



SOUTHCENTRAL ALASKA
SUBSISTENCE REGIONAL
ADVISORY COUNCIL
Meeting Materials

*October 18 - 19, 2016
Anchorage*



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Children are practicing subsistence skills



Donald Mike photo

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SOUTHCENTRAL ALASKA SUBSISTENCE REGIONAL ADVISORY COUNCIL

Gorsuch Commons, University of Alaska Anchorage
3700 Sharon Lane #602
Anchorage

October 17-18, 2016
October 17, 8:30 am – 5:00 pm
October 18, 8:00 am – 5:00 pm

TELECONFERENCE: call the toll free number: 1-866-916-7020, then when prompted enter the passcode: 37311548.

PUBLIC COMMENTS: Public comments are welcome for each agenda item and for regional concerns not included on the agenda. The Council appreciates hearing your concerns and knowledge. Please fill out a comment form to be recognized by the Council chair. Time limits may be set to provide opportunity for all to testify and keep the meeting on schedule.

PLEASE NOTE: These are estimated times and the agenda is subject to change. Contact staff for the current schedule. Evening sessions are at the call of the chair.

AGENDA

*Asterisk identifies action item.

- 1. **Call to Order** (*Chair*)
- 2. **Invocation**
- 3. **Roll Call and Establish Quorum** (*Secretary*)..... 4
- 4. **Welcome and Introductions** (*Chair*)
- 5. **Review and Adopt Agenda*** (*Chair*) 1
- 6. **Review and Approve Previous Meeting Minutes*** (*Chair*) 5
- 7. **Reports**
 - Council Member Reports
 - Chair’s Report
- 8. **Public and Tribal Comment on Non-Agenda Items** (available each morning)
- 9. **Old Business** (*Chair*)
 - a. Draft Non-rural Determination Policy* 12
- 10. **New Business** (*Chair*)
 - a. Fisheries Proposals*

Cook Inlet

- 1. FP17-06 and FP10-07 Salmon. *Remove ___27(e)(10)(J) from current regulations (gillnet on the Kenai) FP10-07 Close parts of the Kenai River to the take of Chinook Salmon; revise size restrictions, seasonal and daily harvest and possession limits.....*30
- 2. FP17-08 Chinook. *Close parts of the Kenai River to the take of Chinook Salmon; revise size restrictions, seasonal and daily harvest and possession limits*80
- 3. FP17-09 Salmon. *Revise gillnet regulations on the Kasilof River.....*136
- 4. FP17-10 Salmon. *Revise gillnet regulations on the Kenai River.....*193

Prince William Sound

- 1. FP17-11 Salmon. *Request C&T determination for residents of Dry Creek in the Glennallen sub-district of the upper Copper River.....*273
- 2. FP17-12 Various Fish. ~~*Revise and clarify all regulations concerning these species-*~~
WITHDRAWN by Proponent

- b. Fisheries Resource Monitoring Program - Priority Information Needs*.....286
 - 1. Copper River-Ahtna Inter-Tribal Resource Conservation District Partners (*Karen Linnell*)
 - 2. Native Village of Eyak Partners (*Matt Piche*)290
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- e. Identify Issues for 2016 Annual Report*300
- f. Charter Review*302
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- h. Feedback on All Council Meeting

12. Agency Reports

(Time limit of 15 minutes unless approved in advance)

Tribal Governments

- a. Ninilchik Tribal Council

Native Organizations

Special Actions

ANSEP

USFWS

- a. Kenai Field Office (*Jeff Andreson*)
- b. Kenai NWR

USFS

NPS

ADF&G

OSM

- a. RFR Status
- b. RFR Process

13. Future Meeting Dates*

Confirm Winter 2017 meeting date and location315

Select Fall 2017 meeting date and location316

14. Closing Comments

15. Adjourn (*Chair*)

To teleconference into the meeting, call the toll free number: 1-866-916-7020, then when prompted enter the passcode: 37311548.

Reasonable Accommodations

The Federal Subsistence Board is committed to providing access to this meeting for all participants. Please direct all requests for sign language interpreting services, closed captioning, or other accommodation needs to Donald Mike, 907-786-3629, donald_mike@fws.gov, or 800-877-8339 (TTY), by close of business on October 6, 2016.

REGION 2

Southcentral Alaska Subsistence Regional Advisory Council

Seat	Year Appointed <i>Term Expires</i>	Member Name and Community
1	2007 2016	Robert J. Henrichs Cordova
2	2014 2016	Eleanor Dementi Cantwell
3	2003 2016	Richard Greg Encelewski Chair Ninilchik
4	2010 2016	Mary Ann Mills Kenai
5	2014 2016	Lee R. Adler Glennallen
6	2003 2017	Gloria Stickwan Vice Chair Tazlina
7	2011 2017	James R. Showalter Soldotna
8	2011 2017	Michael V. Opheim Seldovia
9	2011 2017	Andrew T. McLaughlin Chenega Bay
10	2009 2018	Judith C. Caminer Secretary Anchorage
11	2015 2018	Ingrid B. Peterson Homer
12	2003 2018	Thomas M. Carpenter Cordova
13	2015 2018	Ricky J. Gease Kenai

SOUTHCENTRAL ALASKA SUBSISTENCE REGIONAL ADVISORY COUNCIL

Meeting Minutes
March 09, 2016
Egan Center
Anchorage, Alaska

Call to Order

Meeting called to order by Vice Chair Greg Encelewski.

Roll Call and Establish Quorum

Roll called conducted by Ms. Caminer, Secretary. Greg Encelewski (vice Chair), Lee Adler, Judy Caminer, Tom Carpenter, Eleanor Dementi, Ricky Gease, Andrew McLaughlin, Mary Ann Mills, Michael Opheim, Ingrid Peterson, James Showalter, Gloria Stickwan

Welcome and Introductions

Government Agency Employees

Donald Mike	OSM
Stewart Cogswell	OSM
Eva Patton	OSM
Karen Hyer	OSM
Andy Loranger	FWS Kenai NWR
Trevor Fox	Anchorage USFWS
Serena Selbo	Anchorage USFWS
Tom Whitford	US Forest Service
Milo Burcham	Cordova US Forest Service
Francisco Sanchez	Seward US Forest Service
Robert Skorkowsky	Cordova US Forest Service
Chris Lampshire	US Forest Service LE
Jeff Bryden	US Forest Service LE
David Pearson	US Forest Service Fishery Biologist
Jeff Anderson	Kenai USFWS
Jesse Hankins	Glennallen BLM
Gino DelFrate	Anchorage ADFG
Ms. Jones	Anchorage ADFG Subsistence
Ms. Molly	Anchorage ADFG Subsistence
Bert Frost	NPS Alaska Regional Director
Barbara Cellarius	NPS Wrangell-St. Elias
Terri Marceron	US Forest Service Forest Supervisor

NGOs/Public

Rebecca Skinner	Kodiak-Aleutians RAC
Matt Piche	Native Village of Eyak
Roy Ewan	Gulkana Village
Bill Wall	Ahtna InterTribal Resource Commission
Karen Linnell	Ahtna InterTribal Resource Commission
Michelle Anderson	Ahtna Inc.

Review and Adopt Meeting Agenda

The Council added, under new business, the letter from the Southeast RAC to the Federal Subsistence Board on its position on the U. S. Fish & Wildlife Service’s proposed rule regarding hunting and trapping on Fish and Wildlife Service managed lands in Alaska for the Southcentral RAC’s consideration. Additionally, the Council added a motion from the Yukon-Kuskokwim RAC opposing the proposed rule for the Southcentral Council to take action.

Update on the RFR Kenai fishery litigation under old business.

Meeting agenda adopted with amendments.

Election of Officers

The Southcentral Council held its annual officers elections.

Results of the elections are:

Chair – Greg Encelewski
Vice Chair – Gloria Stickwan
Secretary – Judy Caminer

Review and Adoption of minutes: October 21-22, 2015

Meeting minutes adopted with amendments. Change dates on final page of the minutes to reflect when the minutes were approved.

Reports

Ms. Dementi reported she attended and participated in the Denali Subsistence Resource Commission meetings held in Cantwell. Issues that came up during the public meeting were bear baiting and access into the Park.

Mr. Lee Adler provided reports on the recent Alaska Board of Game sheep working group meetings held in Fairbanks and Anchorage.

Ms. Mills provided an update on current AFN subsistence meetings.

Mr. Gease provide updates on the Kenai Peninsula communities position on the Refuge proposed rule on hunting and trapping within Kenai Peninsula, communities are providing feedback on the issue. Actual data is needed on the Kenai Peninsula brown bear population for management purposes.

Mr. McLaughlin reported on recent deer population observations in Prince William Sound.

Honorary RAC member Ralph Lohse, commented the program need to get the younger generations involved in subsistence and resource management on Federal lands.

Public Testimony

Public testimony heard from Mr. Sean McDonald, Moose Pass resident, testified on customary and traditional use determination. He testified that the resources in the Kenai Peninsula are stressed due to increased user groups.

Old Business

Refuges Proposed Rule

Mr. Andy Loranger and Ms. Serena Selbo presented an update on the Refuge's proposed rule. The proposed rule would amend current Federal regulations governing non-subsistence hunting and trapping on wildlife on Alaska Refuges. The proposed rule is seeking public comment on proposed regulations that would prohibit certain methods and means for harvesting predators on Refuge lands in Alaska and proposed changes would consider closure procedures.

The Council discussed the proposed rule and listened to public testimony and took action to submit its comments via regulations.gov.

The U.S. Fish and Wildlife Services' proposed rule to clarify that predator control is not allowed on national wildlife refuges in Alaska. The proposed rule would also prohibit certain methods for non-subsistence harvest of predators, as well as update procedures for closing an area or restricting an activity on refuges in Alaska.

The Council disagrees with the proposed rule changes that are subject on the National Wildlife Refuges in Alaska. Broad-based management approach to closures on Alaska's national wildlife refuges is not an appropriate wildlife management practice considering the diversity in geography, climate, hunting practice, and most importantly, wildlife populations among the various refuges. There are 16 national wildlife refuges in Alaska comprising 76,774,229 acres, covering an area comparable from Duluth, Minnesota to Bishop, California, and over to Jacksonville, Florida. The Alaska NWRS system constitutes approximately 90% of all national wildlife refuge lands in the United States. Certainly, in the Lower 48, a decision would not be made to manage a predator population in northern Minnesota the same way it is managed in California and in Florida.

Subsistence practices and uses of the resources will also be greatly affected by the proposed rule. The proposed rule will be detrimental to subsistence users by

allowing one species to continually prey upon another species, causing an imbalance in populations that are necessary for human consumption. Prohibiting bear baiting on refuges will have an effect on the caribou and moose populations in the Southcentral Region. Rural residents use baiting under current regulations to harvest brown bear to meet their subsistence needs in the spring. The bear population is currently at a healthy population level, and no conservation concerns exist. Any restrictions placed on Federal public lands will have an indirect effect on subsistence users.

Mr. Tom Carpenter moved to submit the Council's comments, and second called by Mr. McLaughlin. Motion passed.

National Park Service Proposed Rule

Mr. Bert Frost, NPS Regional Director, presented the NPS proposed rule for subsistence collection in Alaska National Park Service lands.

The Wrangell-St. Elias Subsistence Resource Commission recently met and discussed the proposed rule. The Council moved and adopted the comments made by the Subsistence Resource Commission and submits it as their comment to the National Park Service.

National Park Service Proposed Rule to allow qualified subsistence users to collect and use nonedible fish and wildlife parts and plant materials for the creation and subsequent disposition (use, barter, or sale) of handicrafts. The rule would also (1) clarify that collecting or possessing living wildlife is generally prohibited and (2) limit types of bait that may be used to take bears for subsistence uses.

The Council heard testimony from communities most affected by the proposed rule and a briefing from the representative of the Wrangell-St. Elias National Park Subsistence Resource Commission that had submitted its comments to the National Park Service on the proposed rule.

The Council unanimously voted in support of the letter, and fully supported the findings of the Subsistence Resource Commission submitted on March 4, 2016 to Mr. Herbert Frost, Alaska Regional Director, National Park Service. I therefore incorporate these comments by reference and submit them as comments of this Council.

Update on RFR – Kenai/Kasilof Subsistence Fishery and Kenai Fishery Litigation

Mr. Stewart Cogswell, provided a briefing on the current status of the Kenai/Kasilof Subsistence fishery RFR. The RFRs are being evaluated for validity. The next step is to begin the threshold analyses.

The litigation on the Kenai/Kasilof fishery is being handled by the Department of Justice and OSM cannot make comments on its status.

WP16-15

WP16-15 requests to double the harvest limit for caribou from the Kenai Mountains Caribou Herd. At its meeting in Copper Center last October 2015, the OSM preliminary conclusion was to amend this proposal to close this caribou hunt due to conservation concerns. At the Copper Center meeting the Southcentral Council unanimously supported the OSM preliminary conclusion to close the hunt.

Based on the Solicitor's Office advice, OSM's conclusion is now to oppose the proposal, Wildlife Proposal 16-15. The Council unanimously opposed WP16-15.

WP16-15 Requests that the harvest quota for caribou in a portion of Unit 7 be increased from five caribou to ten caribou with five animals for the community of Hope and five for the community of Cooper Landing by Federal registration permit.

At its March 16, 2016 public meeting held in Anchorage, the Council heard new information based on recent information from the Solicitor's office.

RAC Recommendation: Oppose WP16-15

Justification: The herd needs time to recover. The Council opposed WP16-15 based on the DOI Solicitor's advice; as it is beyond the scope of the original proposal to close Federal Public Lands as originally suggested in the OSM preliminary conclusion.

Non-Rural Policy

The Federal Subsistence Board has developed a draft timeline for the non-rural determination. The draft policy from OSM will be presented to the FSB at its summer 2016 work session.

New Business

SERAC Letter to the Federal Subsistence Board

The Council supported the letter from the Southeast RAC requesting action be taken or addressed as a collective voice from the 10 regions during the March 2016 All RAC Meeting. Seven issues are included for the FSB to consider. The Council supported the issues and provided its comments to issues 6 and 7.

YK Regional Advisory Council Proposal Endorsement

The Southcentral Council supported a motion passed by the YKRAC opposing the Service's proposed rule for predator management on refuges requesting the FSB advocate on behalf of the Councils for withdrawal of the refuge's proposed rule.

Motion carried with one opposed.

Call for Proposals

Mr. Stewart Cogswell announced the call for fishery proposals which closes on April 1, 2016.

Priority Information Needs

Mr. Stewart Cogswell presented the Priority Information Needs from 2012 – 2016. Mr. Cogswell asked the council to collectively talk and gather ideas to develop the priority information needs and to submit them to OSM.

Previous studies that are nearing an end may need reconsideration for continuing those studies.

The Council also appointment RAC members to participate in a committee to prioritize the information needs. Committee members are Judy Caminer, Gloria Stickwan, and Ricky Gease.

2015 Annual Report

The Council moved to approve the annual report and submit to the FSB. The Council submitted six annual report items to the FSB. The six annual report topics are; 1) Cooperative management with Ninilchik Traditional Council Fishery. 2) Unit 11 brown bear population status and research. 3) Unit 6 deer harvest report. 4) Unit 13 Paxson hunt area. 5) Tribal resource management. 6) Effects of climate change on subsistence. The Council moved to adopt its final draft with additional language prior to sending to the FSB.

Subsistence Resource Commission

Mr. Jeff Burney of Cantwell, Alaska was appointed to the Denali National Park Subsistence Resource Commission. Mr. Burney called via teleconference to present his qualifications to serve on the SRC.

Agency Reports

Agency reports were submitted as part of Council meeting material during the all RAC public meeting.

Mr. Matt Piche, Fish Biologist for the Native Village of Eyak, presented a Partner's Program Fisheries Report to the Council.

Time and Location of Next meeting

The fall meeting will be held on October 14-15, 2016 in Anchorage.

Winter meeting is scheduled for February 14-15, 2017 in Anchorage.

Adjournment Meeting adjourned.

I hereby certify that, to the best of my knowledge, the forgoing minutes are accurate and complete.

\s\ Donald Mike

Donald Mike, DFO
Regional Advisory Council Coordinator

Richard Greg Encelewski, Chair
Southcentral Alaska Subsistence Regional Advisory Council

These minutes will be formally considered by the Southcentral Alaska Subsistence Regional Advisory Council at its next meeting on October 14-15, 2016, and any corrections or notations will be incorporated in the minutes of that meeting.

POLICY ON NONRURAL DETERMINATIONS

FEDERAL SUBSISTENCE BOARD

Adopted _____, 2017

PURPOSE

This policy clarifies the internal management of the Federal Subsistence Board (Board) and provides transparency to the public regarding the process of making or changing nonrural determinations of areas or communities for the purpose of identifying rural residents who may harvest fish and wildlife for subsistence uses on Federal public lands in Alaska. This policy is intended to clarify existing practices under the current statute and regulations. It does not create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its agencies, officers, or employees, or any other person.

INTRODUCTION

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) declares that, “the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands and by Alaska Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence; the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses” (ANILCA Section 801). Rural status provides the foundation for the subsistence priority on Federal public lands to help ensure the continuation of the subsistence way of life in Alaska. Prior to 2015, implementation of this section and making rural determinations was based on criteria set forth in Subpart B of the Federal subsistence regulations.

In October 2009, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, directed the Board to review the process of rural determinations. On December 31, 2012, the Board initiated a public review of the rural determination process. That public process lasted nearly a year, producing 278 comments from individuals, 137 comments from members of Regional Advisory Councils, 37 comments from Alaska Native entities, and 25 comments from other entities (e.g., city and borough governments). Additionally, the Board engaged in government-to-government consultation with tribes and consultation with Alaska Native Claims Settlement Act (ANCSA) corporations. In general, the comments received indicated a broad dissatisfaction with the rural determination process. Among other comments, respondents indicated the aggregation criteria were perceived as arbitrary, the population thresholds were seen as inadequate to capture the reality of rural Alaska, and the decennial review was widely viewed to be unnecessary.

Based on this information, the Board held a public meeting on April 17, 2014 and decided to recommend a simplification of the process to the Secretaries of the Interior and Agriculture (Secretaries) to address rural status in the Federal Subsistence Management Program. The Board's recommended simplified process would eliminate the criteria from regulation and allow the Board to determine which areas or communities are nonrural in Alaska. All other communities or areas would, therefore, be considered "rural" in relation to the Federal subsistence priority in Alaska.

The Secretaries accepted the Board recommendation and published a Final Rule on November 4, 2015, revising the regulations governing the rural determination process for the Federal Subsistence Management Program in Alaska. The Secretaries removed specific rural determination guidelines and criteria, including requirements regarding population data, the aggregation of communities, and a decennial review. The Board will now make nonrural determinations using a comprehensive approach that may consider such factors as population size and density, economic indicators, military presence, industrial facilities, use of fish and wildlife, degree of remoteness and isolation, and any other relevant material including information provided by the public.

By using a comprehensive approach and not relying on set guidelines and criteria, this new process will enable the Board to be more flexible in making decisions that take into account regional differences found throughout the State. This will also allow for greater input from the Councils, Federally recognized Tribes of Alaska, Alaska Native Corporations, and the public in making nonrural determinations by incorporating the nonrural determination process into the subsistence regulatory schedule which has established comment periods and will allow for multiple opportunities for input. Simultaneously with the Final Rule, the Board published a Direct Final Rule (80 FR 68245; Nov. 4, 2015) (**Appendix B**) establishing the list of nonrural communities, those communities not subject to the Federal subsistence priority on Federal public lands, based on the list of rural communities that predated the 2007 Final Rule (72 FR 25688; May 7, 2007).

As of November 4, 2015, the Board determined all communities and areas in Alaska to be rural in accordance with 36 CFR 242.15 and 50 CFR 100.15 except for the following: Fairbanks North Star Borough; Homer area – including Homer, Anchor Point, Kachemak City, and Fritz Creek; Juneau area – including Juneau, West Juneau, and Douglas; Kenai area – including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kasilof, and Clam Gulch; Ketchikan area – including Ketchikan City, Clover Pass, North Tongass Highway, Ketchikan East, Mountain Point, Herring Cove, Saxman East, Pennock Island, and parts of Gravina Island; Municipality of Anchorage; Seward area – including Seward and Moose Pass; Valdez; and Wasilla/Palmer area – including Wasilla, Palmer, Sutton, Big Lake, Houston, and Bodenbergs Butte (36 CFR 242.23 and 50 CFR 100.23).

BOARD AUTHORITIES

- ANILCA 16 U.S.C. 3101, 3126.
- Administrative Procedures Act (APA), 5 U.S.C. 551-559
- 36 CFR 242.15; 50 CFR 100.15
- 36 CFR 242.18(a); 50 CFR 100.18(a)
- 36 CFR 242.23; 50 CFR 100.23

POLICY

The Board will only address changes to the nonrural status of communities or areas when requested in a proposal. Any individual, organization, or community may submit a proposal to designate a community or area as nonrural. Additionally, any individual, organization, or community may request to change an existing nonrural determination by submitting a proposal to the Board to change the status of a community or area back to rural. This policy will outline what will be required of the proponent in the submission of a proposal, the administrative process to address a proposal, a general schedule or timeline, and the public process involved in acting on such proposals.

Process

Making a Nonrural Determination

For proposals seeking a nonrural determination for a community or area, it is the proponent's responsibility to provide the Board with substantive narrative evidence to support their rationale of why the proposed nonrural determination should be considered.

Submitting a Proposal

To file a request, you must submit a written proposal in accordance with the guidance provided in the Federal Register with a call for proposals to revise subsistence taking of fish and shellfish regulations and nonrural determinations. In addition to the threshold requirements set forth below, all proposals must contain the following baseline information:

- Full name and mailing address.
- A statement describing the proposed nonrural determination action requested.
- A detailed description of the community or area to be considered nonrural, including any current boundaries, borders, or distinguishing landmarks, so as to identify what Alaska residents would be affected by the change in rural status;
- Rationale (law, policy, factors, or guidance) for the Board to consider in determining the nonrural status of a community or area;
- A detailed statement of the facts that illustrate that the community or area is nonrural using the rationale stated above; and
- Any additional information supporting the proposed change.

Threshold Requirements

The Board will accept a proposal to designate a community or area as nonrural only if the Board determines that the proposal meets the following threshold requirements:

- Based upon information not previously considered by the Board;
- Provides substantive rationale for determining the nonrural status of a community or area that takes into consideration the unique qualities of the region; and
- Provides substantive information that supports the provided rationale that a community or area is nonrural instead of rural.

Upon receipt of a proposal to designate a community or area as nonrural, the Board shall determine whether the proposal satisfied the threshold requirements outlined above. If the proposal does not, the proponent will be notified in writing. If the proposal does, it will be considered in accordance with the timeline set forth below.

Rescinding a Nonrural Determination

For proposals seeking to have the Board rescind a nonrural determination, a proposal will be accepted if it is:

- Based upon information not previously considered by the Board; or
- Demonstrates that the information used and interpreted by the Board in designating the community as nonrural has changed since the original determination was made.

Proposals seeking to have the Board rescind a nonrural determination must also include the baseline information and meet the threshold requirements outlined above for nonrural proposals.

Limitation on Submission of Proposals to Change from Rural to Nonrural

The Board is aware of the burden placed on rural communities and areas in defending their rural status. If, under this new process, a community's status is maintained as rural after a proposal to change its status to nonrural is either rejected for (i) failure to comply with these guidelines or (ii) is rejected after careful consideration by the Board, no proposals to change that community's or area's status as nonrural shall be accepted until there has been a demonstrated change in that community's rural identity.

Whether or not there has been a "demonstrated change" to the rural identity of an area or community is the burden of the proponent to show by a preponderance of the evidence.

Process Schedule

As authorized in 36 CFR 242.18(a) and 50 CFR 100.18(a), "The Board may establish a rotating schedule for accepting proposals on various sections of subpart C or D regulations over a period of years." To ensure meaningful input from the Councils and allow opportunities for public comment, the Board will only accept nonrural

determination proposals every other year in conjunction with the call for proposals to revise subsistence taking of fish and shellfish regulations and nonrural determinations. If accepted, the proposal will be deliberated during the regulatory Board meeting in the next Fisheries Regulatory cycle. This schedule thus creates a three- year period for proposal review, analysis, Regional Advisory Council input, tribal and ANCSA corporation consultation, public comment, and Board deliberation and decision.

