

FP21 08 Executive Summary

General Description	<p>Proposal FP21-08 requests that the Federal Subsistence Board (Board) remove the area wide closure to the taking of fish at the mouths of streams used by salmon. <i>Submitted by the Bristol Bay Native Association.</i></p>
Proposed Regulation	<p><i>§____.27(e)(5) Bristol Bay Area</i></p> <p align="center">* * * *</p> <p><i>(iv) You may not take fish from waters within 300 feet of a stream mouth used by salmon.</i></p>
OSM Preliminary Conclusion	<p>Support</p>
Bristol Bay Subsistence Regional Advisory Council Recommendation	
Interagency Staff Committee Comments	
ADF&G Comments	
Written Public Comments	<p>None</p>

DRAFT STAFF ANALYSIS
FP21-08

ISSUES

Proposal FP21-08, submitted by the Bristol Bay Native Association, requests that the Federal Subsistence Board (Board) remove the area wide closure to the taking of fish at the mouths of streams used by salmon.

DISCUSSION

The proponent states that taking fish near stream mouths is a common practice and that the areas of closure under Federal subsistence fishing regulations are more restrictive than under State subsistence regulations. They commented that this regulation is a relic of old commercial fishing regulations and should be repealed. Lastly, they believe that the general provisions in §___.27(b)(4) already provide the conservation intent that this regulation may have been trying to achieve by prohibiting obstruction of more than one-half the width of any stream with any gear used to take fish for subsistence purposes.

Existing Federal Regulation

§___.27(e)(5) *Bristol Bay Area*

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(iv) You may not take fish from waters within 300 feet of a stream mouth used by salmon.

Proposed Federal Regulation

§___.27(e)(5) *Bristol Bay Area*

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(iv) You may not take fish from waters within 300 feet of a stream mouth used by salmon.

Existing State Regulation

5 AAC 01.325. Waters closed to subsistence fishing

(a) Except for the western shore of the Newhalen River, waters within 300 feet of a stream mouth used by salmon are closed to the subsistence taking of fish.

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 comprise fresh waters within and adjacent to the Togiak National Wildlife Refuge, 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. Most of Katmai National Park and Preserve is closed to Subsistence uses. General domain lands managed by the Bureau of Land Management in the Bristol Bay Area are only open on non-navigable waters (see **Bristol Bay Area Map**).

Customary and Traditional Use Determinations

Residents of the Nushagak District and the freshwater drainages flowing into the district have a customary and traditional use determination for salmon and freshwater fish in Nushagak District and freshwater 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-Kvichak District – 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 Naknek-Kvichak District- Kvichak/Iliamna- 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 that district have a customary and traditional use determination for salmon and freshwater fish in the Ugashik District and freshwater drainages flowing into that 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 1941 fisheries management in Alaska was transferred to the United States Fish and Wildlife Service (USFWS). In the Bureau of Fisheries agent annual reports, it was not clear how enforcement agents distinguished between illegal commercial operations and legitimate subsistence fishing efforts during closed commercial fishing periods. The Bureau of Fisheries recommended that no one fishing commercially during the summer season could also fish for dogfood or local food requirements except in

strict compliance with regulations for the taking of fish commercially (Seitz 1990). The Bureau of Fisheries generally referred to subsistence efforts of local residents as “fishing for dog feed” and rarely as fishing for human consumption. The emphasis was the economic importance of the commercial fishery. In the 1950s, more restrictions on subsistence fishing were implemented by the Bureau of Fisheries. For example, allowable gear was limited only to hand, rods, spears or gaffs during closed commercial periods.

In 1960, Alaska Department of Fish and Game (ADF&G) took over management of fisheries from the Federal government, and continued the pattern set by USFWS of allowing subsistence fishing within the commercial district only if it was done with legal commercial gear during open commercial fishing periods. Additional restrictions were imposed, and in 1965, a permit was required for all subsistence fishing, which would be given if ADF&G deemed the fishing “compatible with proper utilization of stocks;” waters within 300 feet of any stream mouth were closed to all subsistence fishing, and nets were prohibited from obstructing more than ½ the width of any stream (Seitz 1990). Seitz (1990) observed that Federal and State regulations in the Nushagak District of Bristol Bay have primarily been for the purpose of conserving the fisheries and managing the commercial harvest.

