

FEDERAL FISHERIES CLOSURE REVIEW
FCR21-13

Closure Location: Russell Creek and Nurse Lagoon—Salmon

Current Federal Regulation

§100.27(e)(7) Alaska Peninsula Area

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

(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;

Relevant Federal Regulations

§100.25 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.

(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.

§100.27(e)(7) Alaska Peninsula Area

(ii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit.

(iii) 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.

(iv) You may take salmon at any time, except in those districts and sections open to commercial salmon fishing where salmon may not be taken during the 24 hours before and 12 hours following each State open weekly commercial salmon fishing period, or as may be specified on a subsistence fishing permit.

(vi) You may take salmon by seine, gillnet, rod and reel, or with gear specified on a subsistence fishing permit. You may also take salmon without a permit by snagging (by handline or rod and reel), using a spear, bow and arrow, or capturing by bare hand.

(viii) You may not use a set gillnet exceeding 100 fathoms in length.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on your subsistence fishing permit.

Note: In the Alaska Peninsula Area, you are required to have a State Subsistence Fishing Permit when subsistence fishing for salmon (**Appendix 1**, see 5 AAC 01.420. Subsistence fishing permits)

Closure Dates: Year-round

Current State Regulations

Subsistence Regulations

Alaska Peninsula Area

5 AAC 01.420. Lawful gear and gear specifications

(a) Salmon may be taken only by seine and gillnet, or with gear specified on a subsistence fishing permit.

(c) In waters open to commercial salmon fishing, salmon may be taken only with a set or drift gillnet that does not exceed 50 fathoms in total length.

(d) Except as specified in (a) and (c) of this section, a permit holder may not operate a

(1) set gillnet that is more than 100 fathoms in length; and

(2) drift gillnet that is more than 200 fathoms in length.

(e) A purse seine or hand purse seine may not exceed 250 fathoms in length or 375 meshes in depth. Seine mesh size may not exceed three and one-half inches stretched measure, except that the first 25 meshes above the leadline may not exceed seven inches stretched measure.

(f) A person may not operate subsistence fishing gear within 100 feet of a set gillnet.

5 AAC 01.430. Subsistence fishing permits

(a) Salmon, trout, and char may only be taken under the authority of a subsistence fishing permit. The department will only issue one permit per household.

(b) No more than 250 salmon may be taken for subsistence purposes, per household, unless otherwise specified by a local representative of the department on the subsistence fishing permit. A permit holder may obtain an additional permit from the department.

(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.

5 AAC 01.425 Waters closed to subsistence fishing

The following waters are closed to subsistence fishing for salmon:

- (1) Russell Creek and Nurse Lagoon and within 500 yards from the stream terminus of Russell Creek and Nurse Lagoon;*

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;

(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: 1992

Customary and Traditional Use Determination

Residents of the Alaska Peninsula Area have a customary and traditional use determination for all fish in the Alaska Peninsula Area.

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. Nurse Lagoon and Russel Creek are Federal public waters within and adjacent to the external boundaries of the Alaska Peninsula National Wildlife Refuge.

Regulatory History

In 1990, the Federal Subsistence Management Program adopted temporary subsistence management regulations for public lands in Alaska, which included this closure, to minimize disruption to the State’s continuing fish and game management, because of the uncertainty over the resumption of State management of subsistence, yet still fulfill the requirements of the Title VIII of ANILCA (55 Fed. Reg. 126; 27125, 27155 [June 29, 1990]).

Closure Last Reviewed

There have been no previous reviews of this closure.

Justification for Original Closure (Section 815 (3) criteria)

Section §815(3) of ANILCA states:

Nothing in this title shall be construed as – (3) authorizing a restriction on the taking of fish and wildlife for nonsubsistence uses on public lands (other than national parks and monuments) unless necessary for the conservation of healthy populations of fish and wildlife, for the reasons set forth in section 816, to continue subsistence uses of such populations, or pursuant to other applicable law.

In 1990, the Federal Subsistence Management Program adopted temporary subsistence management regulations for public lands in Alaska, which included this closure, to minimize disruption to the State’s continuing fish and game management, because of the uncertainty over the resumption of State management of subsistence, yet still fulfill the requirements of the Title VIII of ANILCA (55 Fed. Reg. 126; 27125, 27155 [June 29, 1990]).



Figure 1. Lands around Nurse Lagoon and Russel Creek. Areas in brown surrounding the lagoon and lower portion of the creek draining into the lagoon are all conveyed to the King Cove Corporation. Image courtesy of the FWS Land Mapper for the Alaska Region, developed by the USFWS, Alaska Region, Division of Realty.