Decision Making

When acting upon proposals to change the nonrural status of a community or area, the Board will:

- Proceed on a case-by-case basis to address each proposal regarding nonrural determinations.
- Base its determination or changes to a determination on information of a reasonable and defensible nature contained within the administrative record.
- Make nonrural determinations based on a comprehensive application of considerations presented in the proposal that have been verified by the Board as accurate.
- Consider recommendations of the appropriate Subsistence Regional Advisory Council.
- Consider comments from the public, including the State of Alaska.
- Engage in government-to-government consultation with affected tribes or consultation with affected ANCSA corporations.
- Implement a final decision on a nonrural determination after compliance with the APA, if the determination is supported and valid.

As part of its decision-making process, the Board may compare information from other, similarly-situated communities or areas if limited information exists for a certain community or area. The Board also has discretion to clarify the geographical extent of the area relevant to the nonrural determination. The Board will look to the Regional Advisory Councils for confirmation that any relevant information brought forth during the nonrural determination process accurately describes the unique characteristics of the affected region. However, deference to the Councils does not apply.

General Process Timeline

Outlined in Table 1 and Table 2

Table 1. General Process Timeline

1. January to March (Even Year) – A proposed rule is published in the Federal Register with the call for proposals to revise subsistence taking of fish and shellfish regulations and nonrural determinations.
2. April to July (Even Year) – Proposals for nonrural determinations are validated by staff. If the proposal is not valid, the proponent will be notified in writing.
3. August to November (Even Year) –Affected Regional Advisory Council(s) reviews the validated proposals and provides their initial recommendations, which should include relevant regional characteristics, at their fall meeting on the record.
4. November to December (Even Year) – Staff will organize Nonrural Determination proposal presentations.
5. January (Odd Year) – At the Board’s Fishery Regulatory meeting, Board will determine if the threshold requirements have been met. If the proposal does not meet the threshold requirements, the proponent will be notified in writing. If the proposal does, it will be considered in accordance with the timeline set forth here.
6. February (Odd Year) to July (Even Year) (18 months) – For proposals that have been determined by the Board to meet the Threshold Requirements, the Board will conduct public hearings in the communities that will be affected by the validated proposals. During this time period, independent of the fall Council meetings, Tribes/ANCSA Corporations may also request formal consultation on the nonrural determination proposals. Following the Council meeting cycle, public hearings, and tribal/ANCSA consultations, staff will prepare a written analysis for each nonrural determination proposal following established guidelines.
7. August to November (Even Year) –The Council(s) will provide recommendations on the draft Nonrural Determination Analyses.
8. November 2018 to December (Even Year) – Staff incorporates Council recommendations and comments into the draft Nonrural Determination Analyses for the Board.
9. January (Odd Year) – At the Board’s Fisheries Regulatory meeting, Staff present the Nonrural Determination Analyses to the Board. The Board makes a final decision on the Nonrural Determination proposals.

Wildlife & FRMP Cycle	Fishery Cycle	Dates	FSB or Activity	Proposed Nonrural Determination Cycle			
		Council Cycle		Even Years			
Wildlife & FRMP Review Cycle	Fishery Review Cycle	January	FSB FRMP Work Session	1	Nonrural Proposed Rule Jan 2016		
		February	Fishery Proposed Rule Jan- Mar				
		March					
		April	FSB Meeting	2	Proposal Validation		
		July					
		August	Fishery Proposal Review	3	Nonrural Proposal Review by Councils		
		September					
		October					
		November					
		December			Finalize Proposal Presentations for the Board		
		January	FSB Meeting	5	Odd Years - Board determines which proposals meet the Threshold requirements		
		Fishery Review Cycle	Wildlife Review Cycle	February	Wildlife Proposed Rule Jan - Mar	6	Odd to Even Years (18 months) - Public Hearings, tribal/ANCSA Corporation Consultation, and Writing of Nonrural Determination Analyses for proposals that meet the threshold requirements as determined by the Board
	March						
	April						
	July						
	August			Wildlife Proposal & FRMP Project Review			
	September						
	October						
November							
December							
January	FSB FRMP Work Session						
Fishery Review Cycle	Fishery Review Cycle	February	Fishery Proposed Rule Jan- Mar	7	Even Years Analysis Review	3	Proposal review by Councils
		March					
		April	FSB Meeting				
		July					
		August	Fishery Proposal Review	7	Even Years Analysis Review	3	Proposal review by Councils
		September					
October							
November							
December		8	Finalize Nonrural Determination Analyses	4	Finalize Threshold Reports		
January	FSB Meeting	9	Odd Years – Final Board Decision	5	Odd Years – See 5 above		

Table 2. General Process Timeline Comparison with other Cycles

Appendix A – Final Rule – Rural Determination Process

DEPARTMENT OF AGRICULTURE**Forest Service****36 CFR Part 242****DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 100**

[Docket No. FWS-R7-SM-2014-0063;
FXRS12610700000-156-FF07J00000;
FBMS# 4500086287]

RIN 1018-BA62

**Subsistence Management Regulations
for Public Lands in Alaska; Rural
Determination Process**

AGENCIES: Forest Service, Agriculture;
Fish and Wildlife Service, Interior.
ACTION: Final rule.

SUMMARY: The Secretaries of Agriculture and the Interior are revising the regulations governing the rural determination process for the Federal Subsistence Management Program in Alaska. The Secretaries have removed specific guidelines, including requirements regarding population data, the aggregation of communities, and a decennial review. This change will allow the Federal Subsistence Board (Board) to define which communities or areas of Alaska are nonrural (all other communities and areas would, therefore, be rural). This new process will enable the Board to be more flexible in making decisions and to take into account regional differences found throughout the State. The new process will also allow for greater input from the Subsistence Regional Advisory Councils (Councils), Federally recognized Tribes of Alaska, Alaska Native Corporations, and the public.

DATES: This rule is effective November 4, 2015.

ADDRESSES: This rule and public comments received on the proposed rule may be found on the Internet at www.regulations.gov at Docket No. FWS-R7-SM-2014-0063. Board meeting transcripts are available for review at the Office of Subsistence Management, 1011 East Tudor Road, Mail Stop 121, Anchorage, AK 99503, or on the Office of Subsistence Management Web site (<https://www.doi.gov/subsistence>).

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Eugene R. Peltola, Jr., Office of Subsistence Management; (907) 786-3888 or subsistence@fws.gov. For

questions specific to National Forest System lands, contact Thomas Whitford, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743-9461 or twhitford@fs.fed.us.

SUPPLEMENTARY INFORMATION:**Background**

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. The Secretaries published temporary regulations to carry out this program in the **Federal Register** on June 29, 1990 (55 FR 27114), and published final regulations in the **Federal Register** on May 29, 1992 (57 FR 22940). The program regulations have subsequently been amended a number of times. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, "Parks, Forests, and Public Property," and Title 50, "Wildlife and Fisheries," at 36 CFR 242.1-242.28 and 50 CFR 100.1-100.28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Consistent with Subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board comprises:

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, U.S. National Park Service;
- The Alaska State Director, U.S. Bureau of Land Management;
- The Alaska Regional Director, U.S. Bureau of Indian Affairs;
- The Alaska Regional Forester, U.S. Forest Service; and
- Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.

Through the Board, these agencies and members participate in the development of regulations for subparts C and D, which, among other things, set forth program eligibility and specific harvest seasons and limits.

In administering the program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Regional Advisory Council. The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Council members represent varied geographical, cultural, and user interests within each region.

Prior Rulemaking

On November 23, 1990 (55 FR 48877), the Board published a notice in the **Federal Register** explaining the proposed Federal process for making rural determinations, the criteria to be used, and the application of those criteria in preliminary determinations. On December 17, 1990, the Board adopted final rural and nonrural determinations, which were published on January 3, 1991 (56 FR 236). Final programmatic regulations were published on May 29, 1992, with only slight variations in the rural determination process (57 FR 22940). As a result of this rulemaking, Federal subsistence regulations at 36 CFR 242.15 and 50 CFR 100.15 require that the rural or nonrural status of communities or areas be reviewed every 10 years, beginning with the availability of the 2000 census data.

Because some data from the 2000 census was not compiled and available until 2005, the Board published a proposed rule in 2006 to revise the list of nonrural areas recognized by the Board (71 FR 46416, August 14, 2006). The final rule published in the **Federal Register** on May 7, 2007 (72 FR 25688).

Secretarial Review

On October 23, 2009, Secretary of the Interior Salazar announced the initiation of a Departmental review of the Federal Subsistence Management Program in Alaska; Secretary of Agriculture Vilsack later concurred with this course of action. The review focused on how the Program is meeting the purposes and subsistence provisions of Title VIII of ANILCA, and if the Program is serving rural subsistence users as envisioned when it began in the early 1990s.

On August 31, 2010, the Secretaries announced the findings of the review, which included several proposed administrative and regulatory reviews and/or revisions to strengthen the Program and make it more responsive to those who rely on it for their subsistence uses. One proposal called

for a review, with Council input, of the rural determination process and, if needed, recommendations for regulatory changes.

The Board met on January 20, 2012, to consider the Secretarial directive and the Councils' recommendations and review all public, Tribal, and Alaska Native Corporation comments on the initial review of the rural determination process. After discussion and deliberation, the Board voted unanimously to initiate a review of the rural determination process and the 2010 decennial review. Consequently, the Board found that it was in the public's best interest to extend the compliance date of its 2007 final rule (72 FR 25688; May 7, 2007) on rural determinations until after the review of the rural determination process and the decennial review were completed or in 5 years, whichever comes first. The Board published a final rule on March 1, 2012 (77 FR 12477), extending the compliance date.

The Board followed this action with a request for comments and announcement of public meetings (77 FR 77005; December 31, 2012) to receive public, Tribal, and Alaska Native Corporations input on the rural determination process.

Due to a lapse in appropriations on October 1, 2013, and the subsequent closure of the Federal Government, some of the preannounced public meetings and Tribal consultations to receive comments on the rural determination process during the closure were cancelled. The Board decided to extend the comment period to allow for the complete participation from the Councils, public, Tribes, and Corporations to address this issue (78 FR 66885; November 7, 2013).

The Councils were briefed on the Board's **Federal Register** documents during their winter 2013 meetings. At their fall 2013 meetings, the Councils provided a public forum to hear from residents of their regions, deliberate on the rural determination process, and provide recommendations for changes to the Board.

The Secretaries, through the Board, also held hearings in Barrow, Ketchikan, Sitka, Kodiak, Bethel, Anchorage, Fairbanks, Kotzebue, Nome, and Dillingham to solicit comments on the rural determination process. Public testimony was recorded during these hearings. Government-to-government tribal consultations on the rural determination process were held between members of the Board and Federally recognized Tribes of Alaska. Additional consultations were held

between members of the Board and Alaska Native Corporations.

Altogether, the Board received 475 substantive comments from various sources, including individuals, members of the Councils, and other entities or organizations, such as Alaska Native Corporations and borough governments. In general, this information indicated a broad dissatisfaction with the current rural determination process. The aggregation criteria were perceived as arbitrary. The current population thresholds were seen as inadequate to capture the reality of rural Alaska. Additionally, the decennial review was widely viewed to be unnecessary.

Based on this information, the Board at their public meeting held on April 17, 2014, elected to recommend a simplification of the process by determining which areas or communities are nonrural in Alaska; all other communities or areas would, therefore, be rural. The Board would make nonrural determinations using a comprehensive approach that considers population size and density, economic indicators, military presence, industrial facilities, use of fish and wildlife, degree of remoteness and isolation, and any other relevant material, including information provided by the public. The Board would rely heavily on the recommendations of the Subsistence Regional Advisory Councils.

In summary, based on Council and public comments, Tribal and Alaska Native Corporation consultations, and briefing materials from the Office of Subsistence Management, the Board developed a proposal that simplifies the process of rural determinations and submitted its recommendation to the Secretaries on August 15, 2014.

On November 24, 2014, the Secretaries requested that the Board initiate rulemaking to pursue the regulatory changes recommended by the Board. The Secretaries also requested that the Board obtain Council recommendations and public input, and conduct Tribal and Alaska Native Corporation consultation on the proposed changes. If adopted through the rulemaking process, the current regulations would be revised to remove specific guidelines, including requirements regarding population data, the aggregation of communities, and the decennial review, for making rural determinations.

Public Review and Comment

The Departments published a proposed rule on January 28, 2015 (80 FR 4521), to revise the regulations governing the rural determination

process in subpart B of 36 CFR part 242 and 50 CFR part 100. The proposed rule opened a public comment period, which closed on April 1, 2015. The Departments advertised the proposed rule by mail, radio, newspaper, and social media; comments were submitted via *www.regulations.gov* to Docket No. FWS-R7-SM-2014-0063. During that period, the Councils received public comments on the proposed rule and formulated recommendations to the Board for their respective regions. In addition, 10 separate public meetings were held throughout the State to receive public comments, and several government-to-government consultations addressed the proposed rule. The Councils had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, a Council Chair, or a designated representative, presented each Council's recommendations at the Board's public work session of July 28, 2015.

The 10 Councils provided the following comments and recommendations to the Board on the proposed rule:

Northwest Arctic Subsistence Regional Advisory Council—unanimously supported the proposed rule.

Seward Peninsula Subsistence Regional Advisory Council—unanimously supported the proposed rule.

Yukon-Kuskokwim Delta Subsistence Regional Advisory Council—unanimously supported the proposed rule.

Western Interior Alaska Regional Advisory Council—supported the proposed rule.

North Slope Subsistence Regional Advisory Council—unanimously supported the proposed rule as written. The Council stated the proposed rule will improve the process and fully supported an expanded role and inclusion of recommendations of the Councils when the Board makes nonrural determinations. The Council wants to be closely involved with the Board when the Board sets policies and criteria for how it makes nonrural determinations under the proposed rule if the rule is approved, and the Council passed a motion to write a letter requesting that the Board involve and consult with the Councils when developing criteria to make nonrural determinations, especially in subject matter that pertains to their specific rural characteristics and personality.

Bristol Bay Subsistence Regional Advisory Council—supported switching the focus of the process from rural to

nonrural determinations. They indicated there should be criteria for establishing what is nonrural to make determinations defensible and justifiable, including determinations of the carrying capacity of the area for sustainable harvest, and governmental entities should not determine what is spiritually and culturally important for a community. They supported eliminating the mandatory decennial; however, they requested a minimum time limit between requests (at least 3 years). They discussed deference and supported the idea but felt it did not go far enough.

Southcentral Alaska Subsistence Regional Advisory Council—supported the proposed rule with modification. They recommended deference be given to the Councils on the nonrural determinations.

Southeast Alaska Subsistence Regional Advisory Council—supported the proposed rule with modification. The Council recommended a modification to the language of the proposed rule: “The Board determines, after considering the report and recommendations of the applicable regional advisory council, which areas or communities in Alaska are non-rural” The Council stated that this modification is necessary to prevent the Board from adopting proposals contrary to the recommendation(s) of a Council and that this change would increase transparency and prevent rural communities from being subject to the whims of proponents.

Kodiak/Aleutians Subsistence Regional Advisory Council—is generally appreciative that the Board has recommended changes to the rural determination process and supported elimination of the decennial review. The Council recommended that the Board implement definitive guidelines for how the Board will make nonrural determinations to avoid subjective interpretations and determinations; that the language of the proposed rule be modified to require the Board to defer to the Councils and to base its justification for not giving deference on defined criteria to avoid ambiguous decisions; that the Board provide program staff with succinct direction for conducting analyses on any proposals to change a community’s status from rural to nonrural; and that the Board develop written policies and guidelines for making nonrural determinations even if there is a lack of criteria in the regulations. The Council is concerned that proposals to change rural status in the region will be frequently submitted from people or entities from outside the region; the Council is opposed to

proposals of this nature from outside its region and recommends that the Board develop guidelines and restrictions for the proposal process that the Board uses to reassess nonrural status.

Eastern Interior Alaska Subsistence Regional Advisory Council—opposed the proposed rule due to the lack of any guiding criteria to determine what is rural or nonrural. They stated the lack of criteria could serve to weaken the rural determination process. They supported greater involvement of the Councils in the Board’s process to make rural/nonrural determinations. This Council was concerned about changes including increasing developments, access pressure on rural subsistence communities and resources, and social conflicts in the Eastern Interior region.

A total of 90 substantive comments were submitted from public meetings, letters, deliberations of the Councils, and those submitted via www.regulations.gov.

- 54 supported the proposed rule;
- 16 neither supported nor opposed the proposed rule;
- 7 supported the proposed rule with modifications;
- 7 neither supported nor opposed the proposed rule and suggested modifications; and
- 6 opposed the proposed rule.

Major comments from all sources are addressed below:

Comment: The Board should provide, in regulatory language, objective criteria, methods, or guidelines for making nonrural determinations.

Response: During the request for public comment (77 FR 77005; December 31, 2012), the overwhelming response from the public was dissatisfaction with the list of regulatory guidelines used to make rural determinations. The Board, at their April 17, 2014, public meeting, stated that if the Secretaries approved the recommended simplification of the rural determination process, the Board would make nonrural determinations using a comprehensive approach that considers, but is not limited to, population size and density, economic indicators, military presence, industrial facilities, use of fish and wildlife, degree of remoteness and isolation, and any other relevant material, including information provided by the public. The Board also indicated that they would rely heavily on the recommendations of the Subsistence Regional Advisory Councils. The Board, at their July 28, 2015, public work session, directed that a subcommittee be established to draft options (policy or rulemaking) to address future rural determinations. The subcommittee options, once reviewed

by the Board at their January 12, 2016, public meeting will be presented to the Councils for their review and recommendations.

Comment: The Board should give deference to the Regional Advisory Councils on nonrural determinations and place this provision in regulatory language.

Response: The Board expressed during its April 2014 and July 2015 meetings that it intends to rely heavily on the recommendations of the Councils and that Council input will be critical in addressing regional differences in the rural determination process. Because the Board has confirmed that Councils will have a meaningful and important role in the process, a change to the regulatory language is neither warranted nor necessary at the present time.

Comment: Establish a timeframe for how often proposed changes may be submitted.

Response: During previous public comment periods, the decennial review was widely viewed to be unnecessary, and the majority of comments expressed the opinion that there should not be a set timeframe used in this process. The Board has been supportive of eliminating a set timeframe to conduct nonrural determinations. However, this issue may be readdressed in the future if a majority of the Councils support the need to reestablish a nonrural review period.

Comment: Redefine “rural” to allow nonrural residents originally from rural areas to come home and participate in subsistence activities.

Response: ANILCA and its enacting regulations clearly state that you must be an Alaska resident of a rural area or community to take fish or wildlife on public lands. Any change to that definition is beyond the scope of this rulemaking.

Comment: Develop a policy for making nonrural determinations, including guidance on how to analyze proposed changes.

Response: The Board, at their July 28, 2015, public work session, directed that a subcommittee be established to draft options (policy or rulemaking) to address future rural determinations that, once completed, will be presented to the Councils for their review and recommendations.

Comment: Allow rural residents to harvest outside of the areas or communities of residence.

Response: All rural Alaskans may harvest fish and wildlife on public lands unless there is a customary and traditional use determination that identifies the specific community’s or area’s use of particular fish stocks or

wildlife populations or if there is a closure.

Rule Promulgation Process and Related Rulemaking

These final regulations reflect Secretarial review and consideration of Board and Council recommendations, Tribal and Alaska Native Corporations government-to-government tribal consultations, and public comments. The public received extensive opportunity to review and comment on all changes.

Because this rule concerns public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

Elsewhere in today's **Federal Register** is a direct final rule by which the Board is revising the list of rural determinations in subpart C of 36 CFR part 242 and 50 CFR part 100. See "Subsistence Management Regulations for Public Lands in Alaska; Rural Determinations, Nonrural List" in Rules and Regulations.

Conformance With Statutory and Regulatory Authorities

Administrative Procedure Act Compliance

The Board has provided extensive opportunity for public input and involvement in compliance with Administrative Procedure Act requirements, including publishing a proposed rule in the **Federal Register**, participation in multiple Council meetings, and opportunity for additional public comment during the Board meeting prior to deliberation. Additionally, an administrative mechanism exists (and has been used by the public) to request reconsideration of the Secretaries' decision on any particular proposal for regulatory change (36 CFR 242.18(b) and 50 CFR 100.18(b)). Therefore, the Secretaries believe that sufficient public notice and opportunity for involvement have been given to affected persons regarding this decision. In addition, because the direct final rule that is mentioned above and is related to this final rule relieves restrictions for many Alaskans by allowing them to participate in the subsistence program activities, we believe that we have good cause, as required by 5 U.S.C. 553(d), to make this rule effective upon publication.

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement that described four

alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

Paperwork Reduction Act

An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule does not contain any new collections of information that require OMB approval. OMB has reviewed and approved the collections of information associated with the subsistence regulations at 36 CFR part 242 and 50 CFR part 100, and assigned OMB Control Number 1018-0075, which expires February 29, 2016.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all

significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that two million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of \$3.00 per pound, this amount would equate to about \$6 million in food value Statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this Program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

Title VIII of ANILCA does not provide specific rights to tribes for the subsistence taking of wildlife, fish, and shellfish. However, the Secretaries, through the Board, provided Federally recognized Tribes and Alaska Native corporations opportunities to consult on this rule. Consultation with Alaska Native corporations are based on Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: “The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.”

The Secretaries, through the Board, provided a variety of opportunities for consultation: Commenting on proposed changes to the existing rule; engaging in dialogue at the Council meetings; engaging in dialogue at the Board’s meetings; and providing input in

person, by mail, email, or phone at any time during the rulemaking process.

On March 23 and 24, 2015, the Board provided Federally recognized Tribes and Alaska Native Corporations a specific opportunity to consult on this rule. Federally recognized Tribes and Alaska Native Corporations were notified by mail and telephone and were given the opportunity to attend in person or via teleconference.

Executive Order 13211

This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. However, this rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these regulations under the guidance of Eugene R. Peltola, Jr. of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Mary McBurney, Alaska Regional Office, National Park Service;
- Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Trevor T. Fox, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Thomas Whitford, Alaska Regional Office, U.S. Forest Service.

Authority

This rule is issued under the authority of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126).

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, the Secretaries amend 36 CFR part 242 and 50 CFR part 100 as set forth below.

PART II—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

■ 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart B—Program Structure

■ 2. In subpart B of 36 CFR part 242 and 50 CFR part 100, § 11.15 is revised to read as follows:

§ 11.15 Rural determination process.

(a) The Board determines which areas or communities in Alaska are nonrural. Current determinations are listed at § 11.23.

(b) All other communities and areas are, therefore, rural.

Dated: Oct. 28, 2015.

Sally Jewell,
Secretary of the Interior.

Dated: Sept. 30, 2015.

Beth G. Pendleton,
Regional Forester, USDA – Forest Service.
[FR Doc. 2015–27994 Filed 10–30–15; 8:45 am]

BILLING CODE 3410–11–4333–15–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 52 and 81**

[EPA–R04–OAR–2014–0904; FRL–9936–55–Region 4]

Air Plan Approval and Air Quality Designation; TN; Reasonably Available Control Measures and Redesignation for the TN Portion of the Chattanooga 1997 Annual PM_{2.5} Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the portion of a State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on October 15, 2009, that addresses reasonably available control measures (RACM), including reasonably available control technology (RACT), for the Tennessee portion of the Chattanooga, TN-GA-AL nonattainment area for the 1997 fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS) (hereinafter referred to as the “Chattanooga TN-GA-AL Area” or

Appendix B – Direct Final Rule – Nonrural List

Need for Correction

As published, the final regulations (TD 9728) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the final regulations (TD 9728), that are subject to FR Doc. 2015-18816, are corrected as follows:

1. On page 45866, in the preamble, third column, last sentence of first full paragraph, the language “rules, including section 706(d)(2) and section 706(d)(3).” is corrected to read “rules, including section 704(c), § 1.704-3(a)(6) (reverse section 704(c)), section 706(d)(2), and section 706(d)(3).”

