

FCR27-07 Executive Summary	
General Description	Fisheries Closure Review FCR27-07 is a standard review of a Federal fishery closure to salmon harvest in the McLees Lake drainage by Federally Qualified Subsistence Users.
Current Regulation	§ __.27(e)(6) <i>Aleutian Islands Area</i> *** (iv) <i>You may not subsistence fish for salmon in the following waters:</i> *** (D) <i>Waters of McLees Lake and its tributaries and outlet stream;</i>
OSM Preliminary Conclusion	Rescind
Seward Peninsula Subsistence Regional Advisory Council Recommendation	
Interagency Staff Committee Comments	
ADF&G Comments	
Written Public Comments	None

FEDERAL FISHERIES CLOSURE REVIEW

FCR27-07

ISSUE

Fisheries Closure Review FCR27-07 is a routine review of the McLees Lake Federal closure to subsistence salmon fishing (**Figure 1**). It is the Federal Subsistence Board's (Board) policy that Federal public lands and waters should be reopened as soon as practicable once the conditions that originally justified the closure have changed to such an extent that the closure is no longer necessary. The purpose of this closure review is to determine if the closure is still warranted and to ensure the closure does not remain in place longer than necessary.

Closure Location and Species: McLees Lake drainage—Salmon

Current Federal Regulation

§ __.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*

Relevant Federal Regulations

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

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

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

§ __.27 *Subsistence Taking of Fish*

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

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

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

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

§ __.27(e)(6) Aleutian Islands Area

(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.

(v) You may take fish by net in freshwater on Adak and Kagalaska islands.

(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) A subsistence fishing permit is necessary to fish for salmon, trout, and char, except that you do not need a permit in the Akutan, Umnak, and Atka-Amlia Islands Districts.

(viii) You may take no more than 250 salmon for subsistence, 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.

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 01.370. 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:

(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;

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

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:

(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 Waters

For purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 36 CFR 242.3 and 36 CFR 51.3. 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**).