Council Recommendation for Original Closure

N/A

State Recommendation for Original Closure

N/A

Biological Background

Russell Creek has been surveyed and found to contain Chum, Pink, and Sockeye salmon as well as steelhead trout (Johnson and Blossom 2018). Annual indexing of salmon escapement is conducted

through aerial surveys and recent data shows variable returns of Chum and Pink salmon (**Table 1**). There was also a count of 600 Coho Salmon observed during the 2014 season (Keyse and Fox 2015).

Table 1. Aerial survey estimates of Chum and Pink salmon to Russell Creek (Poetter and Nichols 2014, Keyse and Fox 2015, Keyse et al. 2016, Fox et al. 2017, Fox et al. 2018, Fox et al. 2019).

Year	Chum Salmon	Pink Salmon
2013	20,000	8,000
2014	55,500	60,400
2015	18,800	29,000
2016	113,000	0
2017	125,000	140,000
2018	12,500	2,500

Community Background

Two communities have consistent access to Russell Creek and Nurse Lagoon. Cold Bay is an incorporated city with a population of 108 residents that is home to the Izembek National Wildlife Refuge. King Cove is an incorporated city with a population of 938 residents and an economy dependent on commercial fisheries and seafood processors. King Cove is located across the bay from the Cold Bay community and travel between the communities is limited to boat or plane. Cold Bay residents can access Russell Creek and Nurse Lagoon by road and foot. The small watershed is located directly east of the end of the Cold Bay airport runway.

The most recent comprehensive subsistence surveys conducted in each community were completed for the 2016 study year. The final report is in process but the data are available on the ADF&G, Division of Subsistence Community Subsistence Information System (CSIS). During the study year residents of Cold Bay harvested approximately 232 lb of subsistence foods per person, of which 148 lb per person was salmon. King Cove residents harvested approximately 297 lb per person of subsistence foods, of which 192 lb per person was salmon (CSIS).

Harvest History

Russell Creek is closed to subsistence fishing under both Federal and State regulations; however, it is open to sport fishing. The general Alaska Peninsula/Aleutian Island Remote Zone sport fishing salmon regulations allow 5 salmon (combination of species excluding Chinook) per day and 10 in possession. There is no specific harvest reported for Russell Creek as harvest is so low, but the harvest for the combined Cold Bay Area in years where 12 or more Statewide Sport Fish Harvest Survey responses were received between 2009 and 2018 range between 1,249 and 5,048 salmon (ADF&G 2020). Commercial fishing is not allowed in Russell Creek and Nurse Lagoon and within 500 yards from the stream terminus of Russell Creek and Nurse Lagoon (5 AAC 39.290).

Federal subsistence regulations would apply if the closure was removed. For salmon this would require a State subsistence permit, with reporting due annually by October 31. Salmon taken under the permit could be harvested by gillnet, rod and reel, or gear specified on the permit. Salmon could also be taken without a permit by snagging (hand line or rod and reel), using a spear, bow and arrow, or capture by hand. The salmon harvest limit for the Alaska Peninsula Area is 250 fish.

Federally qualified subsistence users harvest salmon with rod and reel under State sport fishing regulations at Russell Creek (Reedy 2020, pers. comm.). The adjacent land is owned by the King Cove Corporation, and a person must get a permit from the Corporation to access Russell Creek, or a person can access the creek using one of three Bureau of Land Management access easements (Ris Dahl 2020, pers. comm.). For Cold Bay residents, the larger Sockeye Salmon subsistence efforts are at Mortensen's Lagoon (a couple miles southeast from Russell Creek), with rod and reel and beach seines. Many King Cove subsistence harvesters come over to Mortenson's Lagoon as well for the majority of their homepack, since fishing options closer to King Cove are limited. They use the ferry or share on a family member's boat to travel between the communities (Reedy 2020, pers. comm.).

Alternatives Considered

Alternatives considered upon review of a closure include maintaining the status quo, eliminating the closure if no longer necessary, modifying the timing of the closure, or eliminating the closure and restricting legal gear and harvest limits. Salmon returns into the Russell Creek drainage supports some fresh water sport opportunity and a marine based subsistence harvest under State regulations. Maintaining the status quo, which would continue to allow sport fishing while prohibiting subsistence, does not provide for a subsistence priority; therefore this alternative was rejected. Eliminating the closure is also rejected due to the vulnerable status of the salmon population once in the fresh water and particularly in the shallows of Nurse Lagoon. One modification considered would close the waters of Russell Creek, its tributaries and outlet stream, and Nurse Lagoon, to all uses, restricting both subsistence fishing and sport opportunity within the drainage. This modification is rejected because the system currently supports a limited harvest under sport regulation, and may support a similar opportunity under limited subsistence regulations, providing a subsistence opportunity for Federally qualified subsistence users.