In 1992, the Federal Subsistence Management Program promulgated regulations governing the harvest of fish for subsistence uses in Federal public non-navigable waters. (57 FR 22940). These regulations incorporated many provisions from State of Alaska subsistence fishing regulations. The Bristol Bay Area regulations under consideration were incorporated into the Federal regulations in this manner. In particular, the language specific to taking fish from waters within 300 feet of a stream mouth used by salmon has not been modified since the promulgation of these regulations. This restriction does not exist in the area regulations for any of the other 12 Federal subsistence fishing areas in Alaska.

In 1999, the Federal Subsistence Board adopted Federal regulations for fish in navigable waters, in addition to non-navigable waters (64 Fed. Reg. 5 [January 8, 1999]).

Currently, the harvest of fish within 300 feet of a stream mouth used by salmon is legal only under State sport fishing regulated legal gear and harvest limits, ice fishing included.

Biological Background

There are numerous fish stocks in the Bristol Bay Area that are targeted by subsistence, sport, and commercial fisheries.

Salmon migrating to spawning locations are known to become bank-oriented when preparing to move from larger stream segments to smaller tributaries as they head towards spawning areas. They also occasionally exhibit holding behaviors near mouths of streams before preparing to enter those streams.

Cultural Knowledge and Traditional Practices

The Bristol Bay region is culturally complex. The watershed and boundaries encompass the traditional homelands of Yup’ik, Dena’ina, and Alutiiq people. Contemporary settlements are situated along shorelines and waterways, strategically positioned to access the bountiful salmon runs that remain some of the strongest in the state. Permanent communities include Aleknagik, Clarks Point, Dillingham,

Egegik, Ekwok, Igiugig, Iliamna, King Salmon, Koliganek, Kokhanok, Levelock, Monokotak, New Stuyahok, Naknek, Newhalen, Nondalton, Pedro Bay, Pilot Point, Portage Creek, Port Alsworth, Togiak, Twin Hills, and Ugashik.

The ADF&G, Division of Subsistence conducts subsistence harvest surveys periodically throughout Alaska. Though these survey data are only available for some communities in some years, it is an additional source for documenting patterns of use in rural Alaska. For all communities recently surveyed in the Bristol Bay region, fish comprised a significant portion of the total annual harvest, ranging from a high of 87% of the harvest in Iliamna (Fall et al. 2006) to approximately 37% of the harvest in Levelock (Krieg et al. 2009). Most of the fish harvested in any community were salmon. Per capita harvests of salmon were significant and ranged from 89 lbs. per person in Port Alsworth (Fall et al. 2006) to 637 pounds per person in Clarks Point (Holen et al. 2012).

The subsistence harvest surveys also document harvest and use areas for each resource harvested or searched for during the study year. In some communities, harvest of fish year-round took place near or at the mouths of rivers and productive streams for both salmon and non-salmon species. During the study year of 2008, Togiak residents harvested and searched for salmon from Togiak Bay at the mouth of the Togiak River and up. Non-salmon harvest took place primarily at or near the mouth of the Togiak River (Fall et al. 2012). In Manokotak, also for the 2008 study year, many households documented harvesting salmon at the mouth of the Igushik River (Holen et al. 2012). Given that many traditional communities were strategically located on waterways and river or stream outlets in order to harvest local fish and be well positioned for annual salmon returns, the practice of fishing at or near the mouths of rivers and waterways is understood as customary and traditional. Such practice was documented by Vanstone's historical accounts of life along the Nushagak River watershed (VanStone 1967). He reports people fishing for salmon with traps at the mouth of the Nushagak River during the summer months. During the fall and into the winter, people fished for whitefish, arctic grayling and trout through the river and lake ice.

Harvest History

Salmon. A State subsistence permit is required for subsistence salmon harvest in the Bristol Bay Area under both Federal and State regulations. Annual harvest is reported in the Area Management Reports that are provided by ADF&G, Division of Commercial Fisheries. The most recent report covers through the 2018 season (Salomone et al. 2019). Subsistence harvest is reported by commercial district for the Bristol Bay Area, which consists of the Naknek-Kvichak, Egegik, Ugashik, Nushagak, and Togiak Districts.