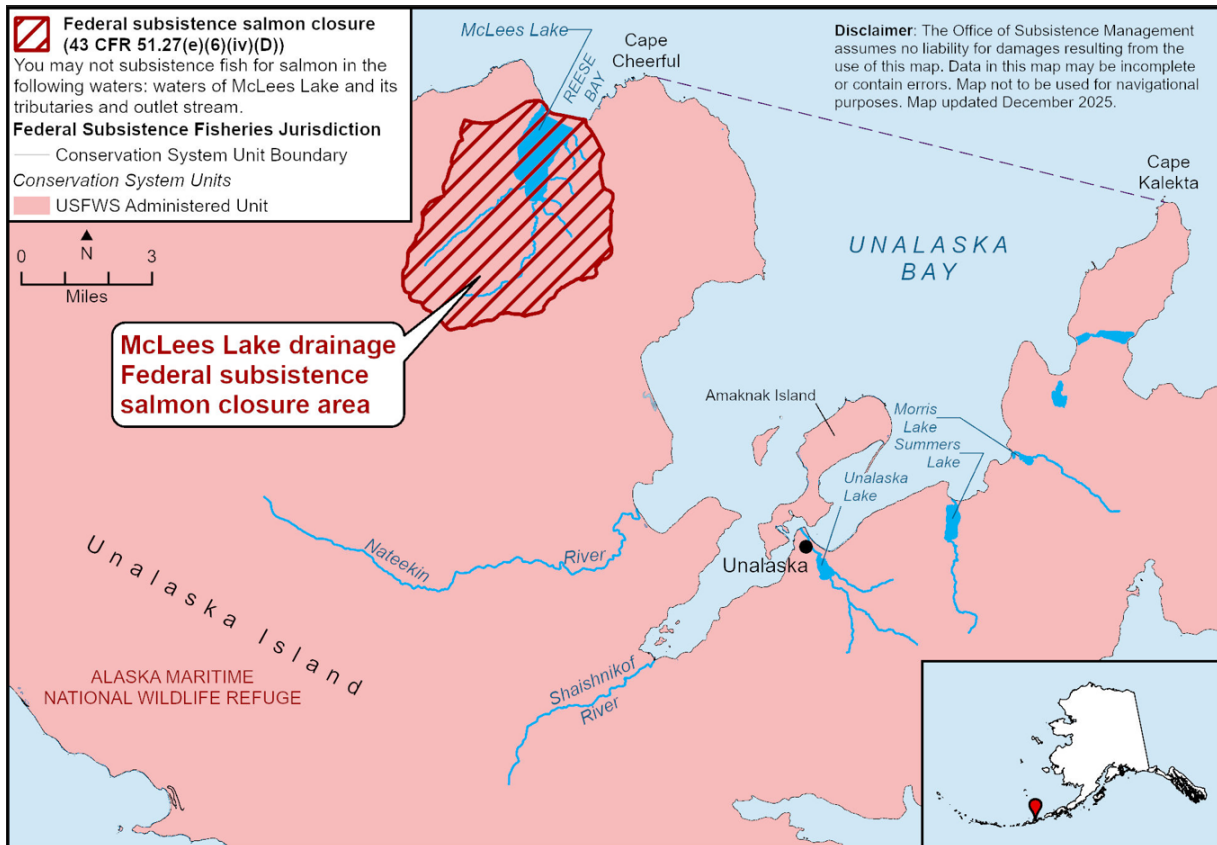


Figure 1. Map showing McLees Lake waters closed to salmon fishing under Federal subsistence regulation and external boundaries of the Alaska Maritime National Wildlife Refuge. This map should not be referenced for landownership.

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

Please see FP27-01 Regulatory History section.

Closure Last Reviewed: 2023 – FCR21-11

Justification for Original Closure

The original Unalaska Lake drainage Federal subsistence fishery closure maintained existing State subsistence fisheries regulations due to the limited availability of fisheries population and community use data (66 Fed. Reg. 30, 10154 [February 13, 2001]).

Council Recommendation for Original Closure

None

State Recommendation for Original Closure

None

Current Events

A Fisheries Proposal to implement conservative regulations for salmon population conservation (FP27-01) is being considered concurrent with this Fisheries Closure Review (FCR27-07) this regulatory cycle. This regulatory change would directly address the closure that is under review this cycle (FCR27-07).

Biological Background

Please see FP27-01 Biological Background section.

Cultural Knowledge and Traditional Practices

Please see FP27-01 Cultural Knowledge and Traditional Practices section.

Harvest History

Please see FP27-01 Harvest History section.

Discussion and Effects

According to Title VIII, section 804 of 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 while subsistence fishing for salmon is closed. 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. Allowing harvest by federally qualified subsistence users would provide Federal opportunity to harvest salmon in the McLees Lake drainage and align open harvest areas under both State sport and Federal subsistence regulations

Under federal regulations, harvesters would not be required to purchase a \$20 Alaska State sport fishing license. 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).

Under Unalaska District Federal subsistence regulations, up to 25 salmon plus an additional 25 salmon for each household member listed on a permit could harvest salmon through a variety of means, including seine and gillnet. Modifying the closure and allowing federally qualified subsistence users to

harvest under Area Federal regulations could lead to overharvest and conservation concerns (KARAC 2022: 315-317). This scenario would rely heavily upon Federal in-season manager actions. The Federal in-season manager may issue special actions to set provisions for the fishery such as stipulating gear types and setting limits in cases of conservation or continuation of subsistence concern. Salmon populations may be further protected by enacting more conservative regulations during the current fisheries regulatory cycle, such as those proposed in FP27-01.

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:

~~(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. OSM considers this situation counter to ANILCA, and suggests the closure to subsistence uses of salmon in this system needs to be lifted. Rescinding this closure area would provide opportunities for federally qualified subsistence users. However, no action need be taken on this FCR27-07 assuming that the Council and Board are both in support of proposed regulations changes outlined in FP27-01. These changes would allow the in-season manager to exercise rural priority for subsistence harvest opportunities as conservation or continuation of subsistence use concerns arise. The in-season manager has delegated authority to open or close Federal subsistence fishing periods or areas provided under codified regulations, to specify methods and means, to specify permit requirements, and to set harvest and possession limits for Federal subsistence fisheries (Appendix 2).

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.

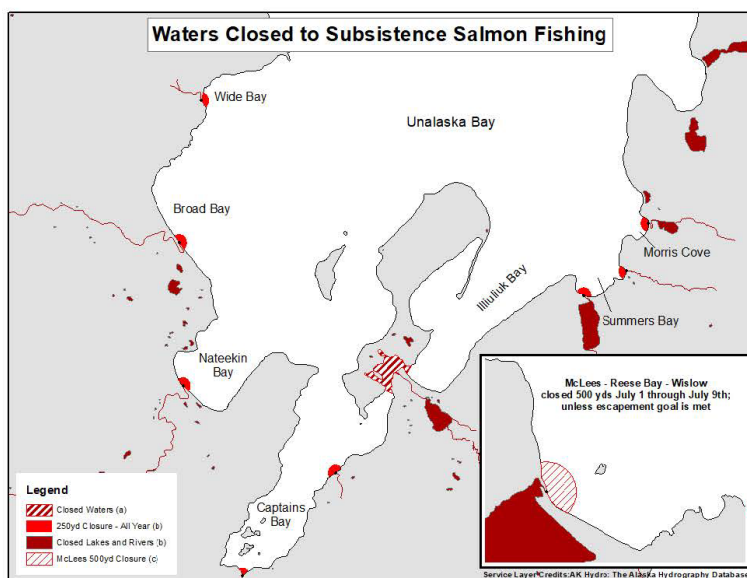
5 AAC 01.380. LIMITS TO NUMBER OF SALMON TAKEN: 25 salmon for the permit holder, of which no more than 10 sockeye salmon may be harvested from Front Beach in Unalaska Bay, plus an additional 25 salmon for each member of the same household whose name is listed on the permit, of which no more than 10 sockeye 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.



