

FP21 05 Executive Summary

General Description	Proposal FP21-05 requests the Board simplify Federal regulations by removing regulations that imply the Board has authority to regulate subsistence fishing in the marine waters of fishing districts. Submitted by: Bristol Bay Native Association.
Proposed Regulation	§____.27(e)(5) Bristol Bay Area * * * * (ii) In all State commercial salmon districts, from May 1 through May 31 and October 1 through October 31, you may subsistence fish for salmon only from 9:00 a.m. Monday until 9:00 a.m. Friday. From June 1 through September 30, within the waters of a commercial salmon district, you may take salmon only during State open commercial salmon fishing periods. * * * * (vi) Within any district, you may take salmon, herring, and capelin by set gillnets only. (vii) Outside the boundaries of any district, u Unless otherwise specified, you may take salmon by set gillnet only. * * * * (xii) During State closed commercial herring fishing periods, you may not use gillnets exceeding 25 fathoms in length for the subsistence taking of herring or capelin. * * * * (xvi) 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.

OSM Preliminary Conclusion	Support FP21-05
Bristol Bay Subsistence Regional Advisory Council Recommendation	
Interagency Staff Committee Comments	
ADF&G Comments	
Written Public Comments	None

DRAFT STAFF ANALYSIS
FP21-05

ISSUES

Proposal FP21-05, submitted by the Bristol Bay Native Association, requests that the Federal Subsistence Board (Board) simplify Federal regulations by removing regulations that imply the Board has authority to regulate subsistence fishing in the marine waters of fishing districts.

DISCUSSION

The proponent states that current Federal regulations suggest jurisdiction in the marine waters of commercial fishing districts. The proponent states, “none of the commercial fishing districts in the Bristol Bay area are located on inland waters within or adjacent to Federal public lands or conservation system units.” The inland waters of the Wood River are in the Nushagak Fishing District; however, they are not within and adjacent to Federal public lands and are not Federal public waters under the jurisdiction of these subsistence regulations. Repealing these regulations simplifies where Federal subsistence fishing regulations occur.

Existing Federal Regulation

§ __.27(e)(5) *Bristol Bay Area*

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(ii) In all State commercial salmon districts, from May 1 through May 31 and October 1 through October 31, you may subsistence fish for salmon only from 9:00 a.m. Monday until 9:00 a.m. Friday. From June 1 through September 30, within the waters of a commercial salmon district, you may take salmon only during State open commercial salmon fishing periods.

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(vi) Within any district, you may take salmon, herring, and capelin by set gillnets only.

(vii) Outside the boundaries of any district, unless otherwise specified, you may take salmon by set gillnet only.

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(xii) During State closed commercial herring fishing periods, you may not use gillnets exceeding 25 fathoms in length for the subsistence taking of herring or capelin.

* * * *

(xvi) 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.

Proposed Federal Regulation

§ __.27(e)(5) Bristol Bay Area

* * * *

~~*(ii) In all State commercial salmon districts, from May 1 through May 31 and October 1 through October 31, you may subsistence fish for salmon only from 9:00 a.m. Monday until 9:00 a.m. Friday. From June 1 through September 30, within the waters of a commercial salmon district, you may take salmon only during State open commercial salmon fishing periods.*~~

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~~*(vi) Within any district, you may take salmon, herring, and capelin by set gillnets only.*~~

~~*(vii) Outside the boundaries of any district, u*~~ *Unless otherwise specified, you may take salmon by set gillnet only.*

* * * *

~~(xii) During State closed commercial herring fishing periods, you may not use gillnets exceeding 25 fathoms in length for the subsistence taking of herring or capelin.~~

* * * *

~~(xvi) 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.~~

Existing State Regulation

5 AAC 01.005. Subsistence fishing permitted

Finfish other than salmon, rainbow trout, and steelhead trout may be taken for subsistence purposes at any time in any area of the state by any method unless restricted by the subsistence fishing regulations in this chapter. Salmon may be taken for subsistence purposes only as provided in this chapter.

5 AAC 01.310. Fishing seasons and periods

(a) Unless restricted in this section and 5 AAC 01.325, or unless restricted under the terms of a subsistence fishing permit, fish, other than rainbow trout, may be taken at any time in the Bristol Bay Area.

(b) In all commercial salmon districts, except for special harvest areas, from May 1 through May 31 and October 1 through October 31, subsistence fishing for salmon is permitted from 9:00 a.m. Monday until 9:00 a.m. Friday. From June 1 through September 30, within the waters of a commercial salmon district, except for special harvest areas, salmon may be taken only during open commercial fishing periods. In the Nushagak District, the commissioner, by emergency order, shall also provide for subsistence salmon fishing during periods of extended closures. During these emergency order openings,

(1) set gillnets may not be more than 10 fathoms in length; and

(2) no set gillnet may be set or operated within 450 feet of another set gillnet;

(3) repealed 5/15/93.