OSM PRELIMINARY CONCLUSION

maintain status quo

modify or eliminate the closure

The modification should read:

Alaska Peninsula Area

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(ii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit.

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

~~(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;~~

(vi) You may take salmon by seine, gillnet, rod and reel, or with gear specified on a subsistence fishing permit. **In the waters of Russel Creek, its tributaries and outlet stream, you may not use a seine or a gillnet.** You may also take salmon without a permit by snagging (by handline or rod and reel), **dipnet**, using a spear, bow and arrow, or capturing by bare hand.

(viii) You may not use a set gillnet exceeding 100 fathoms in length.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on your subsistence fishing permit.

Justification

Although the current closure to Federal subsistence fishing within Russell Creek and Nurse Lagoon is mirrored under State subsistence regulations, harvest is allowed under State sport fishing regulations. Russell Creek is surrounded by corporation land and has three public access points. Annual aerial surveys allow rough observation of trends in returns and take conducted under permits would provide information on subsistence harvest. Specific fishery restrictions could be enacted through the proposal process should issues or concerns arise. While the customary and traditional use determination would allow harvest under this fishery by all rural residents of the Alaska Peninsula Area, it is likely that harvest would be limited to the rural residents of Cold Bay. It is reasonable to eliminate this closure at this time.

LITERATURE CITED

ADF&G. 2020. Alaska Sport Fishing Survey database. 1996– Present. Anchorage, AK: Alaska Department of Fish and Game, Division of Sport Fish. <http://www.adfg.alaska.gov/sf/sportfishingsurvey/>. Retrieved: May 28, 2020.

Fox, E. K. C., C. G. Lipka, and L. K. Strumpf. 2018. South Alaska Peninsula salmon annual management report, 2017 and the 2016 subsistence fisheries in the Alaska Peninsula, Aleutian Islands, and Atka-Amlia Islands management areas. Alaska Department of Fish and Game, Regional Information Report No. 4K18-05. Kodiak, AK. <http://www.adfg.alaska.gov/FedAidPDFs/RIR.4K.2018.05.pdf>

Fox, E. K. C., C. G. Lipka, and M. E. Loewen 2017. South Alaska Peninsula salmon annual management report, 2016. Alaska Department of Fish and Game, Fishery Management Report No. 17-33, Anchorage, AK.
<http://www.adfg.alaska.gov/FedAidPDFs/FMR17-33.pdf>

Fox, E. K. C., L. K. Strumpf, and C. J. Whiteside. 2019. South Alaska Peninsula salmon annual management report, 2018 and the 2017 subsistence fisheries in the Alaska Peninsula, Aleutian Islands, and Atka-Amlia Islands management areas. Alaska Department of Fish and Game, Regional Information Report No. 4K19-01. Kodiak, AK. <http://www.adfg.alaska.gov/FedAidPDFs/RIR.4K.2019.01.pdf>

Johnson, J. and B. Blossom. 2018. Catalog of waters important for spawning, rearing, or migration of anadromous fishes - Southwestern Region, Effective June 1, 2018. Alaska Department of Fish and Game, Special Publication No. 18-06, Anchorage, AK.

Keyse, M. D., C. W. Russell, and E. K. C. Fox. 2016. South Alaska Peninsula salmon annual management report, 2015. Alaska Department of Fish and Game, Fishery Management Report No. 16-02, Anchorage, AK.
<http://www.adfg.alaska.gov/FedAidPDFs/FMR16-02.pdf>

Keyse, M. D. and E. K. C. Fox. 2015. South Alaska Peninsula salmon annual management report, 2014. Alaska Department of Fish and Game, Fishery Management Report No. 15-35, Anchorage, AK.
<http://www.adfg.alaska.gov/FedAidPDFs/FMR15-35.pdf>

Poetter, A. D. and N. W. Nichols. 2014. South Alaska Peninsula salmon annual management report, 2013. Alaska Department of Fish and Game, Fishery Management Report No. 14-15, Anchorage, AK.
<http://www.adfg.alaska.gov/FedAidPDFs/FMR14-15.pdf>

Reedy, K., Ph.D. 2020. Anthropologist: by email. Professor and Chair, Department of Anthropology, Idaho State University, Pocatello, ID.

Risdahl, G. 2020. Fisheries and wildlife biologist: by email. Supervisor, Division of Fisheries, Office of Subsistence Management, USFWS, Anchorage, AK.