2. On page 45868, in the preamble, first column, fourth line from the bottom of the column, the language “interim closings of its books except at” is corrected to read “interim closing of its books except at”.

3. On page 45871, in the preamble, second column, third line from the bottom of the column, under paragraph heading “*v. Deemed Timing of Variations*,” the language “taxable year was deemed to close at the” is corrected to read “taxable year was deemed to occur at the”.

4. On page 45873, in the preamble, third column, eighth line from the bottom of the column, the language “taxable as of which the recipients of a” is corrected to read “taxable year as of which the recipients of a”.

5. On page 45874, second column, eight lines from the bottom of the column, the following sentence is added to the end of the paragraph: “These final regulations do not override the application of section 704(c), including reverse section 704(c), and therefore the final regulations provide that the rules of section 706 do not apply in making allocations of book items upon a partnership revaluation.”

6. On page 45876, in the preamble, second column, under paragraph heading “*Effective/Applicability Dates*”, fifth line of the first paragraph, the language “of a special rule applicable to § 1.704-” is corrected to read “of a special rule applicable to § 1.706-”.

7. On page 45876, in the preamble, second column, under paragraph heading “*Effective/Applicability Dates*”, third line of the second paragraph, the language “regulations apply to the partnership” is corrected to read “regulations apply to partnership”.

8. On page 45876, in the preamble, third column, fourth line from the top of the column, the language “that was formed prior to April 19, 2009.” is corrected to read “that was formed prior to April 14, 2009.”

9. On page 45877, first column, under paragraph heading “*List of Subjects*,” the fourth line, the language “26 CFR part 2” is corrected to read “26 CFR part 602”.

10. On page 45883, third column, the first line of the signature block, the language “Karen L. Schiller,” is corrected to read “Karen M. Schiller,”.

Martin V. Franks,

*Chief, Publications and Regulations Branch,
Legal Processing Division, Associate Chief
Counsel (Procedure and Administration).*

[FR Doc. 2015-28014 Filed 11-3-15; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF AGRICULTURE**Forest Service****36 CFR Part 242****DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 100**

[Docket No. FWS-R7-SM-2015-0156;
FXRS12610700000-156-FF07J00000;
FBMS#4500086366]

RIN 1018-BA82

Subsistence Management Regulations for Public Lands in Alaska; Rural Determinations, Nonrural List

AGENCY: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Direct final rule.

SUMMARY: This rule revises the list of nonrural areas in Alaska identified by the Federal Subsistence Board (Board). Only residents of areas that are rural are eligible to participate in the Federal Subsistence Management Program on public lands in Alaska. Based on a Secretarial review of the rural determination process, and the subsequent change in the regulations governing this process, the Board is revising the current nonrural determinations to the list that existed prior to 2007. Accordingly, the community of Saxman and the area of Prudhoe Bay will be removed from the nonrural list. The following areas continue to be nonrural, but their boundaries will return to their original borders: the Kenai Area; the Wasilla/Palmer area; the Homer area; and the Ketchikan area.

DATES: This rule is effective on December 21, 2015 unless we receive significant adverse comments on or before December 4, 2015.

ADDRESSES: You may submit comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov> and search for FWS-R7-SM-2015-0156, which is the docket number for this rulemaking.

- *By hard copy:* U.S. mail or hand-delivery to: USFWS, Office of Subsistence Management, 1011 East Tudor Road, MS 121, Attn: Theo Matuskowitz, Anchorage, AK 99503-6199

FOR FURTHER INFORMATION CONTACT:

Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service,

Attention: Eugene R. Peltola, Jr., Office of Subsistence Management; (907) 786-3888 or subsistence@fws.gov. For questions specific to National Forest System lands, contact Thomas Whitford, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743-9461 or twhitford@fs.fed.us.

SUPPLEMENTARY INFORMATION:**Background**

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program (Program). This program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. Only residents of areas identified as rural are eligible to participate in the Program on Federal public lands in Alaska. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, “Parks, Forests, and Public Property,” and Title 50, “Wildlife and Fisheries,” at 36 CFR 242.1-242.28 and 50 CFR 100.1-100.28, respectively.

Consistent with these regulations, the Secretaries established a Federal Subsistence Board (Board) comprising Federal officials and public members to administer the Program. One of the Board’s responsibilities is to determine which communities or areas of the State are rural or nonrural. The Secretaries also divided Alaska into 10 subsistence resource regions, each of which is represented by a Regional Advisory Council (Council). The Council members represent varied geographical, cultural, and user interests within each region. The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a

meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska.

Related Rulemaking

Elsewhere in today's **Federal Register** is a final rule that sets forth a new process by which the Board will make rural determinations ("Subsistence Management Regulations for Public Lands in Alaska; Rural Determination Process"). Please see that rule for background information on how this new process was developed and the extensive Council and public input that was considered. A summary of that information follows:

Until promulgation of the rule mentioned above, Federal subsistence regulations at 36 CFR 242.15 and 50 CFR 100.15 had required that the rural or nonrural status of communities or areas be reviewed every 10 years, beginning with the availability of the 2000 census data. Some data from the 2000 census was not compiled and available until 2005, so the Board published a proposed rule in 2006 to revise the list of nonrural areas recognized by the Board (71 FR 46416, August 14, 2006). The final rule published in the **Federal Register** on May 7, 2007 (72 FR 25688), and changed the rural determination for several communities or areas in Alaska. These communities had 5 years following the date of publication to come into compliance.

The Board met on January 20, 2012, and, among other things, decided to extend the compliance date of its 2007 final rule on rural determinations. A final rule published March 1, 2012 (77 FR 12477), that extended the compliance date until either the rural determination process and findings review were completed or 5 years, whichever came first. The 2007 regulations have remained in titles 36 and 50 of the CFR unchanged since their effective date.

The Board followed that action with a request for comments and announcement of public meetings (77 FR 77005; December 31, 2012) to receive public, Tribal, and Alaska Native Corporations input on the rural determination process. At their fall 2013 meetings, the Councils provided a public forum to hear from residents of their regions, deliberate on the rural determination process, and provide recommendations for changes to the Board. The Board also held hearings in Barrow, Ketchikan, Sitka, Kodiak, Bethel, Anchorage, Fairbanks, Kotzebue, Nome, and Dillingham to solicit comments on the rural determination process, and public testimony was

recorded. Government-to-government tribal consultations on the rural determination process were held between members of the Board and Federally recognized Tribes of Alaska. Additional consultations were held between members of the Board and Alaska Native Corporations.

Altogether, the Board received 475 substantive comments from various sources, including individuals, members of the Councils, and other entities or organizations, such as Alaska Native Corporations and borough governments. In general, this information indicated a broad dissatisfaction with the current rural determination process.

Based on this information, the Board at their public meeting held on April 17, 2014, elected to recommend a simplification of the process by determining which areas or communities are nonrural in Alaska; all other communities or areas would, therefore, be rural. The Board would make nonrural determinations using a comprehensive approach that considers population size and density, economic indicators, military presence, industrial facilities, use of fish and wildlife, degree of remoteness and isolation, and any other relevant material, including information provided by the public. The Board would rely heavily on the recommendations of the Councils. The Board developed a proposal that simplifies the process of rural determinations and submitted its recommendation to the Secretaries on August 15, 2014.

On November 24, 2014, the Secretaries requested that the Board initiate rulemaking to pursue the regulatory changes recommended by the Board. The Secretaries also requested that the Board obtain Council recommendations and public input, and conduct Tribal and Alaska Native Corporation consultation on the proposed changes.

The Departments published a proposed rule on January 28, 2015 (80 FR 4521), to revise the regulations governing the rural determination process in subpart B of 36 CFR part 242 and 50 CFR part 100. Following a process that involved substantial Council and public input, the Departments published the final rule that may be found elsewhere in today's **Federal Register**.

Direct Final Rule

During that process, the Board went on to address a starting point for nonrural communities and areas. The May 7, 2007 (72 FR 25688), final rule was justified by the Board's January 3,

1991, notice (56 FR 236) adopting final rural and nonrural determinations and the final rule of May 7, 2002 (67 FR 30559), amending 36 CFR 242.23(a) and 50 CFR 100.23(a) to add the Kenai Peninsula communities (Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kasilof, Clam Gulch, Anchor Point, Homer, Kachemak City, Fritz Creek, Moose Pass, and Seward) to the list of areas determined to be nonrural. The 2007 rule added the village of Saxman and the area of Prudhoe Bay to the nonrural list and expanded the nonrural boundaries of the Kenai Area; the Wasilla/Palmer area; the Homer area; and the Ketchikan Area.

Since the 2007 final rule (72 FR 25688; May 7, 2007) was contentious, and so many comments were received objecting to the changes imposed by that rule, the Board has decided to return to the rural determinations prior to the 2007 final rule. The Board further decided that the most expedient method to enact their decisions was to publish this direct final rule adopting the pre-2007 nonrural determinations. As a result, the Board has determined the following areas to be nonrural: Fairbanks North Star Borough; Homer area—including Homer, Anchor Point, Kachemak City, and Fritz Creek; Juneau area—including Juneau, West Juneau, and Douglas; Kenai area—including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kasilof, and Clam Gulch; Ketchikan area—including Ketchikan City, Clover Pass, North Tongass Highway, Ketchikan East, Mountain Point, Herring Cove, Saxman East, Pennock Island, and parts of Gravina Island; Municipality of Anchorage; Seward area—including Seward and Moose Pass, Valdez, and Wasilla area—including Palmer, Wasilla, Sutton, Big Lake, Houston, and Bodenbergs Butte.

These final regulations reflect Board review and consideration of Council recommendations, Tribal and Alaska Native Corporations government-to-government tribal consultations, and public comments. Based on concerns expressed by some of the Councils and members of the public, the Board went on to direct staff to develop options for the Board to consider and for presentation to the Councils, to address future nonrural determinations. These options will be presented to the Board and Chairs of each Council at the January 12, 2016, public meeting.

We are publishing this rule without a prior proposal because we view this action as an administrative action by the Federal Subsistence Board. This rule will be effective, as specified above in DATES, unless we receive significant

adverse comments on or before the deadline set forth in DATES. Significant adverse comments are comments that provide strong justifications why the rule should not be adopted or for changing the rule. If we receive significant adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. If no significant adverse comments are received, we will publish a document in the **Federal Register** confirming the effective date.

Because this rule concerns public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

Conformance With Statutory and Regulatory Authorities

Administrative Procedure Act Compliance

In compliance with Administrative Procedure Act, the Board has provided extensive opportunity for public input and involvement in its efforts to improve the rural determination process as described in the related final rule published elsewhere in today's **Federal Register**. In addition, anyone with concerns about this rulemaking action may submit comments as specified in **DATES** and **ADDRESSES**.

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of this rule was conducted in accordance with section 810. That evaluation also supported the Secretaries' determination that the rule will not reach the "may significantly restrict" threshold that would require notice and hearings under ANILCA section 810(a).

Paperwork Reduction Act

An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule does not contain any new collections of information that require OMB approval. OMB has reviewed and approved the collections of information associated with the subsistence regulations at 36 CFR part 242 and 50 CFR part 100, and assigned OMB Control Number 1018-0075, which expires February 29, 2016.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public

where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that two million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of \$3.00 per pound, this amount would equate to about \$6 million in food value Statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this Program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more

in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

The Alaska National Interest Lands Conservation Act, Title VIII, does not provide specific rights to tribes for the subsistence taking of wildlife, fish, and shellfish. However, the Secretaries, through the Board, provided Federally recognized Tribes and Alaska Native corporations opportunities to consult on this rule. Consultation with Alaska Native corporations are based on Public Law 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: “The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.”

The Secretaries, through the Board, provided a variety of opportunities for consultation on the rural determination process: commenting on changes under consideration for the existing regulations; engaging in dialogue at the Council meetings; engaging in dialogue at the Board’s meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process.

Since 2007 multiple opportunities were provided by the Board for Federally recognized Tribes and Alaska Native Corporations to consult on the subject of rural determinations. Federally recognized Tribes and Alaska Native Corporations were notified by mail and telephone and were given the opportunity to attend in person or via teleconference.

Executive Order 13211

This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. However, this rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these regulations under the guidance of Eugene R. Peltola, Jr. of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Mary McBurney, Alaska Regional Office, National Park Service;
- Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Trevor T. Fox, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Thomas Whitford, Alaska Regional Office, U.S. Forest Service.

Authority

This rule is issued under the authority of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126).

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, the Secretaries amend 36 CFR part 242 and 50 CFR part 100 as set forth below.

PART—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

- 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart C—Board Determinations

- 2. In subpart C of 36 CFR part 242 and 50 CFR part 100, § 1.23 is revised to read as follows:

§ 1.23 Rural determinations.

(a) The Board has determined all communities and areas to be rural in accordance with § .15 except the following: Fairbanks North Star Borough; Homer area—including Homer, Anchor Point, Kachemak City, and Fritz Creek; Juneau area—including Juneau, West Juneau, and Douglas; Kenai area—including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kasilof, and Clam Gulch; Ketchikan area—including Ketchikan City, Clover Pass, North Tongass Highway, Ketchikan East, Mountain Point, Herring Cove, Saxman East, Penneck Island, and parts of Gravina Island; Municipality of Anchorage; Seward area—including Seward and Moose Pass, Valdez, and Wasilla/Palmer area—including Wasilla, Palmer, Sutton, Big Lake, Houston, and Bodenbergt Butte.

(b) You may obtain maps delineating the boundaries of nonrural areas from the U.S. Fish and Wildlife Service at the Alaska Regional Office address provided at 50 CFR 2.2(g), or on the Web at <https://www.doi.gov/subsistence>.

Dated: September 30, 2015.

Eugene R. Peltola, Jr.,

Assistant Regional Director, U.S. Fish and Wildlife Service, Acting Chair, Federal Subsistence Board.

Dated: September 30, 2015.

Thomas Whitford,

Subsistence Program Leader, USDA – Forest Service.

[FR Doc. 2015–27996 Filed 10–30–15; 8:45 am]

BILLING CODE 3410–11–4333–15–P

FP17-06 & 07 Executive Summary	
General Description	<p>Proposals FP17-06 and FP17-07 are requests to the Federal Subsistence Board (Board) to eliminate gillnets as a method for harvest in the waters under Federal subsistence jurisdiction of the Kenai River</p> <p><i>Submitted by: Cooper Landing and Hope Federal Subsistence Community Group, and Mary Colligan, Assistant Region Director (Fisheries and Ecological Services) and Mitch Ellis, Regional Chief of Refuges (National Wildlife Refuge System) U.S. Fish and Wildlife Service</i></p>
Proposed Regulation	<p>§ __.27(i)(10)(iv) <i>You may take only salmon, trout, Dolly Varden, and other char under authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56 and 5 AAC 57) unless modified herein. Additionally for Federally managed waters of the Kasilof and Kenai River drainages:</i></p> <p><i>(J) Residents of Ninilchik may harvest sockeye, Chinook, Coho, and Pink salmon with a gillnet in the Federal public waters of the Kenai River. Residents of Ninilchik may retain other species incidentally caught in the Kenai River except for rainbow trout and Dolly Varden 18 inches or longer. Rainbow trout and Dolly Varden 18 inches or greater must be released.</i></p> <p><i>(1) Only one community gillnet can be operated on the Kenai River. The gillnet cannot be over 10 fathoms in length to take salmon, and may not obstruct more than half of the river width with stationary fishing gear. Subsistence stationary gillnet gear may not be set within 200 feet of other subsistence stationary gear.</i></p> <p><i>(2) One registration permit will be available and will be awarded by the Federal in-season fishery manager, in</i></p>

	<p>consultation with the Kenai National Wildlife Refuge manager, based on the merits of the operation plan. The registration permit will be issued to an organization that, as the community gillnet owner, will be responsible for its, use, and removal in consultation with the Federal fishery manager. As part of the permit, the organization must:</p> <p>(i) Prior to the season, provide a written operation plan to the Federal fishery manager including a description of how fishing time and fish will be offered and distributed among households and residents of Ninilchik;</p> <p>(ii) After the season, provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, persons or households operating the gear, hours of operation and number of each species caught and retained or released.</p> <p>3) The gillnet owner (organization) may operate the net for subsistence purposes on behalf of residents of Ninilchik by requesting subsistence fishing permit that:</p> <p>(i) Identifies a person who will be responsible for fishing the gillnet;</p> <p>(ii) Includes provisions for recording daily catches, the household to whom the catch was given, and other information determined to be necessary for effective resource management by the Federal fishery manager.</p>
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	<p>(4) Fishing will be allowed from June 15 through August 15 on the Kenai River unless closed or otherwise restricted by Federal special action.</p> <p>(5) Salmon taken in the gillnet fishery will be included as part of the dip net/rod and reel fishery annual total harvest limits for the Kenai River and as part of dip net/rod and reel household annual limits of participating households.</p> <p>(6) Fishing for each salmon species will end and the fishery will be closed by Federal special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.</p>
OSM Preliminary Conclusion	<p>Option 1 (see page 39,40) Defer Proposals FP17-06 & 07</p> <p>Option 2 (see page 40,41) Oppose Proposals FP17-06 &07</p>
Southcentral Regional Council Recommendation	
Interagency Staff Committee Comments	
ADF&G Comments	
Written Public Comments	<p>61 Support, 0 Oppose</p> <p>Written Public Comments Available Upon Request.</p>

DRAFT STAFF ANALYSIS FP17-06 & 07

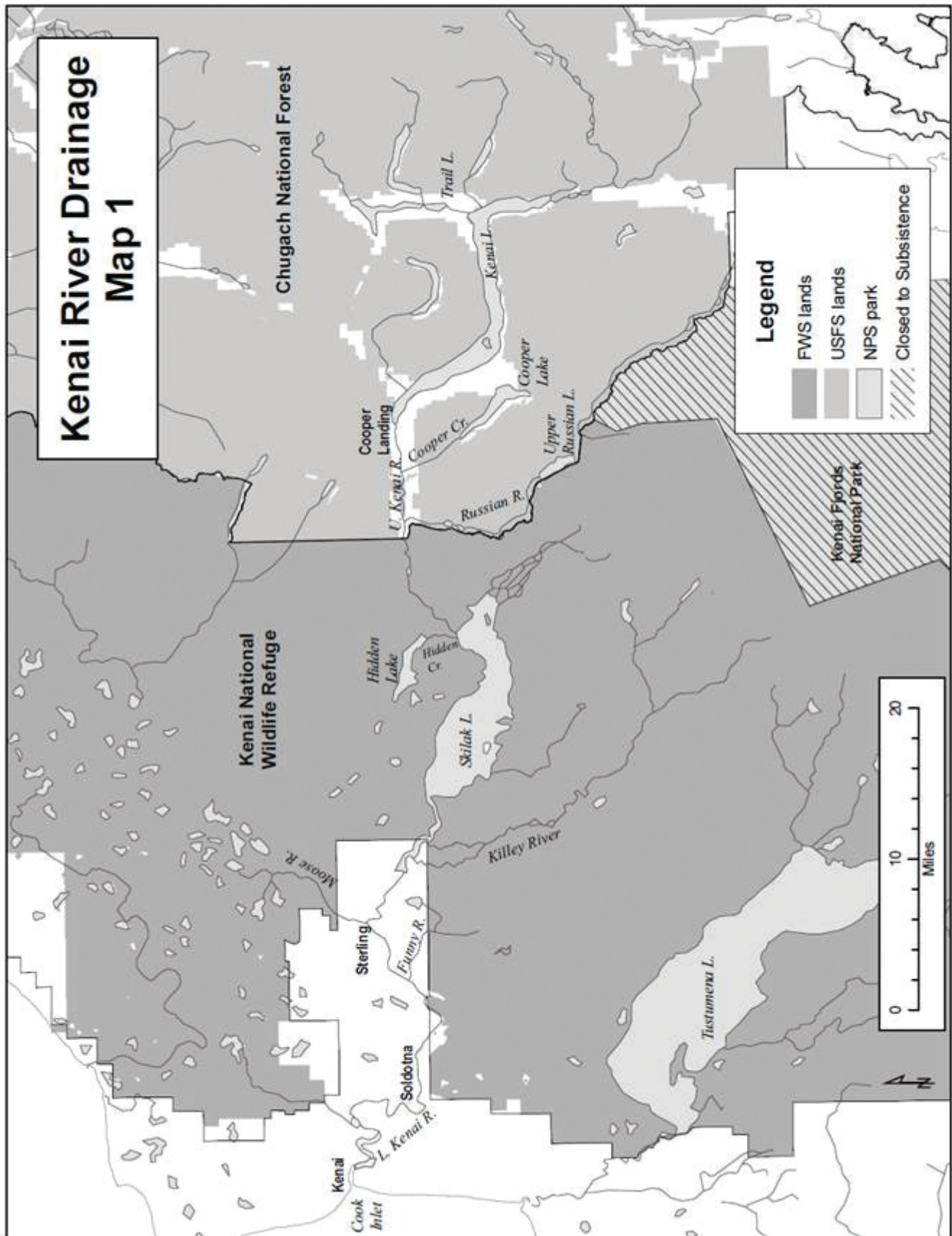
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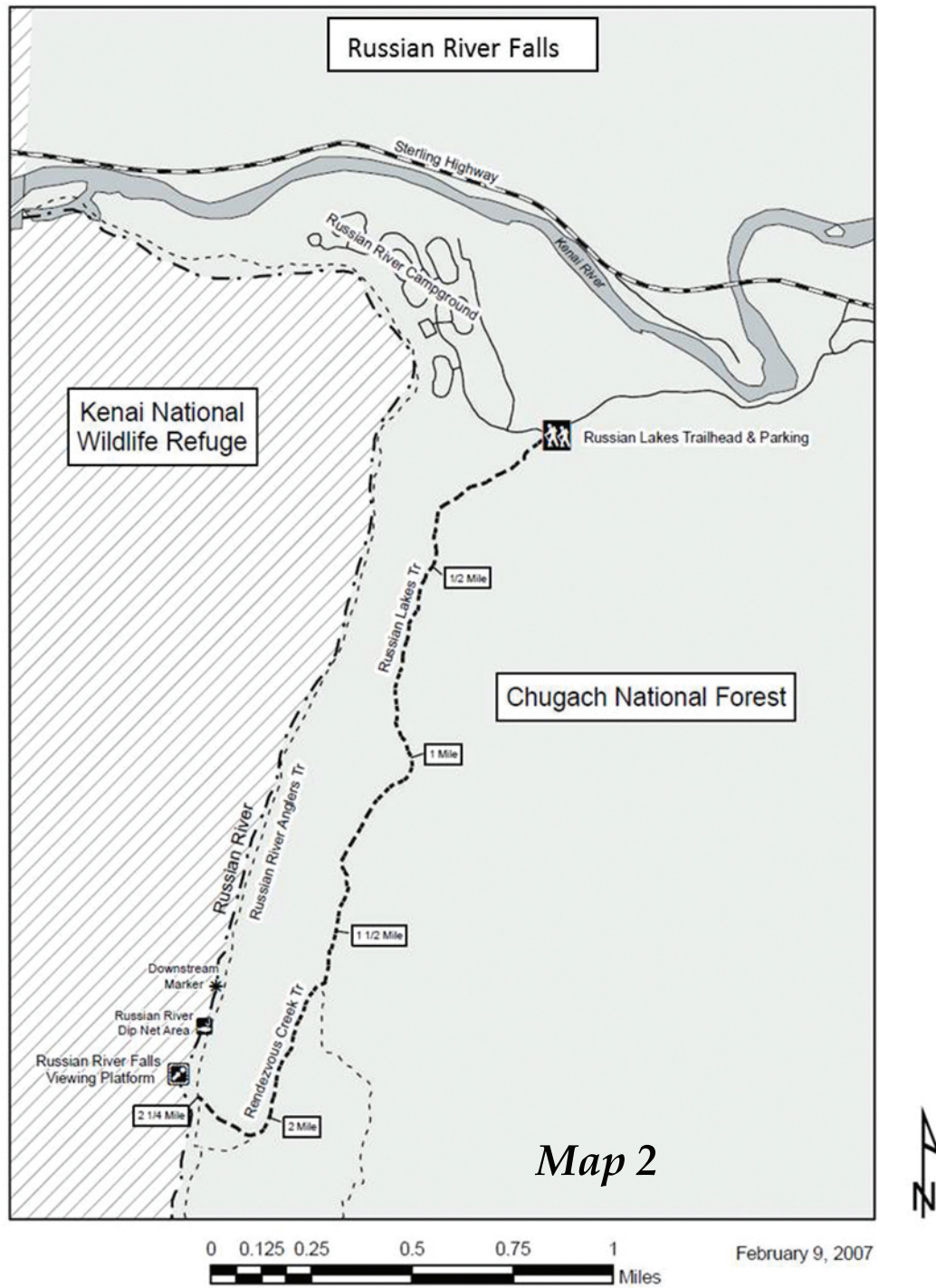
Proposal FP17-06, submitted by the Cooper Landing and Hope Federal Subsistence Community Group, and Proposal FP17-07, jointly submitted by the Assistant Regional Director for Fisheries and Ecological Services, and the Regional Chief of Refuges, U.S. Fish and Wildlife Service, Region 7, Alaska, request the Federal Subsistence Board (Board) to eliminate gillnets as a method for harvest in the waters under Federal subsistence jurisdiction of the Kenai River. The two proposals are being analyzed together because the proponents are requesting the same action from the Board.

