support Proposal FP25-12

Justification

Marking requirements for salmon taken from the Togiak River in Federal regulations are not necessary. The purpose of the marking regulation is to identify subsistence-harvested salmon that illegally enter the commercial market and to act as a disincentive for buyers to purchase them. These Federal marking requirements apply only in the Togiak River drainage, outside of the commercial district. In the modern era, there is not enough justification to continue this burden on federally qualified subsistence users.

The marking requirement for Coho Salmon was adopted in 1992 from State regulations at the beginning of the Federal Subsistence Management Program, and at first included marking subsistence-harvested Coho Salmon taken in the commercial district, which has since been removed. Additionally, the Federal Subsistence Board adopted a proposal (FP07-05) with modification to include the marking requirement in the drift gillnet subsistence salmon fishery in the first two miles of the Togiak River, as the Alaska Board of Fisheries had, which was not requested by the proponent and not in the Bristol Bay Council's recommendation. These marking requirements are burdensome to subsistence users and should be repealed.

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SUBSISTENCE REGIONAL ADVISORY COUNCIL RECOMMENDATION

Bristol Bay Subsistence Regional Advisory Council

Support Proposal FP25-12. The Council said the regulation is little used, burdensome, and should be repealed.

INTERAGENCY STAFF COMMITTEE COMMENTS

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

ALASKA DEPARTMENT OF FISH AND GAME COMMENTS

None