5 AAC 01.320. Lawful gear and gear specifications

(a) Within any district, salmon, herring, and capelin maybe taken by drift and set gillnets.

(b) Outside the boundaries of any district, salmon may only be taken by set gillnet, except that salmon may also be taken by dip nets in the waters described in 5 AAC 01.310(d) if fishing other than from a vessel, and salmon may also be taken as follows:

(j) During closed commercial herring fishing periods gillnets used for the subsistence taking of herring or capelin may not exceed 25 fathoms in length.

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. Federal public waters of the Bristol Bay Area are comprised of those waters within and adjacent to the outer boundaries of the Togiak National Wildlife Refuge, Alaska Peninsula Becharof National Wildlife Refuge, Alaska Peninsula National Wildlife Refuge, Alagnak Wild and Scenic River corridor, Katmai National Preserve, and Lake Clark National Park and Preserve.

Customary and Traditional Use Determinations

Residents of the Nushagak District and freshwater drainages flowing into the district have a customary and traditional use determination for salmon and freshwater fish in the Nushagak District, including drainages flowing into the district.

Residents of the Naknek and Kvichak River drainages have a customary and traditional use determination for salmon and freshwater fish in the Naknek River drainage.

Residents of the Kvichak/Iliamna-Lake Clark drainage have a customary and traditional use determination for salmon and freshwater fish in the Lake Clark drainage.

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 and freshwater fish in Togiak District, including drainages flowing into the district.

Residents of South Naknek, the Egegik District, and freshwater drainages flowing into the district have a customary and traditional use determination for salmon and freshwater fish in the Egegik District, including drainages flowing into the district.

Residents of the Ugashik District and freshwaters drainages flowing into the district have a customary and traditional use determination for salmon and freshwater fish in the Ugashik District, including drainages flowing into the district.

Residents of the Togiak District and freshwater drainages flowing into the district have a customary and traditional use determination for Herring spawn on kelp in the Togiak District.

Residents of the Bristol Bay Area have a customary and traditional use determination for all fish in the Remainder of the Bristol Bay Area.

Regulatory History

In 1992, the Federal Subsistence Management Program (FSMP) promulgated regulations governing the harvest of fish for subsistence uses in waters qualifying as "public lands" under ANILCA (57 FR 22940). These regulations incorporated many provisions from State of Alaska subsistence fishing regulations, which previously applied to those waters. In January 1999, the Federal Subsistence Program amended the scope and applicability of the Federal Subsistence Management Program in Alaska to include subsistence activities occurring on inland navigable waters in which the United States has a reserved water right and to identify specific Federal land units where reserved water rights exist. The amendments also extend the Federal Subsistence Board's management to all Federal lands selected under the Alaska Native Claims Settlement Act and the Alaska Statehood Act and situated within the boundaries of a Conservation System Unit, National Recreation Area, National Conservation Area, or any new national forest or forest addition, until conveyed to the State of Alaska or an Alaska Native Corporation, as required by the Alaska National Interest Lands Conservation Act (ANILCA) (64 FR 1276). The Bristol Bay Area regulations under consideration in this analysis were incorporated into the Federal regulations from existing State of Alaska subsistence regulations. In particular, the language specific to commercial fishing districts has not been modified since the promulgation of these regulations.

Current Events

Fisheries Proposal FP21-06, also submitted by the Bristol Bay Native Association, requests that the Board revise Federal subsistence fishing regulations for the Bristol Bay Area to specify that salmon may be taken by dip net, beach seine, and gillnet only, unless otherwise specified. Should both FP21-05 and FP21-06 be passed by the Board, regulatory language for both proposals would be modified to reflect those changes.

Effects of the Proposal

This proposal is administrative in nature. It would remove specific portions of the Bristol Bay Area Federal subsistence fishing regulations referring to commercial fishing districts that were incorporated nearly 21 years ago, that cover subsistence fishing in marine waters of commercial fishing districts.

If the Board adopts this proposal, there will be no effect on subsistence users or fish resources.

If the Board does not adopt this proposal, there will be no effect on subsistence users or fish resources.

OSM PRELIMINARY CONCLUSION

Support Proposal FP21-05.

Justification

While the regulations in question were promulgated in 1999 as part of the incorporation of much of the State's subsistence fishing regulations into the FSMP, they are confusing and have been of no use to Federally qualified subsistence users due to a lack of Federal jurisdiction over the marine waters in Bristol Bay Area commercial fishing districts. As such, they should be removed from the Federal subsistence fishing regulations to provide a more accurate description of harvest opportunities available to rural residents of the Bristol Bay Area.