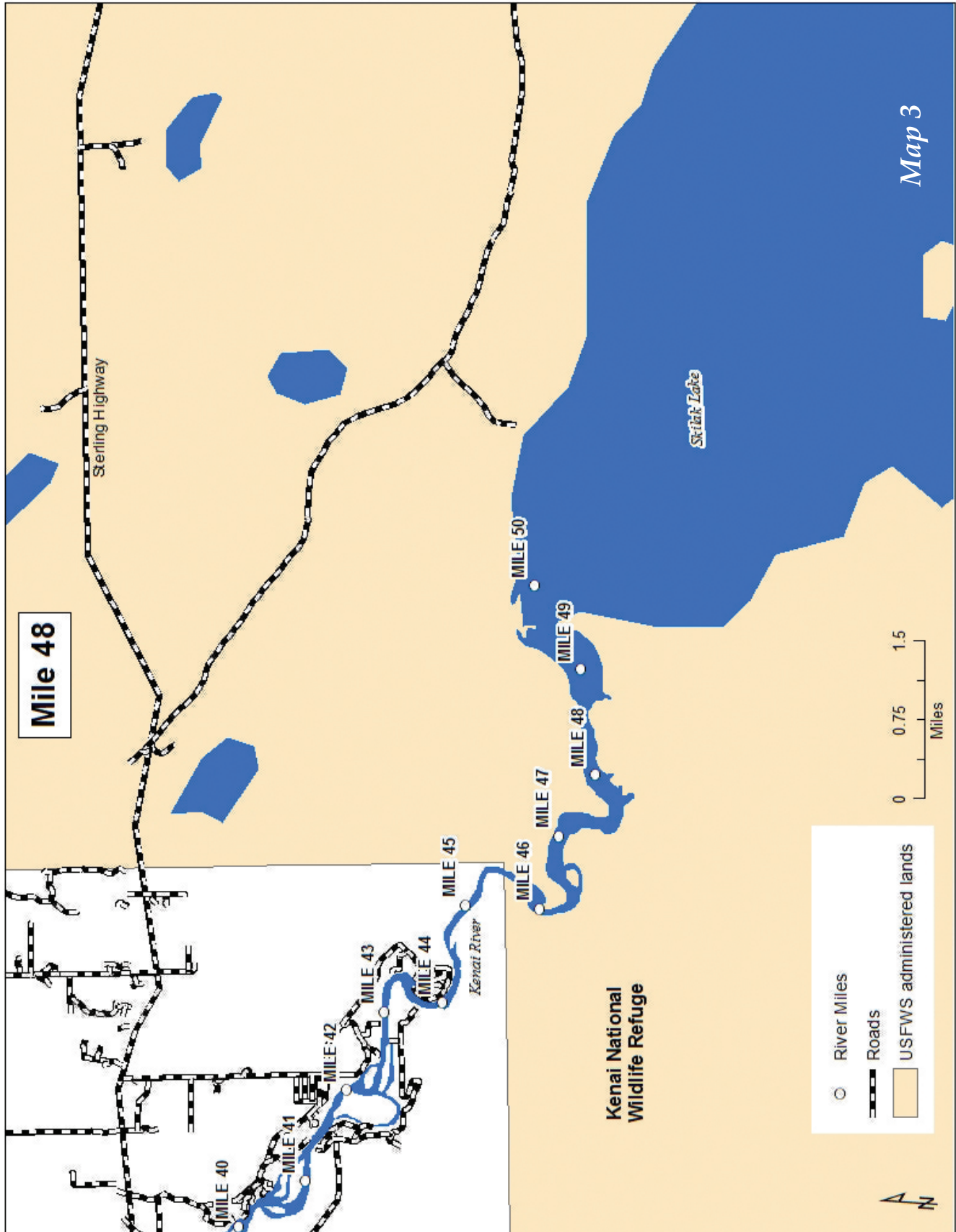
DISCUSSION

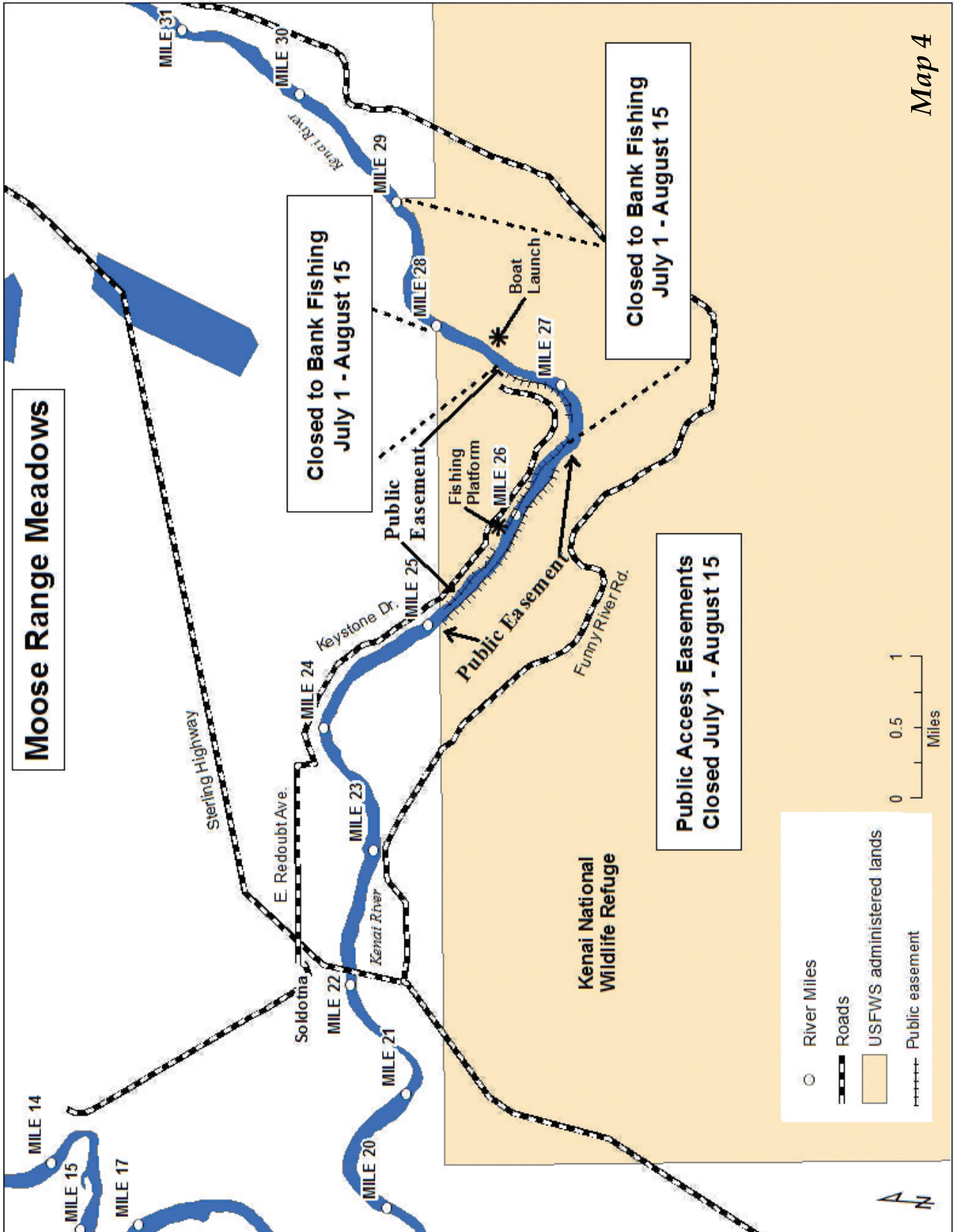
Currently, Federally qualified subsistence users of Cooper Landing, Hope and Ninilchik may harvest salmon with dip nets and rod and reel in the Federal public waters of the Kenai River drainage (**Map 1**). There are three specific areas: a 600-yard section of the Russian River just below the Russian River Falls (**Map 2**), the Kenai River two miles below the outlet to Skilak Lake, from approximately River Mile 45.5 to River Mile 48 (**Map 3**) and the Kenai River in the Moose Range Meadows area, from approximately River Mile 26.5 to River Mile 29 (**Map 4**). They may also harvest salmon in the Kenai River watershed with a rod and reel in all Federal public waters open to sport fishing. Federally qualified subsistence users from Ninilchik may harvest salmon species on the Kenai River utilizing one community gillnet, no more than 10 fathoms in length, under a registration permit issued by the Cook Inlet Federal inseason fisheries manager. Issuance of the registration permit is contingent upon the Federal inseason manager's approval of an operational plan by a Federally qualified subsistence user from Ninilchik or an organization representing the residents of Ninilchik. As of June 15, 2016, the Ninilchik Traditional Council (NTC) has submitted three operation plans to the Cook Inlet Federal inseason fisheries manager, one in 2015 and two in 2016.

The Cooper Landing and Hope Federal Subsistence Community Group (Group) provides six reasons for submission of proposal FP17-06. The Group maintains that the Board's adoption of subsection (J) of the current regulations, which allows Federally qualified subsistence users from Ninilchik to place one community gillnet in the Kenai River:









1. Aggrieves the Federal subsistence priority and rights of Cooper Landing and Hope [Federally-qualified] subsistence users.
2. Is a violation of ANILCA §802 and recognized practices of fish and wildlife management;
3. Is not consistent with sound management principles, and the conservation of healthy populations of fish and wildlife;
4. Is not consistent with management of fish and wildlife in accordance with recognized scientific principles and the purposes for which unit was established, designated, or expanded by or pursuant to Titles II through VII of this Act;
5. Is a violation of ANILCA §815: "Nothing in this title shall be construed as...

(1) granting any property right in any fish or wildlife or other resource of the public lands or as permitting the level of subsistence uses of fish and wildlife within a conservation system unit to be inconsistent with the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife."

6. Is a violation of ANILCA § 801, subsection (4):

"(4) in order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary ... to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents."

The Group contends that, "Any decision by the Board that violates ANILCA and threatens the healthy populations of fish in the Kenai River aggrieves our continued ability to successfully utilize the resource to meet our subsistence needs in a meaningful way. We believe removing section (J) from 50 C.F.R. § 100.27(e)(10) in its entirety and allowing no gillnet in the Kenai River is the only move that will meet both the policy and spirit of ANILCA. This belief is based on our concern about the impact a gillnet will have on the declining stocks of early and late-run Chinook Salmon in the Kenai River system, a concern supported in the OSM Staff analysis of FP-15-10. The Chinook Salmon species in the Kenai River is facing a critical juncture in its vitality and viability."

In a discussion with the two authors of the proposal representing the Group, they reiterated these six reasons and their rationale stated above. They also added that the use of a gillnet by Ninilchik residents has the potential to harvest most, if not all, of the salmon species quotas in the lower river (Moose Range Meadows, the NTC's preferred location) before Cooper Landing and Hope residents even have the chance to fish at the Russian River Falls, their preferred location. It is their contention that elimination of the gillnet fishery would protect the subsistence opportunity for Cooper Landing and Hope residents (Recken and Pearson. 2016. Pers. comm.).

Proponents from Hope and Cooper Landing maintain that the authorization of a community gillnet in the Kenai River is inconsistent with both sound management of fish in accordance with recognized scientific

principles and the conservation of healthy populations. This analysis does not address most of these contentions in detail as they are more appropriately addressed through the Request for Reconsideration (RFR) process and are already under consideration pursuant to the RFR previously filed by the same proponents. One reason asserted by the proponent in its proposal, that allowing a gillnet in the Kenai River aggrieves the Federal subsistence priority and rights of Federally-qualified subsistence users from Cooper Landing and Hope, is not being addressed through the RFR process. Thus, this analysis will discuss that position.

The U.S. Fish and Wildlife Service (Service) provides three reasons for its submission FP17-07, which are the same reasons that the Service opposed FP15-10 in 2015. The Service maintains concerns with implementing a new fishery with a non-selective gear type that has the potential to harvest large numbers of fish in relatively short periods of time, including:

1. Fishing a gillnet in an important spawning area for early and late run Chinook Salmon;
2. The non-selective nature of gillnets as a gear type does not allow for size and species selectivity that is essential to manage and conserve early-run Chinook Salmon, Kenai River Rainbow Trout and Dolly Varden stocks.
3. As adopted by the Board, the current community gillnet fishery regulation for the Kenai River is in conflict with existing regulations, since it authorizes the use of a non-selective gear type, but does not allow harvest of early-run Chinook Salmon and requires release of Rainbow Trout and Dolly Varden larger than 18 inches.

Proposal FP17-10 is related to Proposals FP17-06, FP17-07, and FP17-08, as all will affect the Kenai River community gillnet fishery. The Board's decision on FP17-06,-07, and -08 will have a bearing on FP17-10.

Existing Federal Regulation

Cook Inlet Area

§ __.27(i)(10)(iv) You may take only salmon, trout, Dolly Varden, and other char under authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56 and 5 AAC 57) unless modified herein. Additionally for Federally managed waters of the Kasilof and Kenai River drainages:

(D) Residents of Hope, Cooper Landing, and Ninilchik may take only sockeye salmon through a dip net and a rod and reel fishery at one specified site on the Russian River, and sockeye, late-run Chinook, Coho, and pink salmon through a dip net/rod and reel fishery at two specified sites on the Kenai River below Skilak Lake and as provided in this section. For Ninilchik residents, salmon taken in the Kasilof River Federal subsistence fish wheel, and dip net/rod and reel fishery will be included as part of each household's annual limit for the Kenai and Russian Rivers' dip net and rod and reel fishery. For both Kenai River fishing sites below Skilak Lake, incidentally caught fish may be retained for subsistence uses, except for early-run

Chinook salmon (unless otherwise provided for), rainbow trout 18 inches or longer, and Dolly Varden 18 inches or longer, which must be released. For the Russian River fishing site, incidentally caught fish may be retained for subsistence uses, except for early- and late-run Chinook salmon, coho salmon, rainbow trout, and Dolly Varden, which must be released. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing site, and permits must be returned to the manager by the due date listed on the permit. Chum salmon that are retained are to be included within the annual limit for sockeye salmon. Only residents of Cooper Landing, Hope, and Ninilchik may retain incidentally caught resident species.

(1) The household dip net and rod and reel gear fishery is limited to three sites:

- (i) At the Kenai River Moose Range Meadows site, dip netting is allowed only from a boat from a Federal regulatory marker on the Kenai River at about river mile 29 downstream approximately 2.5 miles to another marker on the Kenai River at about river mile 26.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to two baited single or treble hooks June 15-August 31. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56 and 5 AAC 57 and 5 AAC 77.540).*
- (ii) At the Kenai River Mile 48 site, dip netting is allowed while either standing in the river or from a boat, from Federal regulatory markers on both sides of the Kenai River at about river mile 48 (approximately 2 miles below the outlet of Skilak Lake) downstream approximately 2.5 miles to a marker on the Kenai River at about river mile 45.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to two baited single or treble hooks June 15-August 31. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56, 5 AAC 57, and 5 AAC 77.540).*
- (iii) At the Russian River Falls site, dip netting is allowed from a Federal regulatory marker near the upstream end of the fish ladder at Russian River Falls downstream to a Federal regulatory marker approximately 600 yards below Russian River Falls. Residents using rod and reel gear at this fishery site may not fish with bait at any time.*

(2) Fishing seasons are as follows:

- (i) For sockeye salmon at all fishery sites: June 15-August 15;*
- (ii) For late-run Chinook, pink, and coho salmon at both Kenai River fishery sites only: July 16-September 30; and*

- (iii) *Fishing for sockeye, late-run Chinook, coho, or pink salmon will close by special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.*

(3) Each household may harvest their annual sockeye, late-run Chinook, coho, or pink salmon limits in one or more days, and each household member may fish with a dip net or rod and reel during this time. Salmon taken in the Kenai River system dip net and rod and reel fishery by Ninilchik households will be included as part of those household's annual limits for the Kasilof River.

- (i) *For sockeye salmon—annual total harvest limit of 4,000 (including any retained chum salmon); annual household limits of 25 for each permit holder and 5 additional for each household member;*
- (ii) *For late-run Chinook salmon—annual total harvest limit of 1,000; annual household limits of 10 for each permit holder and 2 additional for each household member;*
- (iii) *For coho salmon—annual total harvest limit of 3,000; annual household limits of 20 for each permit holder and 5 additional for each household member; and*
- (iv) *For pink salmon—annual total harvest limit of 2,000; annual household limits of 15 for each permit holder and 5 additional for each household member.*

(E) For Federally managed waters of the Kenai River and its tributaries, in addition to the dip net and rod and reel fisheries on the Kenai and Russian rivers described under paragraph (e)(10)(iv)(D) of this section, residents of Hope, Cooper Landing, and Ninilchik may take sockeye, Chinook, coho, pink, and chum salmon through a separate rod and reel fishery in the Kenai River drainage. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Permits must be returned to the Federal fisheries manager by the due date listed on the permit. Incidentally caught fish, other than salmon, are subject to regulations found in paragraphs (e)(10)(iv)(F) and (G) of this section. Seasons, areas (including seasonal riverbank closures), harvest and possession limits, and methods and means (including motor boat restrictions) for take are the same as for the taking of these salmon species under State of Alaska fishing regulations (5 AAC 56, 5 AAC 57 and 5 AAC 77.540), except for the following harvest and possession limits:

- (1) In the Kenai River below Skilak Lake, fishing is allowed with up to two baited single or treble hooks June 15-August 31.*
- (2) For early-run Chinook salmon less than 46 inches or 55 inches or longer, daily harvest and possession limits are two per day and two in possession.*

- (3) *For late-run Chinook salmon 20 inches and longer, daily harvest and possession limits are two per day and two in possession.*
- (4) *Annual harvest limits for any combination of early- and late-run Chinook salmon are four for each permit holder.*
- (5) *For other salmon 16 inches and longer, the combined daily harvest and possession limits are six per day and six in possession, of which no more than four per day and four in possession may be coho salmon, except for the Sanctuary Area and Russian River, for which no more than two per day and two in possession may be coho salmon.*

(F) For Federally managed waters of the Kenai River and its tributaries below Skilak Lake outlet at river mile 50, residents of Cooper Landing, Hope, and Ninilchik may take resident fish species including lake trout, rainbow trout, and Dolly Varden/Arctic char with jigging gear through the ice or rod and reel gear in open waters. Resident fish species harvested in the Kenai River drainage under the conditions of a Federal subsistence permit must be marked by removal of the dorsal fin immediately after harvest and recorded on the permit prior to leaving the fishing site. Seasons, areas (including seasonal riverbank closures), harvest and possession limits, and methods and means (including motor boat restrictions) for take are the same as for the taking of these resident species under State of Alaska fishing regulations (5 AAC 56, 5 AAC 57, and 5 AAC 77.54), except for the following harvest and possession limits:

- (1) *For lake trout 20 inches or longer, daily harvest and possession limits are four per day and four in possession. For fish less than 20 inches, daily harvest and possession limits are 15 per day and 15 in possession.*
- (2) *In flowing waters, daily harvest and possession limits for Dolly Varden/Arctic char less than 18 inches in length are one per day and one in possession. In lakes and ponds, daily harvest and possession limits are two per day and two in possession. Only one of these fish can be 20 inches or longer.*
- (3) *In flowing waters, daily harvest and possession limits for rainbow/steelhead trout are one per day and one in possession and must be less than 18 inches in length. In lakes and ponds, daily harvest and possession limits are two per day and two in possession of which only one fish 20 inches or longer may be harvested daily.*

Sections (G), (H), (I) are also in regulations, but are not germane to these proposals

(J) Residents of Ninilchik may harvest sockeye, Chinook, Coho, and Pink salmon with a gillnet in the

Federal public waters of the Kenai River. Residents of Ninilchik may retain other species incidentally caught in the Kenai River except for rainbow trout and Dolly Varden 18 inches or longer. Rainbow trout and Dolly Varden 18 inches or greater must be released¹.

(1) Only one community gillnet can be operated on the Kenai River. The gillnet cannot be over 10 fathoms in length to take salmon, and may not obstruct more than half of the river width with stationary fishing gear. Subsistence stationary gillnet gear may not be set within 200 feet of other subsistence stationary gear.

(2) One registration permit will be available and will be awarded by the Federal in-season fishery manager, in consultation with the Kenai National Wildlife Refuge manager, based on the merits of the operation plan. The registration permit will be issued to an organization that, as the community gillnet owner, will be responsible for its, use, and removal in consultation with the Federal fishery manager. As part of the permit, the organization must:

(i) Prior to the season, provide a written operation plan to the Federal fishery manager including a description of how fishing time and fish will be offered and distributed among households and residents of Ninilchik;

(ii) After the season, provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, persons or households operating the gear, hours of operation and number of each species caught and retained or released.

3) The gillnet owner (organization) may operate the net for subsistence purposes on behalf of residents of Ninilchik by requesting a subsistence fishing permit that:

(i) Identifies a person who will be responsible for fishing the gillnet;

(ii) Includes provisions for recording daily catches, the household to whom the catch was given, and other information determined to be necessary for effective resource management by the Federal fishery manager.

(4) Fishing will be allowed from June 15 through August 15 on the Kenai River unless closed or otherwise restricted by Federal special action.

(5) Salmon taken in the gillnet fishery will be included as part of the dip net/rod and reel fishery

¹ The regulations regarding Chinook Salmon in section (D) still apply to the regulations in section (J). The harvest limit listed in (D) of 1,000 fish is specific to late-run Chinook Salmon; there is no provision in either (D) or (J) to harvest early-run Chinook Salmon. Therefore, early-run Chinook Salmon, Rainbow Trout 18 inches or longer, and Dolly Varden 18 inches or longer, are not allowed to be harvested in the gillnet fishery authorized in section (J); these fish must be “released”. While the regulation does not specifically say so, the phrase “must be released” usually connotes both “immediately” and “unharmmed”, as the more quickly a fish is released after being caught, the greater its chance of being unharmmed, and thus, the greater its chance of survey, recovery, and resumption of normal behavior and activities.

annual total harvest limits for the Kenai River and as part of dip net/rod and reel household annual limits of participating households.