APPENDIX 1

ALASKA PENINSULA AREA SUBSISTENCE SALMON FISHING PERMIT

SELECTED SUBSISTENCE REGULATIONS

These listed regulations are not inclusive of all the regulations that apply to subsistence salmon fishing in the Alaska Peninsula Area.

5 AAC 01.430. LIMITS TO NUMBER OF SALMON TAKEN: 250 salmon per household, unless otherwise specified by a local representative of the department. Additional household permits are available by request from the local ADF&G representative.

5 AAC 01.420. LIMITS TO GEAR USED TO TAKE SALMON: Salmon may be taken by seine or gillnet. No set gillnet may exceed 100 fathoms in length. No drift gillnet may exceed 200 fathoms in length. In areas open to commercial salmon fishing, salmon can only be taken with gillnets of not more than 50 fathoms in aggregate length.

5 AAC 01.427. IDENTIFICATION OF GILLNET GEAR: A buoy at one end of any gillnet must be plainly and legibly marked with the operator's first initial, last name, and mailing address of the permit holder or the vessel's ADF&G number.

5 AAC 01.410. FISHING SEASONS: Salmon may be taken at any time except as follows:

1. In those districts and sections open to commercial salmon fishing, salmon may not be taken by a commercial salmon fishing permit holder within 24 hours before and within 12 hours following a commercial salmon fishing period.
2. As otherwise specified on a subsistence fishing permit; and
3. In the waters closed to subsistence fishing for salmon specified in 5 AAC 01.425.

Exceptions to this rule are listed under EXCEPTIONS 1 and 2 below or as listed on an amended permit.

5 AAC 01.423. SPECIAL PROVISIONS:

1. Mortensens Lagoon: (Mortensens Lagoon and waters within 500 yards of the Mortensens Lagoon terminus only). Salmon may be taken at any time, however the following restrictions apply:
 - A. Subsistence gear is restricted to gillnets of 15 fathoms or less in length.
 - B. No more than 50 salmon per permit per season may be taken from Mortensens Lagoon or within 500 yards of the lagoon terminus.
2. False Pass vicinity: That portion of Bechevin Bay and Isanotski Strait bounded by the latitude of Morzhovoi Village (54°54.58' N lat.) and the latitude of Whirl Point (54°49.50' N lat.). Salmon may be taken at any time using gillnets of 50 fathoms or less in length.
3. Fresh waters of Bear River: Salmon may be taken at anytime upstream from the confluence of the Milky River, also known as the Mad Sow River (a tributary of the Bear River) with gear specified on the subsistence permit.
4. Fresh waters of Sandy River: Salmon may be taken at anytime upstream from the Sandy River (oil exploration) aircraft landing strip located five (5) miles (upriver) of the stream terminus, with gear specified on the subsistence permit.

5 AAC 01.425. WATERS CLOSED TO SUBSISTENCE SALMON FISHING:

1. Russell Creek and Nurse Lagoon and within 500 yards from the stream terminus of Russell Creek and Nurse Lagoon.
2. Trout Creek and within 500 yards outside its mouth.
3. Inshore of a line from the Trident Seafood's Dock at Sand Point to Black Point (located on the northwestern side of Popof Island), including the inlet and Humboldt Creek.
4. Black Hills Section: all freshwaters and within 500 yards of any anadromous salmon stream terminus.
5. Bear River Section: waters closed to commercial salmon fishing under 5 AAC 09.350 and 5 AAC 39.290 and waters of Frank's Lagoon and King Salmon River, excluding exceptions in Bear and Sandy Rivers listed earlier on this permit.
6. No subsistence fishing is allowed in waters closed to commercial salmon fishing as described under 5 AAC 09.350 or 5 AAC 39.290 during a commercial salmon fishing period. Exceptions to this rule are listed under SPECIAL PROVISIONS 1 and 2 above or as specified on an amended permit.

ADDITIONAL RESTRICTIONS:

1. **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."
2. The operator must be in proximity of his or her gear at all times.
3. **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.**
4. Subsistence fishing gear may at no time be used within 100 feet of another set gillnet.
5. Definition of subsistence uses: AS 16.05.940(33) subsistence uses means the noncommercial, customary and traditional uses of wild, renewable resources.

Return permit by October 31, 2020 to: Alaska Department of Fish and Game, Alaska Peninsula Salmon Management, 351 Research Court, Kodiak AK 99615. Questions or concerns please contact your local Fish and Game Office: Cold Bay (907) 532-2419; Sand Point (907) 383-2066; Port Moller (907) 375-2716; Kodiak (907) 486-1882.