FISH and WILDLIFE SERVICE
FOREST SERVICE
BUREAU of LAND MANAGEMENT
NATIONAL PARK SERVICE
BUREAU of INDIAN AFFAIRS

Federal Subsistence Board

1011 East Tudor Road, MS 121

Anchorage, Alaska 99503-6199



MAY 11 2023

In Reply Refer To:

OSM 23045

Supervisory Fish Biologist
U.S. Fish and Wildlife Service
Anchorage Fish and Wildlife Conservation Office 4700 BLM
Road
Anchorage, Alaska 99507

Dear Supervisory Fish Biologist:

This letter delegates specific regulatory authority from the Federal Subsistence Board (Board) to the Supervisory Fish Biologist - Anchorage Fish and Wildlife Conservation Office (Supervisory Fish Biologist) to issue emergency and temporary special actions (special actions) if 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 jurisdiction in the Bristol Bay/Alaska Peninsula/Aleutian Islands/Chignik Areas.

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

DELEGATION OF AUTHORITY

1. **Delegation:** The Supervisory Fish Biologist is hereby delegated authority to issue special actions affecting fisheries in Federal public waters as outlined under the **Scope of Delegation** below. A public hearing

is required before implementing a temporary special action. A public hearing is

recommended for an emergency special action but it is not required. 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 special actions as defined by 36 CFR 242.19 and 50 CFR 100.19. An emergency action may not exceed 60 days and may not be extended through another emergency special action. A temporary special action may exceed 60 days but may not extend beyond the end of the current fisheries regulatory cycle.

This delegation permits you to issue special actions to open or close Federal subsistence fishing periods or areas provided under codified regulations, to specify methods and means, and to set harvest and possession limits for Federal subsistence fisheries.

This delegation also permits you to issue special actions to close and re-open Federal public waters to non-subsistence fishing, but it 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 fish populations, to continue subsistence uses, for reasons of public safety, or to ensure the continued viability of populations.

You are also permitted to specify permit conditions outside of the special action process, provided those permit conditions do not already appear in regulation, are not related to the take of fish, and are not related to areas or periods open to fishing. Permit conditions are not a substitute for the public process to generate regulations regarding take. You may not collect additional information from the public that has not been approved by the Office of Management and Budget (OMB).

All other proposed changes to codified regulations, such as customary and traditional use determinations, 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 OSM to ensure the special action is aligned with ANILCA Title VIII, Federal subsistence regulations, and policy?
- c) Does the proposed action need to be implemented immediately as a 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 federally qualified 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 special action reasonable, rational, and responsible?

6. Guidelines for Delegation: You will become familiar with the management history of the fisheries in the region and be up to date with the current State and Federal regulations, management plans, and stock status, and harvest 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. Consultation is not always possible for in-season management decisions and special actions; however, to the extent practicable, communication with stakeholders 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 and Federal Subsistence Board Policy on Consultation with Alaska Native Claims Settlement Act Corporations 2015).

You will review special action requests or situations that may require a 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 or no action may be on potentially affected subsistence uses and non-subsistence 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 60 days after development of the document.

You will immediately notify the Board through the Assistant Regional Director for OSM, and coordinate with the Chair or alternate of the affected Council(s), local ADF&G managers, and other affected Federal conservation unit managers concerning 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 special action. If the affected Council(s) provided a recommendation, and your action differs from that recommendation, you will provide an explanation in writing in accordance with 50 CFR 100.10(e)(1) and 36 CFR 242.10(e)(1). 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 a special action request, otherwise covered by this delegation of authority, to the Board when the proposed management action will significantly impact 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 a 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 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 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.

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

Sincerely,



Anthony Christianson
Chair Federal Subsistence

Board Enclosures: Maps of the Bristol Bay, Aleutian Islands, and Alaska

Peninsula/Chignik areas

cc: Federal Subsistence Board
Office of Subsistence Management
Bristol Bay Subsistence Regional Advisory Council
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
Special Agent In Charge, Law Enforcement, U.S. Fish and Wildlife Service (Region 7)
Deputy Commissioner, Alaska Department of Fish and Game
Interagency Staff Committee
Administrative Record