- (6) *Fishing for each salmon species will end and the fishery will be closed by Federal special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.*

Kenai National Wildlife Refuge

There are regulations specific to the Kenai National Wildlife Refuge pertinent to the analysis:

50 CFR 36.39(i)

- (7) *Fishing. We allow fishing on the refuge in accordance with State and Federal laws, and consistent with the following provisions:*

(ii) *Designated areas along the Kenai River at the two Moose Range Meadows public fishing facilities along Keystone Drive are closed to public access and use. At these facilities, we allow fishing only from the fishing platforms and by wading in the Kenai River. To access the river, you must enter and exit from the stairways attached to the fishing platforms. We prohibit fishing from, walking or placing belongings on, or otherwise occupying, designated areas along the river in these areas.*

- (12) *Area-specific regulations for the Moose Range Meadows Subdivision non-development and public use easements.*

- (i) *Where the refuge administers two variable width, non-development easements held by the United States and overlaying private lands within the Moose Range Meadows Subdivision on either shore of the Kenai River between river miles 25.1 and 28.1, you may not erect any building or structure of any kind; remove or disturb gravel, topsoil, peat, or organic material; remove or disturb any tree, shrub, or plant material of any kind; start a fire; or use a motorized vehicle of any kind (except a wheelchair occupied by a person with a disability), unless such use is authorized under the terms and conditions of a special use permit (FWS Form 3-1383-G) issued by the Refuge Manager.*
- (ii) *Where the refuge administers two 25-foot-wide public use easements held by the United States and overlaying private lands within the Moose Range Meadows Subdivision on either shore of the Kenai River between river miles 25.1 and 28.1, we allow public entry subject to applicable Federal regulations and the following*

provisions:

(A) You may walk upon or along, fish from, or launch or beach a boat upon an area 25 feet upland of ordinary high water, provided that no vehicles (except wheelchairs) are used. We prohibit non-emergency camping, structure construction, and brush or tree cutting within the easements.

(B) From July 1 to August 15, you may not use or access any portion of the 25-foot-wide public easements or the three designated public easement trails located parallel to the Homer Electric Association Right-of-Way from Funny River Road and Keystone Drive to the downstream limits of the public use easements. Maps depicting the seasonal closure are available from Refuge Headquarters.

Proposed Federal Regulation

Cook Inlet Area

§ __.27(i)(10)(iv) You may take only salmon, trout, Dolly Varden, and other char under authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56 and 5 AAC 57) unless modified herein. Additionally for Federally managed waters of the Kasilof and Kenai River drainages:

~~(J) Residents of Ninilechik may harvest sockeye, Chinook, Coho, and Pink salmon with a gillnet in the Federal public waters of the Kenai River. Residents of Ninilechik may retain other species incidentally caught in the Kenai River except for rainbow trout and Dolly Varden 18 inches or longer. Rainbow trout and Dolly Varden 18 inches or greater must be released.~~

~~(1) Only one community gillnet can be operated on the Kenai River. The gillnet cannot be over 10 fathoms in length to take salmon, and may not obstruct more than half of the river width with stationary fishing gear. Subsistence stationary gillnet gear may not be set within 200 feet of other subsistence stationary gear.~~

~~(2) One registration permit will be available and will be awarded by the Federal in-season fishery manager, in consultation with the Kenai National Wildlife Refuge manager, based on the merits of the operation plan. The registration permit will be issued to an organization that, as the community gillnet owner, will be responsible for its, use, and removal in consultation with the Federal fishery manager. As part of the permit, the organization must:~~

~~(i) Prior to the season, provide a written operation plan to the Federal fishery manager including a description of how fishing time and fish will be offered and~~

~~distributed among households and residents of Ninilchik;~~

~~(ii) After the season, provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, persons or households operating the gear, hours of operation and number of each species caught and retained or released.~~

~~3) The gillnet owner (organization) may operate the net for subsistence purposes on behalf of residents of Ninilchik by requesting subsistence fishing permit that:~~

~~(i) Identifies a person who will be responsible for fishing the gillnet;~~

~~(ii) Includes provisions for recording daily catches, the household to whom the catch was given, and other information determined to be necessary for effective resource management by the Federal fishery manager.~~

~~(4) Fishing will be allowed from June 15 through August 15 on the Kenai River unless closed or otherwise restricted by Federal special action.~~

~~(5) Salmon taken in the gillnet fishery will be included as part of the dip net/rod and reel fishery annual total harvest limits for the Kenai River and as part of dip net/rod and reel household annual limits of participating households.~~

~~(6) Fishing for each salmon species will end and the fishery will be closed by Federal special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.~~

Existing State Regulations

The management of Kenai River fisheries is conducted through several fisheries management plans, as outlined in Regulatory History section below. The State of Alaska manages salmon fisheries statewide based on the principles and criteria listed in the State's Policy for the Management of Sustainable Salmon Fisheries, 5AAC 39.222 (See **Appendix A**).

In addition, the following State regulation to protect riparian habitat in the Moose Range Meadows area, by prohibiting or restricting sport fishing at certain times of the year, is relevant to the proposals under analysis:

5 AAC 56.065. Riparian Habitat Fishery Management Plan

~~(d) From July 1 through August 15, the following Kenai River riparian habitats are closed to all fishing, except fishing from a boat that is located more than 10 feet from shore and not connected to the shore or any riparian habitat:~~

(15) on the south bank of the Kenai River, between ADF&G regulatory markers located at river mile 26.4 and river mile 30.0;

(16) on the north bank of the Kenai River from an ADF&G regulatory marker located at the upstream edge of the boat ramp at the end of Keystone Drive at approximately river mile 27.3, upstream to ADF&G regulatory markers located at the Kenai National Wildlife Refuge boundary delineated by the power line at river mile 28.0;

(17) in the Caymas Subdivision, on the north bank of the Kenai River, between ADF&G regulatory markers located at river mile 31.5 and 32.5;

(e) For purposes of this section, “riparian habitat” means all areas within 10 feet in either direction from the Kenai River waterline.

Extent of Federal Public Water

Federal public waters are defined and described under 36 CFR 242.3 and 50 CFR100.3. For the Kenai River, Federal public waters under consideration include all waters of the Kenai River within and adjacent to the exterior boundaries of the Kenai National Wildlife Refuge and Chugach National Forest (**Map 1**). These include Kenai Lake and its tributaries and all water downstream to the confluence of the upper branch of the Killey River (approximately RM 45.5), the mainstem Kenai River between RM 26.5 and RM 29 (known locally as Moose Range Meadows), and most of the upper reaches of tributaries below Skilak Lake including the Moose, Killey and Funny Rivers.

Customary and Traditional Use Determinations

Residents of the communities of Cooper Landing, Hope and Ninilchik have a customary and traditional use determination for all fish in the Kenai Peninsula District, waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.

Regulatory History

Pre- and Early Statehood Fisheries

Prior to 1952, freshwater streams in the Kenai Peninsula were open to subsistence fishing, but poorly managed commercial fisheries, a growing local and Alaska State resident population, and increased user pressure decimated salmon runs. In 1952, as part of efforts to rebuild salmon runs, all streams and lakes of the Kenai Peninsula were closed to subsistence fishing under Territory of Alaska regulations. Only rod and reel fishing was allowed for “personal use” (Fall et al. 2004).

Contemporary State Fisheries

Overall, the State of Alaska manages commercial and sport salmon fisheries statewide based on the principles and criteria listed in the State’s Policy for the management of sustainable salmon fisheries, 5AAC 39.222 (**Appendix A**). A State regulatory management plan for Upper Cook Inlet salmon (5 AAC

21.363) provides the Alaska Board of Fisheries guiding principles and provisions for adopting management plans for specific stocks. In 1992, the State classified most of the Cook Inlet Area, including the Kenai and Kasilof River drainages, as a nonsubsistence area (5AAC 99.015(3)). The only State subsistence fisheries in Cook Inlet occur in areas that are not accessible from the road system, including the Tyonek, Windy Bay, Port Chatham, and Port Graham subdistricts, as well as portions of Seldovia Bay and the Yentna River drainage.

The Kenai River fisheries are complex and intensively managed by the State of Alaska. There are five management plans that apply to Kenai River salmon stocks:

- Upper Cook Inlet Salmon Management Plan (5 AAC 21.363)
- Kenai River and Kasilof River Early-Run King Salmon Conservation Management Plan (5 AAC 56.070)
- Kenai River Late-Run King Salmon Management Plan (5 AAC 21.359)
- Kenai River Late-Run Sockeye Salmon Management Plan (5 AAC 21.360)
- Kenai River Coho Salmon Management Plan (5 AAC 56.080)

These plans provide goals for sustained yield, guidance for mixed-species and mixed-stock fisheries, and plans for allocation between competing fisheries. Most of the initial Federal subsistence fishing regulations for the Kenai River that were put in place during the period of 2006 – 2008, were based on these plans to mirror State of Alaska regulations, conservation efforts, and management.

The State also has a regulatory management plan for Upper Cook Inlet personal use salmon fisheries (5 AAC 77.540). This plan established four personal use fisheries in Cook Inlet: Kasilof River dip net, Kasilof River set gillnet, Kenai River dip net, and Fish Creek dip net. Unlike subsistence fisheries, personal use fisheries do not have a priority over other existing uses. Personal use fisheries are open to all residents of Alaska, require a household permit and sport fishing license, occur in marine and intertidal waters, and are well downstream of Federal public waters in the Kenai River drainage. These fisheries target Sockeye Salmon, the species of greatest abundance and for which the best stock assessment information is available. Annual harvest limits are 25 salmon for the head of each household and 10 salmon for each additional household member. The limit is combined for all four fisheries. Incidentally caught Coho, Pink, and Chum Salmon may be retained as part of the annual limit. Each household is limited to one Chinook Salmon in the Kenai River dip net fishery.

Finally, the State administers up to twelve educational fisheries each year in the Cook Inlet area under the provisions of 5 AAC 93.200 – 93.235 (Nelson et al. 1999, Fall et al. 2004). Around half of these educational fisheries occur in marine waters near the mouths of Kenai Peninsula Rivers. The purpose of educational fisheries is to allow groups to practice traditional, contemporary, or experimental methods for locating, harvesting, or processing fishery resources. Educational fisheries like personal use fisheries, but unlike subsistence fisheries, do not have statutory priority over other fisheries. Therefore, during times of resource shortages, educational fisheries could be restricted before or at the same time as commercial, sport and personal use fisheries are restricted.

From 2010 to 2016, numerous State emergency orders were put in place to protect Chinook salmon in the Kenai River due to conservation concerns (**Table 1**)

Table 1. Emergency Orders issued by the Alaska Department of Fish and Game for Chinook Salmon in the Kenai River drainage between 2010 and 2016

Alaska Department of Fish and Game Chinook Salmon Emergency Orders in the Kenai River				
Year	Number	Start Date	End Date	Action
2010	2-KS-1-12-10	6/5/2010	7/14/2010	Partial season closure for sport fishery
2010	2-KS-1-16-10	6/12/2010	7/14/2010	Restricted reopening for sport fishery
2010	2-KS-1-19-10	6/15/2010	7/31/2010	Reopen back to standard sport fishing regulations
2011	2-KS-1-17-11	6/29/2011	7/14/2011	Restrict sport fishery
2011	2-KS-1-20-11	7/15/2011	7/31/2011	Continue duration of restricted sport fishery
2012	2-KS-1-11-12	6/15/2012	7/14/2012	Restrict sport fishery
2013	2-KS-1-11-13	5/16/2013	7/14/2013	Restrict sport fishery
2013	2-KS-1-22-13	6/20/2013	7/14/2013	Close sport fishery in some areas, restrict in others
2013	2-KS-1-24-13	7/1/2013	7/31/2013	Restrict sport fishery
2013	2-KS-1-34-13	7/10/2013	7/31/2013	Prohibit retention of Chinook Salmon in personal use fishery
2013	2-KS-1-36-13	7/15/2013	7/31/2013	Close sport fishery
2013	2-KS-1-43-13	7/25/2013	7/31/2013	Allow harvest of fish less than 20 inches or greater than 55 inches
2013	2-KS-1-45-13	7/28/2013	7/31/2013	Close sport fishery
2013	2-KS-1-46-13	8/1/2013	8/15/2013	Prohibit use of bait and limit gear in the sport fishery
2014	2-KS-1-04-14	5/1/2014	7/31/2014	Close sport fishery for early-run
2014	2-KS-1-26-14	7/1/2014	7/31/2014	Prohibit use of bait in the sport fishery
2014	2-KS-1-27-14	7/10/2014	7/31/2014	Prohibit retention of Chinook Salmon in personal use fishery
2014	2-KS-1-40-14	7/19/2014	7/31/2014	Restrict sport fishery to unbaited single barbless hook, no retention
2014	2-KS-1-42-14	7/26/2014	7/31/2014	Close sport fishery
2015	2-KS-1-05-15	5/1/2015	7/31/2015	Close sport fishery for early-run
2015	2-KS-1-35-15	7/1/2015	7/31/2015	Prohibit use of bait in the sport fishery
2015	2-KS-1-46-15	7/25/2015	7/31/2015	Restore use of bait in sport fishery, no Chinook retention
2016	2-KS-1-03-16	5/1/2016	7/31/2016	Close sport fishery for early-run
2016	2-KS-1-19-16	6/18/2016	6/30/2016	Allow harvest in sport fishery from mouth of river to Slikok Creek
2016	2-KS-1-24-16	7/1/2016	7/31/2016	Prohibit use of bait in the sport fishery
2016	2-KS-1-28-16	7/1/2016	7/31/2016	Maintain bait prohibition in the sport fishery
2016	2-KS-1-33-16	7/9/2016	7/31/2016	Restore use of bait in the sport fishery

Federal Subsistence Fisheries Regulations in the Cook Inlet Area

In 2002, Federal subsistence regulations for harvest in the Cook Inlet Area were established for salmon, trout, and Dolly Varden. A Federal subsistence permit was required and seasons, harvest and possession limits, and methods and means for take were the same as those in Alaska sport fishing regulations. This fishery was established as an interim measure to provide some subsistence opportunity in the Cook Inlet Area for Federally qualified rural residents. Initially, there were no customary and traditional use

determinations for salmon, trout and Dolly Varden in Cook Inlet; so all rural residents of Alaska could harvest under Federal regulations.

In January 2006, the Federal Subsistence Board made customary and traditional use determinations for Hope and Cooper Landing residents for all fish in the Kenai River Area, and for Ninilchik residents for all fish within the Kasilof River drainage within the Kenai National Wildlife Refuge. In November 2010, the Board made a customary and traditional use determination for Ninilchik residents for all fish in the Kenai River Area within the Kenai National Wildlife Refuge and the Chugach National Forest.

For the 2007 regulatory cycle, two additional steps were included in the analysis and review process for regulatory proposals; 1) the formation of a stakeholder subcommittee of the Southcentral Council, which met twice in Soldotna in February 2007, to review the analyses and suggest changes, and 2) a review by the NTC, the proponent of some of the proposals, to assess, and provide feedback on, the changes suggested by the subcommittee, and to suggest other changes. Both of these steps took place prior to the Southcentral Council's March 2007 meeting. Several suggested changes which resulted from these extra steps, were incorporated into the analyses as modifications to the proposed regulations and presented to the Council and, ultimately, the Board (OSM 2007).

At the time, the Board typically held public meetings twice a year to make decisions on proposals to change Federal subsistence regulations throughout the State; once in the Spring (April or May) for wildlife regulations and once in the Winter (December or January) for fisheries proposals. In May 2007, the Board held a third public meeting solely to hear public testimony on, deliberate and make decisions for the Kenai Peninsula fisheries proposals of the 2007 regulatory cycle. The meeting lasted three days (FSB. 2007a).

During its May 2007 meeting, the Board adopted proposals that established dip net/rod and reel salmon fisheries on the Kasilof and Kenai Rivers; increased previously established harvest, possession, and annual limits for salmon and selected resident species for existing rod and reel fisheries on the Kasilof and Kenai River drainages; and allowed use of up to two single or treble hooks and bait for rod and reel fishing during specified dates for both systems. Sockeye Salmon annual harvest limits were set at 4,000 fish, with an annual household limit of 25 for each permit holder, and an additional 5 for each household member; late-run Chinook Salmon annual harvest limits were set at 1,000 fish, with an annual household limit of 10 for each permit holder, and an additional 2 fish per each household member; Coho Salmon annual harvest limits were set at 3,000 fish, with an additional household limit of 20 for each permit holder, with an additional 5 fish for each household member; and Pink Salmon annual harvest limits were set at 2,000 fish, with an annual household limit of 15 for each permit holder, and an additional 5 per each household member. Any Rainbow Trout or Dolly Varden 18 inches or greater in length were required to be released alive.

Additionally, during the 2007 regulatory cycle, there were several proposals that included requests for the use of gillnets in the Kenai River drainage. These included Proposals FP07-27B and C (by NTC) and FP07-29 (by Mr. Robert Gibson of Cooper Landing). FP07-27B and C requested a community set gillnet fishery for Chinook, Sockeye, and Pink Salmon in the Kasilof and Kenai Rivers and a community set gillnet fishery for Coho Salmon in the Kenai River. FP07-29 requested that gillnets with different mesh sizes be

used to harvest Sockeye Salmon, Coho Salmon, Pink Salmon, Rainbow Trout, Dolly Varden, Lake Trout, and whitefish species in several lakes in the Kenai River drainage. The recommendation of the Southcentral Council was to move forward with only the dip net and rod and reel salmon fisheries described above. Justification for this recommendation was that a dip net fishery at Moose Range Meadows provides additional subsistence opportunity and that limiting this fishery to dip nets from boats addresses habitat and private property concerns in this area. The Southcentral Council also stated that allowing incidental harvest of Rainbow Trout and Dolly Varden/Arctic Char less than 18 inches in dip net fisheries below Skilak Lake is consistent with conservation practices and provides a reasonable alternative to expanded harvest opportunity in the rod and reel fishery. Lastly, the Southcentral Council stated that providing up to two baited hooks in the rod and reel fishery below Skilak Lake from January 1 to August 31 provides an additional opportunity for Chinook and Coho Salmon, and is consistent with conservation practices for these species.

During the 2008 regulatory cycle, the NTC submitted Proposal FP08-08 to allow the salmon dip net fishery to occur from the shore (river bank), as well as from boats, within the Federal public waters of the Kenai River in the Moose Range Meadows area. The Southcentral Council voted 5-4 to support the proposal, after a lengthy discussion during its fall 2007 meeting. The Southcentral Council decided that allowing subsistence dip net fishing from shore as well as from a boat would provide more of a subsistence preference in this area of the Kenai River. The Southcentral Council also stated that limiting the dip net fishery at Moose Range Meadows to boats would limit participation by Federally qualified subsistence users without access to a boat and that while there are habitat and private property concerns in the area, it should be possible to allow some subsistence fishing from shore on Federal public lands that can be accessed without the use of a boat. During the Board's December 2007 meeting, some Board members expressed concerns about allowing dip netting from the shore because this area is prime Chinook Salmon rearing habitat with bank closures in place for habitat protection, that the area was not a safe place to use dip nets, and that opening the area to fishing from the shore would not be consistent with recognized principles of fish and wildlife management. Other Board members pointed out that adoption of the proposal would provide a "meaningful subsistence preference". A motion was put forth to support Proposal FP08-08. The motion failed on a three/three tie vote (FSB. 2007b).

Also during the 2008 cycle, the Southcentral Council submitted Proposal FP08-09 to establish a temporary community fish wheel on both the Kenai and Kasilof Rivers for residents of Ninilchik, Hope, and Cooper Landing. The Council contended that the fish wheels would provide a more effective means for Federally qualified subsistence users to harvest salmon. The Council requested the establishment of fish wheels as a gear type be temporary to evaluate the feasibility of operating this type of gear. The Board, at its December 2007 meeting, adopted the proposal, with modification, to allow fish wheels to be classified as a gear type, but only in the Kasilof River. The Board felt that there were too many logistical issues to be dealt with on the Kenai River, especially with three communities having the possibility of running a single fish wheel. The Board specified that only one fish wheel with a live box would be allowed in the upper mainstem of the Kasilof River. A permit would be required to use the fish wheel and that an operational plan must be submitted to and approved by the Federal inseason manager, before the permit would be issued. Individuals operating the fish wheel would need to have a Federal subsistence fishing permit and all harvest limits on the permit would apply to the fish wheel. Salmon harvested by the fish wheel were

included as part of each household's annual limit and all fish harvested were to be reported to the inseason manager with 72 hours of leaving the fishing location. The Board, at its January 2013 meeting, supported FP13-15 to remove the expiration date for the community fish wheel salmon fishery on the Kasilof River allowing continued operation of the fish wheel (FSB 2013).

For the 2009 regulatory cycle, the NTC submitted Proposal FP09-08, again requesting the Board to allow the salmon dip net fishery to occur from the shore (river bank), as well as from boats, within the Federal public waters of the Kenai River in the Moose Range Meadows area. Proposal FP09-08 was put on the Board's consensus agenda due to opposition of the proposal by both the Southcentral Council and the Alaska Department of Fish and Game (ADF&G). The Council's stated reason for opposing FP09-08 was that "no Federal lands are available to allow fishing from the shore without serious damage to the river bank." The Board adopted the consensus agenda without discussion. As a result, Proposal FP09-08 failed (FSB 2009).

For the 2015 regulatory cycle, Proposal FP15-10 was submitted by NTC to establish a community gillnet fishery in the Kenai River in order to provide additional subsistence harvest opportunities for residents of Ninilchik. The proponent requested the use of a single community gillnet that was 10 fathoms or less in length for the harvest of salmon. Similar to the fish wheel regulations, an operational plan would be required to be developed by a local organization on behalf of Ninilchik residents, and approved by the Federal in-season manager before a fishing permit would be authorized. The operational plan would include deployment locations, fishing times, and a methodology for distributing the harvest. All salmon taken in the Kenai River community gillnet fishery would be included as part of the existing annual household limit for Ninilchik residents, and fishing for salmon would be closed by Federal special action prior to regulatory end dates if the annual total harvest limit for that species was reached or for other regulatory requirements. Proposal FP15-10 was adopted at the Board's January 2015 public meeting (FSB 2015).

From 2010 to 2015, numerous Federal special actions were put in place to protect Chinook salmon in the Kenai River due to conservation concerns (**Table 2**)

Table 2. Federal special actions for Chinook Salmon in Federal public waters of the Kenai River drainage between 2010 and 2015

Chinook Salmon Federal Special Actions for Federal public waters of the Kenai River				
Year	Number	Start Date	End Date	Action
2010	10-KS-01-10	6/4/2010	7/14/2010	Close to subsistence fishing for early-run
2010	10-KS-02-10	6/15/2010	7/14/2010	Reopen under restricted subsistence harvest guidelines for early-run
2010	10-KS-03-10	6/15/2010	8/31/2010	Open to subsistence fishing under normal regulations
2011	10-KS-02-11	7/15/2011	7/31/2011	Restrict harvest of early-run
2012	10-KS-01-12	6/15/2012	7/14/2012	Restrict harvest of early-run
2012	10-KS-02-12	6/22/2012	7/14/2012	Close to subsistence fishing for early-run
2012	10-KS-03-12	7/16/2012	7/31/2012	Close to subsistence fishing for late-run
2013	10-KS-02-13	6/20/2013	7/14/2013	Close to subsistence fishing for Chinook Salmon
2013	10-KS-03-13	7/15/2013	8/15/2013	Extend closure of subsistence fishing for Chinook Salmon
2014	10-KS-01-14	6/19/2014	7/14/2014	Close to subsistence fishing for Chinook Salmon
2014	10-KS-02-14	7/15/2014	8/17/2014	Extend closure of subsistence fishing for Chinook Salmon
2015	10-KS-01-15	6/18/2015	8/15/2015	Close to subsistence fishing for early-run

Current Events Involving the Gillnet Fishery

The date of publication of the regulation which resulted from the Board's adoption of proposal FP15-10 was May 18, 2015. Over 700 timely requests for reconsideration (RFRs) were filed with the Board, all requesting the Board to reverse or rescind its decision on FP15-10. The proponents of FP17-06 and FP17-07 were among the entities and individuals that filed a timely RFR. The RFR process is ongoing.

In January 2015, the Board adopted proposal FP15-10 from the NTC to allow Ninilchik residents to use a community gillnet in the Federal public waters of the Kenai River. Both the U.S. Fish and Wildlife Service and the Office of Subsistence Management opposed the proposal based on conservation concerns for certain species (FSB 2015). To address these concerns, the Board required the NTC to submit an operational plan to demonstrate how the fishery would be prosecuted with these conservation concerns being addressed. The operational plan was submitted to the Cook Inlet Federal in-season manager for approval. The manager did not approve NTC's plan due to conservation concerns and regulatory conflicts. On October 22, 2015, NTC filed suit to compel the agency to approve an operational plan. *Ninilchik Traditional Council v. Towarak et al.*, Case No. 3:15-cv-0205 JWS (D. Alaska).