Total Bristol Bay subsistence permit issuance and harvest of Sockeye, Chinook, Chum, Pink, and Coho salmon has shown a very slight downward trend over the most recent two 10-year time periods available (1998 - 2007 and 2008 - 2017). Permit issuance increased slightly in two districts (Nushagak and Togiak) between the two time periods, while it has decreased in the other three (Naknek-Kvichak, Egegik, and Ugashik). Harvests correlate directly to permit issuance in all of these areas over this time period, where an increase or decrease in number of permits equates to an increase or decrease in the harvest of each salmon species. Average annual subsistence harvest of all salmon species in the Bristol Bay Area over the

five-year period from 2013 - 2017 was 122,342 fish, while 2016 and 2017 average dropped to 115,965 which are among the lowest harvests recorded since 2010 (113,238) and 2002 (109,587).

Table 1. The estimated use and harvest of fishes other than salmon in the Bristol Bay Area.

Community	Study Year	Percentage of households					Average pounds harvested	
		Use	Fish for	Harvest	Receive	Give	Per Household	Per Person
Alegnagik	2008	78	69	66	50	44	95	26
Clarks Point	2008	100	100	100	73	73	71	34
Dillingham	2010	69	42	42	53	29	23	7
Egegik	2014	75	65	60	24	35	219	77
Ekwok	1987	76	72	62	62	38	229	69
Igiugig	2013	94	78	61	83	61	14	5
Iliamna	2013	79	69	69	59	31	79	30
King Salmon	2007	57	55	49	16	12	15	5
Kokhanok	2005	74	66	66	51	57	137	36
Koliganek	2005	96	93	93	75	68	323	90
Levelock	2005	86	86	86	50	57	71	40
Manokotak	2008	93	80	80	84	56	173	44
Naknek	2007	76	68	65	48	32	47	18
New Stuyakok	2005	88	78	78	67	47	123	28
Newhalen	2013	88	70	67	73	33	38	12
Nondalton	2013	84	73	73	62	60	147	45
Pedro Bay	2013	73	64	46	55	36	41	17
Pilot Point	2014	76	53	53	35	35	118	43
Port Alsworth	2013	41	37	37	14	8	14	4
Port Heiden	2018	41	26	26	26	26	9	3
South Naknek	2007	86	52	52	67	43	16	8
Togiak	2008	94	85	84	81	73	264	62
Twin Hills	1999	92	92	92	75	92	303	101

Non-salmon. Not all subsistence harvests of fish other than salmon are monitored by ADF&G; however, subsistence harvest surveys can provide an estimate of harvest and use for the year a survey was conducted. **Table 1** describes the percentage of community households that used, fished for, received, and gave fish other than salmon for the most recent year that data are available. It also describes the average pounds harvested per household and the average pounds harvested per person. Most households from every community reported using non-salmon fish during each study year. This use ranged from 41% of households in Port Alsworth and Port Heiden to 100% of households in Clarks Point. Sharing of non-

salmon fish was also very important for the communities in the Bristol Bay Area with 14% to 100% of households reporting to have received fish and an estimated 8% to 92% of households reporting to have given fish during their study years. Estimated annual household harvests of non-salmon fish have ranged from a low of 9 pounds in Port Heiden to a high of 323 lbs. in Koliganek.

Effects of the Proposal

This proposal, if adopted, would remove the existing prohibition on taking fish within 300 feet of a stream mouth used by salmon for Federally qualified subsistence users in the Bristol Bay Area. There is a similar restriction in State subsistence regulations, and removal would make Federal regulations less restrictive. This would not affect commercial harvest as there is a general commercial fishing restriction that prohibits fishing within 500 feet of a salmon stream mouth.

If adopted, the harvest of fish near stream mouths by Federally qualified subsistence users may increase on waters within and adjacent to Federal public lands. As fish often hold or become bank-oriented in areas near stream mouths, allowing harvest in these areas would increase efficiency. Conversely, this may create a situation that is detrimental to smaller stocks if the harvest is large or multiple users target the same stock. There is a general regulation that prohibits obstructing more than one-half the width of any stream with any gear used to take fish that would provide some level of conservation to these stocks.

If adopted, this proposal will align the Bristol Bay area restrictions regarding closures at stream mouths with the area restrictions for all other areas in the Federal subsistence fishing regulations for Alaska.

OSM PRELIMINARY CONCLUSION

Support Proposal FP21-08.

Justification

Both salmon and non-salmon fish are an important resource for the communities of the Bristol Bay Area and fishing at or near the mouths of rivers and streams is just one of the many customary and traditional practices area residents use to harvest fish for subsistence purposes. Adopting this proposal would provide additional opportunity to harvest fish for Federally qualified subsistence users, and removal of the restriction would make Federal regulations less restrictive than State regulations. Currently there is no conservation concern.

LITERATURE CITED

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