On June 28, 2016, the NTC submitted a Special Action Request (FSA16-02) to the Board to implement the subsistence gillnet fishery for the Kenai River. On July 14, 2016, NTC amended FSA16-02 to reflect that portions of the initial request were no longer valid due to the passage of time.

On July 27, 2016, the Board approved Emergency Special Action Request FSA16-02 with modification, providing for the implementation of an experimental Kenai River community gillnet fishery for residents of Ninilchik. The Board designated this fishery as experimental to see if a set gillnet could be used in certain locations on the Kenai River with minimal impact to Chinook Salmon, Rainbow Trout and Dolly Varden. The Board stipulated that the fishery may be conducted in the Moose Range Meadows area of the Kenai

National Wildlife Refuge, with a gillnet up to 10 fathom (60') in length with 5 ¼" mesh, anchored to the bank. The fishery allows for the retention of up to 50 Chinook Salmon, all other salmon within current Federal regulation limits, and any incidentally caught Rainbow Trout and Dolly Varden. Genetic samples will be collected from all Chinook Salmon. The State bank closures, as adopted into Federal subsistence regulations, were temporarily removed to allow for the Kenai River community gillnet fishery; however, Kenai National Wildlife Refuge regulations at 50 CFR 36.39(i) remain in effect and prohibit access within an area 25 feet upland of ordinary high water on either shore of the Kenai River between river miles 25.1 and 28.1.

At the conclusion of the 2016 experimental community gillnet fishery on August 15, the Ninilchik community has caught 755 Sockeye Salmon, 7 Pink Salmon, 1 Chinook Salmon, 12 Coho Salmon and 2 Dolly Varden, while harvesting 723 Sockeye Salmon, 6 Pink Salmon, 1 Chinook Salmon, and 12 Coho Salmon. They also have released 29 Sockeye Salmon, 1 Pink Salmon, and 2 Dolly Varden. No Rainbow Trout or Steelhead were caught, harvested, or released during the experimental community gillnet fishery.

Biological Background and Harvest History

All Pacific salmon species spawn within the Kenai River drainage, and the runs are harvested in State commercial, sport, personal use, and educational fisheries, as well as Federal subsistence fisheries. Federal subsistence harvest history will be discussed after the description of State harvest under these various State run fisheries. The State's Upper Cook Inlet Salmon Management Plan (5 AAC 21.363) establishes long-term direction for the management of Upper Cook Inlet salmon stocks. It provides mandatory criteria that the Alaska Board of Fisheries must consider when adopting management plans for specific fish stocks, and establishes a set of guiding principles for the adoption of regulations governing salmon fisheries. The plan focuses the commercial fisheries take on late-run Sockeye Salmon, while early-run Sockeye, early- and late-run Chinook, and Coho Salmon runs are primarily managed for sport fisheries. Considerable information has been compiled on abundance and distribution of Sockeye, Chinook, and Coho Salmon runs, but little information is available on either Pink or Chum Salmon runs. Spawning escapement goals have been set for Sockeye and Chinook Salmon runs, and sustainable harvest levels have been estimated for Sockeye, Chinook, and Coho Salmon.

Early-Run Sockeye Salmon

Most early-run Sockeye Salmon spawn within the Russian River. The State's Russian River Sockeye Salmon Management Plan (5 AAC 57.150) establishes escapement objectives and provides guidelines for the State management of State fisheries harvesting this run. The primary harvest of this run occurs within the sport fishery, and the State manages other fisheries to minimize the harvest of early run sockeye. The biological escapement goal range set by this plan is 22,000 to 42,000 early-run Sockeye Salmon.

Sport fishing for early-run Sockeye Salmon primarily occurs within the Russian River area. This fishery includes the lower Russian River up to a marker 600 yards below Russian River Falls, and the mainstem Kenai River from the confluence down to the power line crossing. The allowable gear in this fishery is restricted to fly fishing only, and the fishery opens June 11 at the conclusion of the spawning season closure for Rainbow Trout. Bag and possession limits for Sockeye Salmon throughout the Kenai River drainage

are 3 per day and 6 in possession. Sport fishery harvests of early-run Russian River Sockeye Salmon during 2003–2012, the most recent 10-year period for which data are available, have ranged from 15,231 to 59,097 fish with an average harvest of 34,375 fish (Begich et. al. 2013). On average, the sport fishery harvested about 46% of the early-run that enters the Russian River area during this period.

The Kenaitze Indian Tribe educational fishery currently consists of one set gillnet that is fished May 1 – June 30 in marine waters just south of the Kenai River mouth, and two set gillnets that are fished July 1– November 30 in marine waters just south of Kenai River mouth. The net can be fished from 1 May through 30 November, and there is an annual harvest limit of 10,000 salmon, as well as species and stock restrictions. Annual harvests of early-run Russian River Sockeye Salmon during 2004–2013, the most recent 10-year period, have ranged from 275 to 2,374 Sockeye Salmon, with an average of 1,405 (Begich et. al. 2013).

Escapement into the Russian River system is estimated using a weir below the outlet of Upper Russian Lake. Early-run Sockeye Salmon enter the Kenai River from about mid-May through mid-July. During 2004–2013, spawning escapements have ranged from 24,115 to 80,524 Sockeye Salmon, with an average escapement of 41,656 (Begich et. al. 2013).

Late-Run Sockeye Salmon

Late-run Sockeye Salmon is intensively managed and utilized Kenai River salmon resource. The State's Kenai River Late-run Sockeye Salmon Management Plan (5 AAC 21.360) and Russian River Sockeye Salmon Management Plan (5 AAC 57.150) establish escapement objectives and provides guidelines for the management of all fisheries harvesting the late run. The optimum escapement goal range for the total drainage, including the Russian River system, is set at 700,000 to 1,400,000 late-run Sockeye Salmon, which is estimated with sonar equipment installed in the lower Kenai River. The sustainable escapement goal range for the Russian River is set at 30,000–110,000 late-run Sockeye Salmon, which is monitored with a weir. While primary harvest of the late-run occurs within the commercial fishery, the State manages the commercial fishery to provide for harvests within other fisheries and to achieve spawning goals within the Kenai River system.

The harvest of late-run Sockeye Salmon is monitored in all existing commercial, personal use, sport, and educational fisheries (Begich et. al. 2013). Commercial fisheries are conducted in the marine waters of Cook Inlet using both drift and set gillnets. During 2003–2012, the commercial harvest of Kenai River bound Sockeye Salmon has ranged from 204,579 to 5,277,995 late-run Sockeye Salmon, with an average of 3,445,684. About half of the commercial harvest is generally taken within a few days centered on July 20 (Begich et. al. 2013).

A personal use dip net fishery occurs at the mouth of the Kenai River and extends upstream as far as the Warren Ames Bridge. Dip nets can be fished from boats in the section of river from the City Dock upstream to the Warren Ames Bridge. To target effort on late-run Sockeye Salmon, and reduce harvests of late-run Chinook Salmon and Coho Salmon, this dip net fishery is only open July 10–31. All Alaska residents may participate, permits are required, and the annual household limit is 25 salmon for the permit holder and 10 additional salmon for each household member. From 2009 to 2013, about 25,000 to 30,000 household days of effort are for all fisheries each year. Annual late-run Sockeye Salmon harvests have ranged from

127,630 to 537,765 fish during 2004–2012, with an annual average of 333,960. The three communities of Cooper Landing, Hope, and Ninilchik all participate in the State personal use fisheries. From 2010 to 2013, the average number of households with a personal use fishery permit was 22 for Cooper Landing, 16 for Hope, and 166 for Ninilchik. The average number of Sockeye harvested in each community during this time was 272 fish for Cooper Landing, 285 fish for Hope, and 2,876 fish for Ninilchik (**Table 3 & Table 4**).

The Kenaitze Indian Tribe educational fishery annual harvests have ranged from 2,246 to 5,278 late-run Sockeye Salmon during 2004– 2013, with an annual average of 3,505 fish. Sport fishery bag and possession limits for late-run Sockeye Salmon are initially 3 per day and 6 in possession, but are liberalized per the allocative management plans based on return abundance. Total sport fish harvests have ranged from 203,602 to 470,547 late-run Sockeye Salmon during 2003–2012, with an annual average of 320,122 fish. For the Russian River component, sport harvests have ranged from 9,331 to 33,935 late-run Sockeye Salmon during this time period, with an average of 21,200 fish.

The late-run Sockeye Salmon enter the Kenai River from about early July through mid-August. The total drainage spawning escapement has ranged from 703,979 to 1,876,180 late-run Sockeye Salmon during 2003–2012, with an average of 1,258,861 fish (Begich et. al. 2013). The late-run Sockeye Salmon spawn throughout the drainage, with 35%-42% spawning within the mainstem Kenai River above Skilak Lake, 10%-20% spawning within the mainstem Kenai River at the outlet of Skilak Lake, 11%-21% spawning in the upper tributaries of the watershed, and 7%-11% spawning in Skilak Lake and its tributaries (Willette et al. 2012).The Russian River spawning escapement has ranged from 31,364 to 110,244 late-run Sockeye Salmon during 2004–2013, with an average of 60,520 fish.

Table 3. Personal Use Fisheries Harvest for Kasilof River set net fishery, Kasilof River dip net fishery, Kenai River dip net fishery, Fish Creek (Knik Arm) dip net fishery from 2010 to 2013 for residents of Cooper Landing, Hope, and Ninilchik (Fall, J. A. et al. 2013a&b,14,15)

Year	Cooper Landing (Pop. 289) (161 households)			Hope (Pop. 210) (107 households)			Ninilchik (Pop. 1,476) (682 households)		
	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook
2010	235	1	2	245	1	0	3,000	10	10
2011	361	2	2	306	1	0	3,316	8	10
2012	283	0	0	277	1	0	2,968	7	0
2013	206	1	0	312	1	0	2,222	13	0
TOTAL	1,087	4	4	1,140	4	0	11,506	38	20
AVG	272	1	1	285	1	0	2,876	9.5	5
Per household Average	1.6			2.7			4.2		

Table 4. Personal Use Fisheries Sockeye Salmon Harvest, Number of Permits, Sockeye per Permit, Households, and Population Numbers for Kasilof River set net fishery, Kasilof River dip net fishery, Kenai River dip net fishery, Fish Creek (Knik Arm) dip net fishery from 2010 to 2013 for residents of Cooper Landing, Hope, and Ninilchik (Fall, J. A. et al. 2013a&b,14,15).

Year	Cooper Landing (Pop. 289) (161 households)			Hope (Pop. 210) (107 households)			Ninilchik (Pop. 1,476) (682 households)		
	Permits	Sockeye	Sockeye/Permit	Permits	Sockeye	Sockeye/Permit	Permits	Sockeye	Sockeye/Permit
2010	26	235	9	14	245	17	168	3,000	18
2011	19	361	19	17	306	18	183	3,316	18
2012	30	283	9	13	277	21	163	2,968	18
2013	14	206	15	19	312	16	151	2,222	15
TOTAL	89	1,087	52	63	1,140	72	665	11,506	69
AVG	22	272	13	16	285	18	166	2,876	17

Chinook Salmon

A series of radio-telemetry studies and in-river abundance estimation techniques have identified differential run times and spawning distributions for Chinook Salmon returning to the Kenai River. Indices of run strength for Chinook Salmon entry times into the Kenai River indicates two runs with the early component of the run peaking between 8 and 20 June and a later component peaking between 17 and 25 July (Hammarstrom and Larson 1986; Conrad and Larson 1987; Conrad 1988; Carlon and Alexandersdottir 1989; Alexandersdottir and Marsh 1990; Miller et al. 2011; Reimer 2013). Chinook Salmon entering the Kenai River during July and August are considered “late-run” fish and almost exclusively spawn during August and early September in the main-stem Kenai River (Burger et al. 1985; Bendock and Alexandersdottir 1991, 1992; Reimer 2013). Each run, early and late, are managed independently primarily because of differences in run size, run timing, and spatial distribution of spawning fish.

Chinook Salmon abundance in the Kenai River and throughout Alaska has been decreasing since around 2007 (ADF&G Chinook Salmon Research Team 2013). Some stocks are also exhibiting declining trends in size and age, including Kenai River Chinook Salmon that spawn on the Kenai National Wildlife Refuge, either in tributary streams (Boersma and Gates 2016) or the main-stem Kenai River (Lewis et al. 2015). Several potential, but as yet unproven, causal factors for this downward trend in abundance, include: size-selective harvest, competitive interactions, and changing environmental conditions (Lewis et al. 2015). Mainstem spawning areas were identified between RM 13 and RM 80, with higher spawning densities document between RMs 14 – 15, 17 – 21, and 46 – 47, and with the section between RM 46 and 47 shown to support the highest number of spawners (Reimer 2013). Of the 50 river miles in the drainage available for sport fishing for Chinook Salmon (all below Skilak Lake), only about 5 miles are within Federal public waters (RM 48 – 45.5 and RM 29 – 26.5).

Early-Run Chinook Salmon

Early-run Chinook Salmon enter the Kenai River from about mid-May through late-June. Most early-run

Chinook Salmon spawn in Kenai River tributaries below the outlet of Skilak Lake, and most of these spawners are bound for the Killey and Funny Rivers. In general, about 80% of the early-run Chinook Salmon spawn in either the Funny or the Killey Rivers, while only about 7% of all early-run Chinook Salmon spawn in tributaries above Skilak Lake (Bendock and Alexandersdottir 1992, Burger et al. 1983). In the mainstem Kenai River, staging behavior (preparing for spawning) generally runs from early- to mid-July with most spawning occurring from mid-July through August. During this time a small segment of early run Chinook Salmon (7-20% of the total run) also utilize the main stem Kenai River to spawn (Bendock and Alexandersdottir 1992, Burger et al. 1983). For Chinook Salmon, the stretch of river encompassing river miles 46 and 47 on the Kenai National Wildlife Refuge represents some of the highest densities of spawners in the entire watershed (Reimer 2013).

The State's optimal escapement goal (OEG)² range for early-run Chinook Salmon is 5,300 to 9,000 fish for the Kenai River system. Escapement is monitored by sonar at RM 14 between mid-May and mid-August. Additionally, a gillnet at RM 9 is used to provide the relative proportion of large Chinook Salmon, small Chinook Salmon, and Sockeye Salmon for apportionment of sonar counts (ADF&G 2016a). The spawning escapement for the years 2006 – 2015 averaged 7,473 fish, with a range of 4,460 fish in 2013 to 13,282 in 2006. The spawning escapement in 2014 was 5,776 fish and in 2015 was 6,190 fish (ADF&G 2016b).

The State's Kenai River and Kasilof River Early-Run King Salmon Conservation Management Plan (5 AAC 57.160) establishes escapement objectives and guidelines for the management of all existing fisheries harvesting this run. This plan also tries to ensure that the age and size composition of the harvest closely approximates that of the run. The primary harvest of this run occurs within the sport fishery. Most of the sport harvest is taken within the Kenai River. Based on tag recoveries, a small amount of harvest of early-run Chinook Salmon also occurs within the Deep Creek marine sport fishery (King and Breakfield 2002). The State manages other fisheries to minimize the harvest of this run. The commercial and personal use fisheries open after most early-run Chinook Salmon have entered the Kenai River, and the personal use fishery has a seasonal limit of 1 Chinook Salmon per household. The Kenaitze Indian Tribe's educational fishery has historically had a seasonal limit of 300 Chinook salmon, but in 2014 the limit was decreased to 50 Chinook salmon to conserve returning fish.

The early-run Chinook Salmon OEG range mentioned above is set by this plan. To determine whether or not the escapement goal will or will not be achieved, daily sonar estimates of Chinook Salmon passing the sonar site (at RM 14) and estimates of the sport harvest from creel surveys are utilized in a run timing model to project total in-river return, total harvest and final spawning escapement. If escapement is projected to fall below the lower end of the OEG range, the fishery is incrementally restricted to catch-and-release only and ultimately to closure, if necessary. Bait cannot be used until escapement is projected to fall within the OEG range. To help prevent the harvest of 5-ocean fish³, there is a slot limit that specifies the size of Chinook Salmon that may be retained (less than 42 inches in length or greater than 55 inches in length). The slot

² An optimum escapement goal, which may be expressed as a range, allows for sustainable runs based on biological needs of the stock and ensures healthy returns for commercial, sport, subsistence, cost-recovery, and personal use harvests. Optimum escapement goals are set by the State of Alaska Board of Fisheries (ADF&G. 2016a).

³ 5-ocean fish have spent five years in the ocean before returning to their natal streams to spawn.

limit is in effect from 1 January to 30 June from the Kenai River mouth upstream to the outlet of Skilak Lake, and from 1 to 14 July from the Slikok Creek upstream to the outlet of Skilak Lake.

All sport fishing for early-run Chinook Salmon in the Kenai River occurs below Skilak Lake. The bag and possession limit is 1 Chinook Salmon per day and 1 in possession. Additionally, there is an annual limit of 2 Chinook Salmon from the Kenai River. Only Chinook Salmon less than 42 inches or greater than 55 inches can be retained in the sport fishery. Sport fishery harvests of early-run Kenai River Chinook Salmon during 2004-2013 have ranged from 0 to 4,693, with an average of 2,334 (Begich 2013). The Kenaitze Indian Tribe's educational fishery harvest has ranged from 11 to 76 early-run Chinook Salmon during 2004-2013, with an average of 42 fish (Begich et al. 2013). No estimates of the number of early-run Kenai River Chinook salmon harvested in commercial or personal use fisheries are available, but due to the timing of these fisheries these harvests are assumed to be negligible.

Late-Run Chinook Salmon

Late-run Chinook Salmon enter the Kenai River from about late-June through late-July. Most late-run Chinook Salmon spawn in the mainstem Kenai River. An estimated 20% – 40% spawn between RM 10 and the Soldotna Bridge at RM 21 (ADF&G 2016c), more than half between the Soldotna Bridge and the outlet of Skilak Lake, and about 9% of the total late run spawns within or above Skilak Lake (Bendock and Alexandersdottir 1992, Hammarstrom et al. 1985, Burger et al. 1983). In the mainstem Kenai River, staging behavior for spawning in other tributaries on the Kenai River generally runs from late-July to mid-August, with most spawning occurring from mid-August to mid-September.

The sustainable escapement goal (SEG)⁴ range for late-run Chinook Salmon is 17,800 to 37,500 fish. As with early-run Chinook Salmon, escapement is monitored by sonar at RM 14 between mid-May and mid-August. Additionally, a gillnet at RM 9 is used to provide the relative proportion of large Chinook Salmon, small Chinook Salmon, and Sockeye Salmon for apportionment of sonar counts (ADF&G 2016a). The spawning escapement for the years 2006 – 2015 averaged 26,613 fish with a range of 16,527 fish in 2010 to 48,950 in 2006. The spawning escapement in 2014 was 17,446 fish and in 2015 was 22,654 fish (ADF&G 2016b).

The State's Kenai River Late-Run King Salmon Management Plan (5 AAC 21.359) establishes escapement objectives and guidelines for the management of all existing fisheries harvesting this run. While this run is primarily managed for use by the sport fishery, the incidental harvest in commercial fisheries is substantial. Most of the sport harvest is taken below the Soldotna Bridge within the Kenai River and some are taken in marine waters in the Deep Creek sport fishery. The bag and possession limit is 1 Chinook Salmon per day

⁴ A sustainable escapement goal is a level of escapement, indicated by an index or an escapement estimate, that is known to provide for sustained yield over a 5 to 10 year period, used in situations where a biological escapement goal cannot be estimated due to the absence of a stock specific catch estimate; the SEG is the primary management objective for the escapement, unless an optimal escapement goal or inriver run goal has been adopted by the State of Alaska Board of Fisheries, and will be developed from the best biological information; the SEG will be determined by the Alaska Department of Fish and Game and will be stated as a range that takes into account data uncertainty; the Department will seek to maintain escapements within the bounds of the SEG (from 5 AAC 39.222(f)) (ADF&G 2016a).

and 1 in possession. Additionally, there is an annual limit of 2 Chinook Salmon from the Kenai River. Most of the commercial harvest is taken in the East Side set gillnet fishery. The personal use fishery has a seasonal limit of 1 Chinook Salmon per household, and the Kenaitze Tribe's educational fishery had a seasonal limit of 50 Chinook Salmon in 2014. To determine whether or not the escapement goal will or will not be achieved, daily sonar estimates of Chinook Salmon passing the sonar site and estimates of the sport harvest from creel surveys are utilized in a run timing model to project total inriver return, total harvest and final spawning escapement. If escapement is projected to fall below the lower end of the SEG range, the fishery is restricted by several steps, including prohibiting use of bait, to catch-and-release only with barbless hooks, and if necessary, closure.

The harvest of late-run Chinook Salmon is monitored in the commercial, personal use, sport, and educational fisheries (Begich et al. 2013). Commercial fishery harvests during 2004–2013 have ranged from 640 to 16,925 Kenai River late-run Chinook Salmon, with an average of 7,380 fish. Harvests in the Deep Creek marine sport fishery have ranged from 30 to 996 Kenai River late-run Chinook Salmon during 2003–2012, with an average of 446 fish. Sport fishery harvests in the Kenai River have ranged from 103 to 18,214 late-run Chinook Salmon during 2003-2012, with an average of 9,926. Personal use dip net fishery harvests have ranged from 11 to 1,509 late-run Chinook Salmon during 2004–2013, with an average of 904 fish. Kenaitze Tribe's educational fishery harvests have ranged from 0 to 21 late-run Chinook salmon during 2004–2013, with an average of 9 fish.

Coho Salmon

Coho Salmon are the last of the salmon species to enter the Kenai River each year. The majority of the run enters the Kenai River from late-July through mid-September, but continues at lower rates into November (Begich et al. 2013). Burger et al. (1983) found that Coho Salmon spawned in the mainstem Kenai River, as well as its tributaries, with mainstem spawning observed as late as January. Spawning was documented from RM40 upstream to RM74.5, and large numbers of spawning Coho Salmon were observed below Skilak Lake (RM 40 – RM50).

The State manages Kenai River Coho Salmon primarily for take in sport fisheries, and the Kenai River Coho Salmon Management Plan (5 AAC 57.170) establishes management actions and guidelines for sport harvest. There are no escapement goals for Kenai River Coho Salmon. Although genetic studies have shown differences between and within early and late returning spawning components (Olsen et al. 2003, Crane et al. 2007), the entire run is currently managed as a single stock by the State.

The harvest of Coho Salmon is monitored in all existing commercial, personal use, sport, and educational fisheries, but stock specific information for commercial fisheries, based on coded-wire tag returns, is only available through 2003 (Lafferty et al. 2005). While total harvests of Coho Salmon in Upper Cook Inlet commercial fisheries are generally several hundreds of thousands each year, harvest of Kenai River Coho Salmon are only a small component of the total. Commercial fishery harvest has ranged from 95,215 to 311,058 Coho Salmon during 2004-2013, with an average of 172,716 fish. Total sport fishery harvest has ranged from 36,407 to 65,952 Coho Salmon during 2003-2012, with an average of 47,371 fish. There is no estimate of catch-and-release mortality for this sport fishery.

Rainbow Trout

The Kenai River also supports one of the largest Rainbow Trout sport fisheries in the United States, with annual catches that have been trending upward since the 1980's (Begich et al. 2013). Increasingly restrictive regulations were adopted for this fishery since the 1950's due to public concern and an initial lack of biological data. ADF&G began population estimation projects in 1986 using mark-recapture methods, and have repeated estimation projects multiple times since then. Estimations between 1986 and 2009 have shown increases in the size of the Rainbow Trout population as further restrictions have been enacted on the fishery. The State sport fishery is closed from May 1 through June 11 to protect Rainbow Trout during their spawning period. Radio telemetry projects have found the majority of Rainbow Trout from the area of the Kenai River drainage downstream of Skilak Lake spawn between RM 45.8 and RM 48 during that time period (Palmer 1998; Eskelin 2016, pers. comm.). Measurements of spawning Rainbow Trout in the Kenai River demonstrated that 95% of females 20 inches in length or larger are spawners, and that the minimum length at spawning is approximately 16 inches (OSM 2007).

Rainbow Trout abundance estimates have been generated several times for index sections of the Kenai River since the mid 1980's. Abundance estimates of fish over 200mm (~7.8 inches) in the upper Kenai River index area have taken place in 1986 (3,640 fish, SE 456), 1987 (4,950 fish, SE 376), 2001 (8,553 fish, SE 806), and 2009 (5,916 fish, SE 481; Begich et al. 2013). The upper Kenai River index area is the most heavily fished section of the upper Kenai River (King and Breakfield 2007), and is situated above Skilak Lake and below the Russian River between RM 69.7 and RM 73.2. Abundance estimates for fish of the same size in the middle Kenai River index area have taken place in 1987 (1,750 fish) and 1999 (7,883 fish). The middle Kenai River index area is the most heavily fished section of the river where regulations allow retention of Rainbow Trout (Larson and Hanson 2000), and is located above Naptowne Rapids and below Skilak Lake between approximately RM 38 and RM 50. There have been no drainage-wide estimates generated to date.

The catch and harvest of Rainbow Trout in the Kenai River are monitored through the Statewide Harvest Survey. Catches of Rainbow Trout in the Kenai River since 1984 have ranged between 8,720 and 202,875, with an average during 2008–2012 (most recent data published) of 189,400 fish (Begich et al. 2013). Harvests of Rainbow Trout, however, are substantially smaller and have ranged (since 1984) between 1,560 and 3,940, with an average during 2008–2012 of 2,470.

Dolly Varden

There are assumed to be both resident and anadromous forms of Dolly Varden in the Kenai River. Anadromous fish are believed to enter the Kenai River in July (Begich et al. 2013). Both forms move within the Kenai River drainage from summer feeding sites to spawning location by mid-to late September. Spawning occurs between mid-September and late October, after which these fish moved to overwintering locations (Palmer and King 2005). Outmigration from the drainage by anadromous fish occurs in April and May. Minimum length at spawning for this population is approximately 12 inches in length, and the majority of females 18 inches or longer in length are spawners (OSM 2007). There are no Dolly Varden population estimates for the Kenai River.

The catch and harvest of Dolly Varden in the Kenai River are monitored through the Statewide Harvest Survey. Catches of Dolly Varden in the Kenai River since 1990 have ranged between 34,577 and 166,618, with an average during 2008–2012 (most recent data published) of 127,280 fish. Harvests of Dolly Varden are substantially smaller, and have ranged (since 1990) between 1,789 and 14,517, with an average during 2008–2012 of 2,680. Similar to the Rainbow Trout Fishery, the Dolly Varden sport fishery has experienced increasingly restrictive regulations over time (Begich et al. 2013).

Research Related to Gillnets on the Kenai River

Research related to the effects of gillnet in the Kenai River in a subsistence fishery setting is limited to the results of experimental community gillnet by Ninilchik residents in 2016, but other gillnets have been placed in the river during past research.

As stated in a previous section ADF&G has monitoring escapement projects on the Kenai River (via sonar) at RM 14 between mid-May and mid-August. A gillnet is used at RM 9 to provide the relative proportion of large Chinook Salmon, small Chinook Salmon, and Sockeye Salmon for apportionment of sonar counts (ADF&G 2016a).

From 1999 to 2003, ADF&G used a combination of fishing methods to recapture Coho Salmon in the Kenai River as a part of a mark-recapture study to estimate the abundance of adult Coho Salmon in the Kenai River (Carlson and Evans 2007). The recapture event primarily used a drift gillnet (4.75” mesh, 29 meshes deep, 5 fathoms in length), but, to a limited extent, supplemented the recapture catch with other methods including a set gillnets, fish wheels, hook-and-line, and seining. The drift gillnet specifications were intended to capture fish by entanglement rather than by wedging fish into a single mesh space permitting fish to be more easily removed upon capture and decreasing injury.

The recapture event of this study was conducted in two reaches on the Kenai River:

1.) In 1999 along the banks between Soldotna Bridge and the Funny River tributary confluence (RM 21.1 – RM 30.4). This reach encompasses Moose Range Meadows (RM 26.5 – RM 29)

2.) From 2000-2003, along the banks at the confluence of the Moose River tributary (RM 30.4 – RM 36.3)

In the 1999 recapture event, effort was expended daily during the following periods: August 9 through October 8, 1999. The recapture events from 2000 to 2003 effort were expended daily during the following periods: August 1 through October 13, 2000; August 1 through October 5, 2001; August 2 through October 4, 2002; and August 1 through October 5, 2003.

The catch and effort results from the recapture event of this study is summarized below are summarized in **Table 5** and **Table 6** below.

It is important to note that this study did not follow mortality for species other than Coho Salmon. The study did occur in the area of Moose Range Meadows for one year (1999) and in the area above Moose

Range Meadows from 2000-2003. The time period of sampling also did include times in which the experimental gillnet fishery was performed (early-mid August), but most of it occurred through late-August till early to mid-October. Methods did include the use of a drift and set gillnet with similar specifications to those used in the experimental gillnet fishery.

Table 5. Catches of species during the recapture events, 1999-2003 (Carlson and Evans 2007)

Species	1999	2000	2001	2002	2003
Coho	2,098	3,161	4,669	5,145	3,493
Sockeye	1,126	1,235	1,162	1,712	1,861
Chinook	263	318	395	393	828
Pink	27	9,299	8	14,354	4
Chum	0	0	0	1	0
Dolly Varden	179	206	241	442	248
Rainbow Trout	208	343	745	397	1,304
Steelhead	3	3	8	3	24
Whitefish	5	1	1	3	1
Longnose Sucker	2	0	0	1	1

Table 6. Summary of effort in net hours by gear type during the recapture events, 1999-2003 (Carlson and Evans 2007)

Gear Type	1999	2000	2001	2002	2003
Drift Gillnet	255.0	253.8	305.1	206.0	322.5
Set Gillnet	0.0	69.5	43.9	0.2	0.5
Hook-and-Line	0	34	9	238	6
Fish Wheel	916	0	0	0	0
Beach Seine	0	0	0	82	0

Catch and Release Mortality

A number of studies have been conducted to examine unintended mortality in catch and release fisheries. Rates of unintended mortality from catch and release fishing vary across studies due to factors such as species, life stage, water temperature, and gear type. A literature review of 18 studies by Taylor and White (1992) found a 3.8% mortality rate associated with fly-fishing, a 4.9% rate associated with lures, and a 31.4% rate associated with bait. Another review of 7 studies by Schill and Scarpella (1997) found a 4.5% mean mortality rate for barbed hooks compared to 4.2% for barbless. Lindsay et al. 2004 found a 12.2% rate of mortality in Chinook Salmon in the lower Willamette River of Oregon, while Bendock and Alexandersdottir (1990) found rates of 13% for male and 7% for female Chinook Salmon in the Kenai River. DeCicco (1994) found rates below 2% for Dolly Varden from the Nome and Snake rivers of Northwest Alaska. Estimated catch and release mortality ranges for the early-run Chinook Salmon sports

fishery in the Kenai River range from 0 to 257 fish (Begich et al 2013). Estimated catch and release mortality ranges for the late-run Chinook Salmon sports fishery in the Kenai River range from 79 to 1,267 fish, which equates to an average estimated mortality rate of around 1% of the in-river run total before sportfish harvest has been removed (Begich et al 2013). Although no estimates of catch and release mortality exist for Rainbow Trout, a recent stock assessment performed in the Kenai River drainage (Eskelin and Evans 2013) reported that over 92% of the Rainbow Trout were observed to have hooking injuries. The authors suggested that it was likely that the trout in some sections of the river are caught and released multiple times. No estimates of catch and release mortality exist for Dolly Varden.

Overall, some amount of mortality is a recognized consequence of catch and release fisheries, including those currently authorized in the Kenai River.

Gillnet Release Mortality

Research has also been conducted to examine the rates of mortality for a variety of fish caught and released from gill and tangle nets (WDFW 2014). The studies summarized in this literature review come from 13 papers based in a variety of locations ranging from Bristol Bay to Finland. The study sites were mainly concentrated in Washington or British Columbia, with only two sites in Alaska (Bristol Bay and Kodiak). The study years for these projects ranged from 1955 to 2007 (median ~ 2000) and a majority of them focus on salmonid species being captured and immediately released in estuarine locations. Variables considered in these studies included mesh size, fish size, soak time, water temperature, location type, maturity state, and migration duration. Those studies that focus on fish released from gillnets demonstrated a wide range of mortality. Immediate mortality rates ranged between 0.5% and 98% depending on the variables considered and within the context of the studies considered in the literature review. For example, the lowest mortality rate was for Chinook Salmon in the spring (cooler water) in a freshwater environment with a 5.5 inch mesh gillnet whereas the 98% mortality was in July (warmer water) in an estuary environment with an 8 inch mesh gillnet. Long-term mortality rates ranged between 2.3% and 60.6%, again depending on the variable and within the context of the studies considered in the literature review.

Overall, unintended mortality is a recognized consequence of releasing fish captured in gillnets.

Federal Subsistence Harvest

Rural residents of Cooper Landing, Hope and Ninilchik have harvested fish in the Kenai River drainage under Federal subsistence regulations since 2007. In addition to the rod and reel fishery in Federal waters of the Kenai River, there exist three areas in the Kenai River drainage in which Federally-qualified subsistence users of Cooper Landing, Hope and Ninilchik may harvest salmon by dip net and rod and reel, as well as a separate community gillnet fishery for the residents of Ninilchik.

Russian River Falls

Cooper Landing and Hope residents have fished almost exclusively in the Russian River Falls area over the past nine years. Cooper Landing residents have reported a harvest of 8,609 Sockeye Salmon since 2007; 7,905 in the dip net fishery with an annual average of 878 fish, and 704 in the rod and reel fishery with an

average of 89 fish (**Table 7**). Hope residents have reported a harvest of 2,357 Sockeye Salmon since 2007; 2,142 in the dip net fishery with an average of 238 fish, and 215 Sockeye Salmon in the dip net fishery with an annual average of 24 fish (**Table 8**). Ninilchik residents have harvested in the Russian River Falls area to a much lesser extent. They have utilized the dip net fishery in six of the nine years that it has been a harvest option, with a reported harvest of 155 Sockeye Salmon, and an annual average of 26 fish over the six years. They have utilized the rod and reel fishery three of the nine years (2007–2009), with a reported harvest of 281 Sockeye Salmon; an average of 94 for the three years (**Table 9**). There has been no reported harvest of Chinook Salmon in the Russian River Falls area under Federal regulation.

Kenai River below Skilak Lake, RM 45.5 to RM 48

For the years 2007–2015, a total of 30 Sockeye Salmon have been reported as harvested in this area, all by Ninilchik residents using dip nets, and all in the year 2009 (**Table 9**). There has been no reported harvest by Cooper Landing and Hope residents in this area (**Tables 7 & 8**). There has been no reported harvest of Chinook Salmon in this area under Federal regulation.

Kenai River, Moose Range Meadows, RM 26.5 to RM 29

Cooper Landing residents reported harvesting 44 Sockeye Salmon in the rod and reel fishery for the years 2011–2015, but have not reported harvest of any fish in the dip net fishery for this area (**Table 7**). Hope residents have not reported harvest of any fish in either the dip net or the rod and reel fisheries in this area (**Table 8**). In 2007, Ninilchik residents reported a harvest of 12 Sockeye Salmon in the dip net fishery in this area. There has been no reported harvest in the dip net fishery since. In the rod and reel fishery, Ninilchik residents reported a total harvest of 741 Sockeye Salmon for the years 2008–2015, an annual average of 93 fish. They also reported harvesting 5 Coho Salmon in 2008 (**Table 9**). There has been no reported harvest of Chinook Salmon in the Moose Range Meadows area under Federal regulation.

Table 7. Kenai River Federal Subsistence Salmon Harvest, 2007 – 2015, Cooper Landing Residents

Dip Net Fisheries

Year	Russian River Falls			Kenai River below River Mile 48			Moose Range Meadows			Total
	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	
2007	437	n/a	n/a	0	0	0	0	0	0	437
2008	960			0	0	0	0	0	0	960
2009	706			0	0	0	0	0	0	706
2010	622			0	0	0	0	0	0	622
2011	794			0	0	0	0	0	0	794
2012	998			0	0	0	0	0	0	998
2013	996			0	0	0	0	0	0	996
2014	1,216			0	0	0	0	0	0	1,216
2015	1,176			0	0	0	0	0	0	1,176
TOTAL	7,905									7,905
AVG	878									878

Rod and Reel Fisheries

Year	Upper Kenai/Russian River						Moose Range Meadows			Total
	Sockeye	Coho	Chinook				Sockeye	Coho	Chinook	
2007	169	5	n/a				0	0	0	174
2008	108	7					0	0	0	115
2009	46	9					0	0	0	55
2010	57	0					0	0	0	57
2011	46	0					6	0	0	52
2012	43	0					11	0	0	54
2013	49	4					12	0	0	61
2014	97	2					9	0	0	108
2015	89	0					6	0	0	95
TOTAL	704	27					44	0	0	771
AVG	78	3					5			86

Source: USFWS 2007 – 2015

Table 8. Kenai River Federal Subsistence Salmon Harvest, 2007 – 2015, Hope Residents

Dip Net Fisheries

Year	Russian River Falls			Kenai River below Mile 48			Moose Range Meadows			Total
	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	
2007	85	n/a	n/a	0	0	0	0	0	0	85
2008	280			0	0	0	0	0	0	280
2009	103			0	0	0	0	0	0	103
2010	172			0	0	0	0	0	0	172
2011	159			0	0	0	0	0	0	159
2012	287			0	0	0	0	0	0	287
2013	252			0	0	0	0	0	0	252
2014	402			0	0	0	0	0	0	402
2015	402			0	0	0	0	0	0	402
TOTAL	2,142									2,142
AVG	238									238

Rod and Reel Fisheries

Year	Upper Kenai/Russian River						Moose Range Meadows			Total
	Sockeye	Coho	Chinook				Sockeye	Coho	Chinook	
2007	169	5	n/a				0	0	0	174
2008	6	0					0	0	0	6
2009	18	0					0	0	0	18
2010	0	0					0	0	0	0
2011	0	0					0	0	0	0
2012	0	0					0	0	0	0
2013	19	0					0	0	0	19
2014	3	0					0	0	0	3
2015	0	0					0	0	0	0
TOTAL	215	5								220
AVG	24	0.6								24

Source: USFWS 2007 – 2015

Table 9. Kenai River Federal Subsistence Salmon Harvest, 2007 – 2015, Ninilchik Residents

Dip Net Fisheries

Year	Russian River Falls			Kenai River below Mile 48			Moose Range Meadows			Total
	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	
2007	5	n/a	n/a	0	0	0	12	0	0	17
2008	41			0	0	0	0	0	0	41
2009	0			30	0	0	0	0	0	30
2010	10			0	0	0	0	0	0	10
2011	0			0	0	0	0	0	0	0
2012	0			0	0	0	0	0	0	0
2013	19			0	0	0	0	0	0	19
2014	54			0	0	0	0	0	0	54
2015	26			0	0	0	0	0	0	26
TOTAL	155			30			12			197
AVG	17			3			1.3			22

Rod and Reel Fisheries

Year	Upper Kenai/Russian River						Moose Range Meadows			Total
	Sockeye	Coho	Chinook				Sockeye	Coho	Chinook	
2007	169	5	n/a				0	0	0	174
2008	11	0					202	5	0	218
2009	101	0					93	0	0	194
2010	0	0					42	0	0	42
2011	0	0					84	0	0	84
2012	0	0					75	0	0	75
2013	0	0					61	0	0	61
2014	0	0					115	0	0	115
2015	0	0					69	0	0	69
TOTAL	281	5					741	5		1,032
AVG	31	0.6					82	0.6		115

Source: USFWS 2007 – 2015

Cultural Knowledge and Traditional Practices

The Kenai River watershed is within the traditional territory of the *Dena'ina* Athabaskans, which dates to around 1000 A.D. The area extends from Kachemak Bay on the south end of the Kenai Peninsula, west across Cook Inlet to Lake Clark and the Stony River and northeast to the Susitna Basin. Borders are shared with the traditional territory of the *Sugpiaq* (Alutiiq) which includes the southern portion of the Kenai Peninsula, bridging the *Sugpiaq* territories of Prince William Sound with Kodiak Island and the Alaska Peninsula (de Laguna 1934, Krauss 1982, Stanek 1980).

Non-Native settlement of the Kenai Peninsula began in the 18th century with the Russians and the fur trade, and later mining efforts in Kachemak Bay. At the end of the 19th century, commercial fishing brought

about new settlements, such as the herring saltery at Seldovia in 1896. The next major non-Native settlement period began during the Gold Rush era at the end of the 19th century. Hope and Cooper Landing settlements are related to this period. Homesteading in the Homer region occurred from 1915 through 1940. With the construction of roads and local oil development after in the 1950s, the population of the Kenai Peninsula increased substantially through in-migration of people born outside Alaska.

From the early 1900s, the annual subsistence pattern of the *Dena'ina* included commercial fishing in the spring and summer at the mouth of the Kenai River before moving up-river in the fall to harvest Coho Salmon and freshwater fish, hunt moose, and trap furbearers. This cycle continued until the 1940s when the creation of the Kenai National Moose Range disrupted traditional harvest patterns. Despite new federal refuge enforcement efforts, many *Dena'ina* continued to access their Stepanka camps, long used settlements up the Kenai River near Skilak Lake (Fall et al. 2004:16–20).

Commercial and subsistence fishing were also an important aspect of the annual cycle of the Kenai Peninsula homesteaders. In freshwater, gillnets and seines were used in the Kenai, Skilak, and Tustumena Lakes to harvest lake trout, grayling, whitefish, and char. Trappers in the upper Kenai River area maintained gillnets and caught salmon and trout for personal use. Other uses mentioned were taking Coho Salmon through the ice in the winter and steelhead below Skilak Lake in the late 1940s and early 1950s (Fall et al. 2004:20-21). Andrew Berg, who lived from 1869 to 1939 and was a guide on the Kenai Peninsula, documented his use of subsistence resources including harvesting trout in Tustumena Lake and Dolly Varden, salmon, and whitefish at the mouth of Indian Creek (Cassidy and Titus 2003).

Subsistence fishing in the freshwaters of the Kenai Peninsula was prohibited from 1952 until the Federal Subsistence Board created a subsistence fishery in 2002 which mirrored the State sport fishing regulations. Since statehood, legal availability of fishery resources in Federal public waters has been defined by State sport fishing regulations, and these regulations do not provide for harvest of all species or harvest by traditional methods and means. In this area, preferred traditional methods and means include nets, an efficient method and means of harvest for subsistence users who traditionally harvest as much fish as they can process at once. Rod and reel is considered an authorized subsistence gear type under Federal subsistence regulations and under State regulations in some parts of the state. In some cases under State regulations, rod and reel has been recognized as traditional gear in places where fish fences or traps are no longer a legal means to harvest fish and rod and reel is the only legal alternative (Williams et al. 2005:31–32).

In 1952, gillnets were made illegal in many freshwaters, and the Kenai Peninsula *Dena'ina* ceased using gillnets during the fall occupation of their upriver harvest sites. The Stepanka fishery, that had been a traditional, long-standing source of salmon for the *Dena'ina* (Kenaitze) Indians, was closed. As a result of this closure, snagging became the primary harvest method until it was made illegal in 1973. Local residents turned to sport fishing without snagging, and continued to fish the beaches of Cook Inlet with gillnets in the State subsistence fishery. In the 1970s, sport fishing had grown in popularity and the Kenai had become a favorite spot for fishing and recreation. The Kenai Peninsula is unique in that rural communities are interspersed among much larger nonrural communities. By the early 1980s the Alaska Board of Fisheries added more restrictions on subsistence and personal use fishing along the Cook Inlet beaches, closing beaches to subsistence gillnetting. By the mid-1990s, only two personal use fisheries remained at the mouth of the Kenai and Kasilof rivers (Fall et al. 2004:22–23; 30).

Regulations relating to areas, seasons, and methods have changed consistently over the past 54 years, and have become more restrictive, requiring residents to take different approaches to obtaining subsistence resources. For example, in the case of salmon, as regulations and conditions have changed, residents have adapted their traditional practices to continue to obtain salmon—trade it, buy it, or harvest it in new ways under various regulatory regimes (Georgette 1983:186–187). In 1993, as the result of a lawsuit filed by the Kenaitze Tribe, a State judge ordered the development of educational fisheries for the NTC, the Knik Tribal Council, the Native Village of Eklutna and the Kenaitze Tribe (Loshbaugh 1993:1, 14). The educational fishery provided another means for residents to harvest salmon using gillnets. The educational permits, however, were a compromise: “Villagers—who have traditionally focused on early-run king salmon will be catching mostly reds under the proposed permit” (Loshbaugh 1993:14).

Recommendation for Future Board Action

To safeguard opportunity in the Federal subsistence fisheries for the communities of Hope and Cooper Landing, the Board could consider linking all of Ninilchik's harvests for both the Kenai River and the Kasilof River to the Kasilof River annual and household limits. This would leave the Kenai River annual and household limits to be split between Hope and Cooper Landing. However, this may also warrant additional assessment of annual and household limits for the Kasilof River.

Effects of the Proposal

If one or both of these proposals were adopted, the community gillnet salmon fishery in the Kenai River for Ninilchik residents would be eliminated. This would remove the community gillnet salmon fishery regulations for the Kenai River adopted by the Board in January 2015, which became effective in April 2015. These regulations would still allow for the retention of late-run Chinook via the Federal dip net and rod and reel fishery. The regulations will still prohibit the retention of early-run Chinook Salmon at the three specific sites in the Federal waters on the Kenai River (Russian River Falls, Kenai River below Skilak Lake (RM 45.5 to 48), Moose Range Meadows) via the Federal dip net and rod and reel fishery, while allowing harvest of early-run Chinook Salmon via the additional rod and reel fishery elsewhere in the Federal waters of the Kenai River (with a protective slot limit). Additionally, Federal regulations prohibit the retention of Rainbow Trout and Dolly Varden over 18 inches.

Given the recent results of the community gillnet fishery adopted and opened under FSA16-02 on July 29, 2016, the removal of the community gillnet may allow a number of salmon species to continue to migrate to spawning grounds throughout the Kenai River system. At the conclusion of the community gillnet fishery, the Ninilchik community caught 755 Sockeye Salmon, 7 Pink Salmon, 1 Chinook Salmon, and 12 Coho Salmon, while harvesting 723 Sockeye Salmon, 6 Pink Salmon, 1 Chinook Salmon, and 12 Coho Salmon. The results from the community gillnet fishery need to be taken with careful consideration as they were produced in a limited time window and with specific methods that could have influenced the amount and range of species harvested. However, had the community gillnet not been implemented, the amount of harvest on the migrating populations that did occur could still have occurred under Federal regulations, but with different gear types (dip net and rod and reel).

The results from the recent community gillnet fishery allow for some inferences on the impact of a single

community gillnet in the spawning areas of late-run Chinook Salmon. During the community gillnet fishery, only 1 Chinook Salmon was caught and harvested. The Chinook Salmon harvested in the gillnet, by regulatory definition, was a late-run Chinook Salmon as it was harvested after July 16. With or without the regulatory existence of a community gillnet in the Kenai River, the harvest of late-run Chinook on spawning areas in the Kenai River is still allowed with other methods and can still occur under Federal regulations up to 1,000 fish.

The results from the recent community gillnet fishery do not allow for any inferences on the impact of a single community gillnet fishery in spawning areas of early-run Chinook Salmon. The gillnet fishery was not implemented until July 29, by which time the 7% to 20% of the early-run Chinook that do spawn in the mainstem of the Kenai River would have spawned. If a community gillnet were to be implemented like it currently states in Federal regulations, from June 15 to August 15, the gillnet could potentially capture staging early-run Chinook Salmon that would eventually make their way to either the Funny/Killey Rivers or tributaries above Skilak Lake. The potential would also exist to capture the small portion of spawning Early-run Chinook Salmon (7% to 20%) that spawn in the mainstem of the Kenai River below Skilak Lake. The potential to capture these early-run Chinook in a gillnet is dependent on numerous variables (e.g. net size, dimensions, placement, etc.) and may or may not occur, but could be controlled in an operational plan. If early-run Chinook Salmon were captured by the community gillnet, they would have to be released as it is stipulated in current Federal regulations. Depending on the range of injuries sustained as a result of capture in the gillnet, survival and/or spawning capabilities could be reduced.

By removing the community gillnet from the Kenai River, residents of Hope, Cooper Landing, and Ninilchik will have subsistence opportunities under the Federal dipnet and rod and reel fisheries in the Kenai River. Residents of Ninilchik will not have the additional subsistence opportunity for community harvest of salmon using a gillnet in the Kenai River.

If both of these proposals are not adopted, the community gillnet salmon fishery in the Kenai River for Ninilchik residents would continue to be administered as originally adopted by the Board in 2015 and stipulated in Federal subsistence regulations. These regulations would still allow for the retention of late-run Chinook via the Federal dip net and rod and reel fishery. The regulations will still prohibit the retention of early-run Chinook Salmon at the three specific sites in the Federal waters on the Kenai River (Russian River Falls, Kenai River below Skilak Lake (RM 45.5 to 48), Moose Range Meadows) via the Federal dip net and rod and reel fishery, while allowing harvest of early-run Chinook Salmon via the additional rod and reel fishery elsewhere in the Federal waters of the Kenai River (with a protective slot limit). Additionally, Federal regulations prohibit the retention of Rainbow Trout and Dolly Varden over 18 inches.

Since little is known about the effects of a single fixed gillnet fished in the Moose Range Meadows area or the area below Skilak Lake on the Kenai River (until recent times) limited predictions, based on the best available data, can be made about the effects of a gillnet on salmon and resident species in the Kenai River. Other studies that have been performed in different regions of the country have shown that many variables have to be considered when determining the effects of immediate and long-term mortality rates on salmon. These variables include mesh size, fish size, soak time, water temperature, location type, maturity state, and

migration duration. These studies show immediate mortality rates for salmonids range between 0.5% and 98% depending on various variables, while the long-term mortality rates for salmonids range between 2.3% and 60.6%, again depending on various variables. Based on the review of these studies in other systems, the possibility remains that unintended mortality of salmonids captured and released in a gillnet will be similar to other areas and will occur with the continued placement and operation of a gillnet on the Kenai River, as prescribed in regulation for certain portions of the Kenai River.

From 1999 to 2003, an ADF&G mark-recapture study was performed in the Moose Range Meadows area of the Kenai River, as well as at the confluence of the Moose River tributary (Carlson and Evans 2007). Although the study was performed to estimate the abundance of Coho Salmon in the Kenai River, it did capture other species of salmon and resident fish during the recapture events, with methods that included drift and set gillnets. The study did not follow any mortality events associated with the handling of the incidentally caught species. It was stated that it was possible that fish caught by the gillnets were subject to greater mortality because of the mechanics of entanglement capture by the gillnets, but that many of the fish released from the drift gillnets did not show any visible injuries. It should be noted that the study did occur in the area of Moose Range Meadows for one year (1999) and in the area above Moose Range Meadows from 2000-2003. The time period of sampling also did include times in which the experimental gillnet fishery was performed (early-mid August), but most of it occurred through late-August till early to mid-October. Methods did include the use of a drift and set gillnet with similar specifications to those used in the experimental gillnet fishery. Based on this study from the Kenai River, the possibility remains that unintended catch of salmonids will occur with the continued placement and operation of a gillnet on the Kenai River, as prescribed in regulation for certain portions of the Kenai River.

At the conclusion of the community gillnet season, there has been only 1 late-run Chinook Salmon caught and harvested in the community gillnet on the Kenai River, as well as the capture and release of 2 Dolly Varden. No Rainbow Trout or early-run Chinook were harvested during the experimental community gillnet fishery. This is the only available data that is directly related to the effects of a subsistence gillnet in the Kenai River, but careful consideration needs to be taken as it is just one data point that was produced in a limited time window and with specific methods that could have influenced the amount and variety of species harvested. The fact remains that a single community gillnet was implemented in the Kenai River, and that during the time period it was implemented and within the methods allowed by in current Federal regulations, the unintended catch and mortality of species of concern were minimal. If these harvest results are consistent with how the fishery would run on an annual basis as provided for in current Federal regulations, the amount of unintended catch and mortality of non-target species will be minimal.

A community gillnet remaining on the Kenai River will continue to provide additional subsistence opportunities for the residents of Ninilchik. Residents of Hope and Cooper Landing will continue to have subsistence opportunities provided to them under the Federal dip net and rod and reel fisheries in the Kenai. There is the potential that annual total harvest limits for the Kenai River fishery could be obtained through the community gillnet fishery before residents of Hope and Cooper Landing are able to harvest at their preferred locations in the upper Kenai River at Russian River Falls.

OSM PRELIMINARY CONCLUSION

Given the ongoing RFR process related to the Kenai River community gillnet fishery, OSM is offering two potential courses of action for consideration. Option 1 assumes that the RFR process is ongoing: either the Board has not reached a decision about the threshold analysis or has determined that one or more claims meet the threshold for further analysis. Option 2 assumes that the RFR process has been completed and the Kenai River community gillnet fishery regulations remain in place.

Option #1:

Defer Proposal FP17-06 & 07.

Justification

Proposals FP17-06 and FP17-07 mirror several requests for reconsideration (RFR) submitted to the Federal Subsistence Board regarding adoption of Proposal FP15-10 in January 2015. The adoption of FP15-10 authorized the use of one community gillnet in the Kenai River to harvest salmon by residents of Ninilchik for subsistence. Currently, more than 700 RFRs are under evaluation by the Office of Subsistence Management (OSM). In addition to the RFRs, the NTC filed a lawsuit on October 22, 2015 in the U.S. District Court against the Federal Subsistence Board, the U.S. Department of Interior and the U.S. Department of Agriculture. The lawsuit petitions the court to compel the U.S. Fish and Wildlife Service to approve an operational plan for the gillnet fishery in the Kenai River. With simultaneous RFR and legal efforts occurring at this time, it is recommended by OSM that any decisions on FP17-06 and FP17-07 be deferred so as not to preclude any decisions that have yet to be made by the Board through the RFR process and/or contradict any potential direction that may be received from the U.S. Court as a result of the pending litigation.

Option #2:

Oppose Proposals FP17-06 & 07.

Justification

To date, given the best available data obtained by the deployment of the experimental community gillnet fishery adopted and opened under FSA16-02, a single community gillnet on the Kenai River does provide an additional subsistence opportunity with minimal incidental harvest of species of concern. However, since this experimental gillnet fishery has only been executed once (from July 29 to August 15 with 20' and 60' net lengths), inferences made from this single data point need to be approached with careful consideration. Currently the only data that exists for a subsistence gillnet fishery on the Kenai River is the data that was gathered by the Ninilchik Tribal Council in association with the experimental community gillnet fishery. Additional data will allow for better inferences about the effects of a subsistence community gillnet fishery on the Kenai River. The collection of additional data can be controlled through an operational plan, which is already provided for under current Federal regulations. The only way that this process will occur is with the continued implementation of the community subsistence gillnet fishery.

This provides a fair and reasonable balance between managing fish populations with conservation in mind while also providing for continued subsistence opportunity when it can be provided.

As the Federal regulation currently exists, an operational plan for the community gillnet on the Kenai River is required. Including harvest limits in the operational plan will ensure the protection of subsistence opportunities for all Federally qualified subsistence users.

At the conclusion of the 2016 experimental community gillnet fishery, only 1 Chinook Salmon was caught and harvested from the community gillnet. As the experimental subsistence gillnet fishery only was implemented from July 29 to August 15, which is well out of the time frame in which early-run Chinook have shown to stage or spawn in the mainstem of the Kenai, no concerns can be substantiated about the impacts of a single subsistence community gillnet fishery on the impacts of declining stocks of early and late-run Chinook Salmon in the Kenai River. The harvest of staging or spawning late-run Chinook Salmon is already permissible under current Federal regulations in the Kenai River with different gear types (dip net and rod and reel) up to a 1,000 fish, so harvest of staging or spawning late-run Chinook Salmon already occurs under an acceptable level of mortality and would still continue to be accepted with the keeping or removal of a single community gillnet on the Kenai River. Additionally, there needs to be consideration on an acceptable level of mortality for all species of salmon and resident species in the subsistence community gillnet fishery and the sport fishery, while also considering subsistence priorities for Federally qualified subsistence users.

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FP17-08 Executive Summary	
General Description	<p>Proposal FP17-08, requests changes to two sections of regulations for the Kenai River that would close a portion of the Federal public waters to Chinook Salmon fishing, extend conservation size regulations in another area of the drainage, remove distinction between early- and late-run, modify seasonal and daily harvest and possession limits, and specify that harvest from the Kasilof River experimental community gillnet will be included in each household's limits for the Kenai River dip net/rod and reel fishery.</p> <p><i>Submitted by: U.S. Fish and Wildlife Service, Region 7.</i></p>
Proposed Regulation	<p>§____.27(e)(10)(iv)(D) <i>Residents of Hope, Cooper Landing, and Ninilchik may take only sockeye salmon through a dip net and a rod and reel fishery at one specified site on the Russian River, and sockeye, late-run Chinook, coho, and pink salmon through a dip net/rod and reel fishery at two specified sites on the Kenai River below Skilak Lake, and Chinook salmon through a dip net/rod and reel fishery at one specified site on the Kenai River below Skilak Lake and as provided in this section. For Ninilchik residents, salmon taken in the Kasilof River Federal subsistence fish wheel, experimental community gillnet, and dip net/rod and reel fishery will be included as part of each household's annual limit for the Kenai and Russian Rivers' dip net and rod and reel fishery. For both Kenai River fishing sites below Skilak Lake, incidentally caught fish may be retained for subsistence uses, except for early-run Chinook salmon (unless otherwise provided for), rainbow trout 18 inches or longer, and Dolly Varden 18 inches or longer, which must be released. For the Russian River fishing site, incidentally caught fish may be retained for subsistence uses, except for early-and-late-run Chinook salmon, coho salmon, rainbow trout, and Dolly Varden, which must be released. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing site, and permits must be returned to the manager by the due date listed on the permit. Chum salmon that are retained are to be included within the annual limit for sockeye salmon. Only residents of Cooper Landing, Hope, and Ninilchik may retain incidentally caught resident</i></p>

	<p><i>species..</i></p> <p><i>(1) The household dip net and rod and reel gear fishery is limited to three sites:</i></p> <p><i>(i) At the Kenai River Moose Range Meadows site, dip netting is allowed only from a boat from a Federal regulatory marker on the Kenai River at about river mile 29 downstream approximately 2.5 miles to another marker on the Kenai River at about river mile 26.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to two baited single or treble hooks June 15-August 31. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56 and 5 AAC 57 and 5 AAC 77.540).</i></p> <p><i>ii) At the Kenai River Mile 48 site, dip netting is allowed while either standing in the river or from a boat, from Federal regulatory markers on both sides of the Kenai River at about river mile 48 (approximately 2 miles below the outlet of Skilak Lake) downstream approximately 2.5 miles to a marker on the Kenai River at about river mile 45.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to two baited single or treble hooks June 15-August 31. Chinook Salmon may not be harvested at this site and any Chinook Salmon incidentally caught must be immediately released. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56, 5 AAC 57, and 5 AAC 77.540).</i></p> <p><i>(iii) At the Russian River Falls site, dip netting is allowed from a Federal regulatory marker near the upstream end of the fish ladder at Russian River Falls downstream to a Federal regulatory marker approximately 600 yards below Russian River Falls. Residents using rod and reel gear at this fishery site may not fish with bait at any time.</i></p> <p><i>(2) Fishing seasons are as follows:</i></p> <p><i>(i) For sockeye salmon at all fishery sites: June 15-August 15;</i></p> <p><i>(ii) For late run Chinook, pink, and coho salmon at both Kenai River fishery sites only: July 16-September 30; and</i></p> <p><i>(iii) For Chinook Salmon at the Kenai River Moose Range Meadows fishery site only: July 16 – September 30; and</i></p> <p><i>(iii iv) Fishing for sockeye, late run Chinook, coho, or pink</i></p>
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	<p><i>salmon will close by special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action</i></p> <p><i>(3) Each household may harvest their annual Sockeye, late-run Chinook, Coho, or Pink salmon limits in one or more days, and each household member may fish with a dip net or rod and reel during this time. Salmon taken in the Kenai River system dip net and rod and reel fishery by Ninilchik households will be included as part of those household's annual limits for the Kasilof River.</i></p> <p><i>(i) For Sockeye Salmon—annual total harvest limit of 4,000 (including any retained Chum Salmon); annual household limits of 25 for each permit holder and 5 additional for each household member;</i></p> <p><i>(ii) For late-run Chinook Salmon—annual total harvest limit of 1,000; annual household limits of 10 4 for each permit holder and 2 additional for each household member;</i></p> <p><i>(iii) For Coho Salmon—annual total harvest limit of 3,000; annual household limits of 20 for each permit holder and 5 additional for each household member; and</i></p> <p><i>(iv) For Pink Salmon—annual total harvest limit of 2,000; annual household limits of 15 for each permit holder and 5 additional for each household member.</i></p> <p><i>§ __.27(e)(10)(iv) (E) For Federally managed waters of the Kenai River and its tributaries, in addition to the dip net and rod and reel fisheries on the Kenai and Russian rivers described under paragraph (e)(10)(iv)(D) of this section, residents of Hope, Cooper Landing, and Ninilchik may take sockeye, Chinook, coho, pink, and chum salmon through a separate rod and reel fishery in the Kenai River drainage. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Permits must be returned to the Federal fisheries manager by the due date listed on the permit. Incidentally caught fish, other than salmon, are subject to regulations found in paragraphs (e)(10)(iv)(F) and (G) of this section. Seasons, areas (including seasonal riverbank closures), harvest and possession limits, and methods and means (including motor boat restrictions) for take are the same as for the taking of these salmon species under State of Alaska fishing regulations</i></p>
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	<p>(5 AAC 56, 5 AAC 57 and 5 AAC 77.54), except for the following harvest and possession limits:</p> <p>(1) In the Kenai River below Skilak Lake, fishing is allowed with up to two baited single or treble hooks June 15–August 31.</p> <p>(2) For early run Chinook salmon less than 46 inches or 55 inches or longer, daily harvest and possession limits are two per day and two in possession.</p> <p>(3) For late run Chinook salmon 20 inches and longer, daily harvest and possession limits are two per day and two in possession.</p> <p>(2) For the Kenai River Moose Range Meadows fishery site only: Chinook Salmon less than 46 inches or 55 inches or longer may be harvested from July 16 – August 31 with daily harvest and possession limits of two per day and four in possession.</p> <p>(3) In the Kenai River from Federal regulatory markers at the outlet of Skilak Lake at about river mile 50 downstream approximately 4.5 miles to a marker on the Kenai River at about river mile 45.5, fishing for Chinook Salmon is prohibited. Chinook salmon may not be harvested at this site and any Chinook Salmon incidentally caught must be immediately released.</p> <p>(4) Annual harvest limits for any combination of early and late run Chinook salmon are four for each permit holder.</p> <p>(5) For other salmon 16 inches and longer, the combined daily harvest and possession limits are six per day and six in possession, of which no more than four per day and four in possession may be coho salmon, except for the Sanctuary Area and Russian River, for which no more than two per day and two in possession may be coho salmon.</p>
<p>OSM Preliminary Conclusion</p>	<p>Option 1 (see page 37): Defer Proposal FP17-08</p> <p>Option 2 (see page 38 – 42):</p> <p>Issue 1: Support</p> <p>Issue 2: Oppose</p> <p>Issue 3: Oppose</p> <p>Issue 4: Oppose</p> <p>Issue 5: Oppose</p> <p>Issue 6: Support</p>

	Issue 7: Oppose Issue 8: Oppose
Southcentral Regional Advisory Council Recommendation	
Interagency Staff Committee Comments	
ADF&G Comments	
Written Public Comments	3 Support, 1 Oppose

**DRAFT STAFF ANALYSIS
FP17-08**

ISSUES

Proposal FP17-08, submitted by the U.S. Fish and Wildlife Service, Region 7, Alaska, requests the Federal Subsistence Board revise sections § __.27(i)(10)(iv)(D), which authorizes a dip net/rod and reel fishery at three locations on the Kenai River for Federally qualified subsistence users, and § __.27(i)(10)(iv)(E), which authorizes a separate rod and reel salmon fishery in Federal public waters of the Kenai River and its tributaries.

Section § __.27(i)(10)(iv)(D) currently provides the residents of Hope, Cooper Landing, and Ninilchik with a dip net/rod and reel fishery at one specified site on the Russian River for Sockeye Salmon, and at two specified sites on the Kenai River below Skilak Lake for Sockeye, late-run Chinook, Coho, and Pink Salmon. The requested changes to this section are:

1. Remove all language distinguishing the early- and late-runs of Chinook Salmon;
2. Prohibit harvest and require immediate release of Chinook Salmon below Skilak Lake from river mile (RM) 48 downstream to RM 45.5;
3. Specify that Chinook Salmon may be harvested in the Moose Range Meadows area from approximately RM 29 downstream to RM 26.5 between July 16 and September 30;
4. Remove 1,000 fish annual total harvest limit for Chinook Salmon, and adjust annual household limit from 10 Chinook Salmon (plus 2 per each additional household member) to 4 Chinook Salmon (plus 2 per each additional household member);
5. Specify that salmon taken in the Kasilof River experimental gillnet Federal subsistence fisheries by the residents of Ninilchik will be included in each household's annual limit for the Kenai and Russian River's dipnet/rod and reel fishery.

Section § __.27(i)(10)(iv)(E) provides the residents of Hope, Cooper Landing, and Ninilchik with a separate rod and reel fishery in the Federally managed waters of the Kenai River and its tributaries. The requested changes to this section are:

1. Remove all language distinguishing the early- and late-runs of Chinook salmon;
2. Specify that Chinook Salmon may be harvested in the Moose Range Meadows area from approximately RM 29 downstream to RM 26.5, between July 16 and August 31, with daily harvest and possession limits of 2 per day and 4 in possession, and only if fish are less than 46 inches or 55 inches or longer;
3. Prohibit harvest and require immediate release of Chinook Salmon from the outlet of Skilak Lake at RM 50 downstream to RM 45.5.

DISCUSSION

The proponent states that the requested changes “will afford needed protections for Kenai River Chinook Salmon that will help achieve the intent of the State of Alaska’s Kenai River and Kasilof River Early-run

King Salmon Conservation Management Plan (5 AAC 56.070) by extending protective slot limits and harvest restrictions for Chinook Salmon throughout their residency in freshwater and affording protections while on the spawning grounds.”

According to the proponent, the intents of the proposal are to:

1. Close the Kenai River between RM 45.5 and Skilak Lake to fishing for Chinook Salmon;
2. Extend conservative size regulations for Chinook Salmon at the Moose Range Meadows fishing site;
3. Remove confusing regulatory language about the early- and late-runs; and
4. Modify seasonal and daily harvest and possession limits for Chinook Salmon.

The proponent has also submitted two companion proposals to the State of Alaska Board of Fisheries (BOF), for changes to State of Alaska fishing regulations 5 ACC 57.120 and 5 ACC 57.121, to close 4.5 miles of the Kenai River below Skilak Lake to sport fishing for Chinook Salmon (Proposal 155) and to extend the time of the protective slot limit and single hook/no bait restrictions through July 31 upstream of the Slikok Creek closure area (Proposal 159). If the proposals are validated, they will be taken up by the BOF during its February – March 2017 meeting in Anchorage, more than a month after the January 2017 meeting of the Federal Subsistence Board.

Existing Federal Regulation

Kenai River dip net/rod and reel fishery regulations

§100.27(e)(10) Cook Inlet Area.

(iv) You may take only salmon, trout, Dolly Varden, and other char under the authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56 and 5 AAC 57) unless modified herein. Additionally, for Federally managed waters of the Kasilof and Kenai River drainages:

(D) Residents of Hope, Cooper Landing, and Ninilchik may take only sockeye salmon through a dip net and a rod and reel fishery at one specified site on the Russian River, and Sockeye, late-run Chinook, Coho, and Pink salmon through a dip net/rod and reel fishery at two specified sites on the Kenai River below Skilak Lake and as provided in this section. For Ninilchik residents, salmon taken in the Kasilof River Federal subsistence fish wheel, and dip net/rod and reel fishery will be included as part of each household's annual limit for the Kenai and Russian Rivers' dip net and rod and reel fishery. For both Kenai River fishing sites below Skilak Lake, incidentally caught fish may be retained for subsistence uses, except for early-run Chinook Salmon (unless otherwise provided for), Rainbow Trout 18 inches or longer, and Dolly Varden 18 inches or longer, which must be released. For the Russian River fishing site, incidentally caught fish may be retained for subsistence uses, except for early- and late-run Chinook Salmon, Coho Salmon, Rainbow Trout, and Dolly Varden, which must be released. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests

must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing site, and permits must be returned to the manager by the due date listed on the permit. Chum Salmon that are retained are to be included within the annual limit for Sockeye Salmon. Only residents of Cooper Landing, Hope, and Ninilchik may retain incidentally caught resident species.

(1) The household dip net and rod and reel gear fishery is limited to three sites:

(i) At the Kenai River Moose Range Meadows site, dip netting is allowed only from a boat from a Federal regulatory marker on the Kenai River at about river mile 29 downstream approximately 2.5 miles to another marker on the Kenai River at about river mile 26.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to two baited single or treble hooks June 15-August 31. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56 and 5 AAC 57 and 5 AAC 77.540).

ii) At the Kenai River Mile 48 site, dip netting is allowed while either standing in the river or from a boat, from Federal regulatory markers on both sides of the Kenai River at about river mile 48 (approximately 2 miles below the outlet of Skilak Lake) downstream approximately 2.5 miles to a marker on the Kenai River at about river mile 45.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to two baited single or treble hooks June 15-August 31. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56, 5 AAC 57, and 5 AAC 77.540).

(iii) At the Russian River Falls site, dip netting is allowed from a Federal regulatory marker near the upstream end of the fish ladder at Russian River Falls downstream to a Federal regulatory marker approximately 600 yards below Russian River Falls. Residents using rod and reel gear at this fishery site may not fish with bait at any time.

(2) Fishing seasons are as follows:

(i) For sockeye salmon at all fishery sites: June 15-August 15;

(ii) For late-run Chinook, pink, and coho salmon at both Kenai River fishery sites only: July 16-September 30; and

(iii) Fishing for sockeye, late-run Chinook, coho, or pink salmon will close by special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action

(3) Each household may harvest their annual Sockeye, late-run Chinook, Coho, or Pink salmon limits in one or more days, and each household member may fish with a dip net or rod and reel during this time. Salmon taken in the Kenai River system dip net and rod and reel fishery by Ninilchik households will be included as part of those household's annual

limits for the Kasilof River.

(i) For Sockeye Salmon—annual total harvest limit of 4,000 (including any retained Chum Salmon); annual household limits of 25 for each permit holder and 5 additional for each household member;

(ii) For late-run Chinook Salmon—annual total harvest limit of 1,000; annual household limits of 10 for each permit holder and 2 additional for each household member;

(iii) For Coho Salmon—annual total harvest limit of 3,000; annual household limits of 20 for each permit holder and 5 additional for each household member; and

(iv) For Pink Salmon—annual total harvest limit of 2,000; annual household limits of 15 for each permit holder and 5 additional for each household member.

Kenai River separate rod and reel fishery regulations

(E) For Federally managed waters of the Kenai River and its tributaries, in addition to the dip net and rod and reel fisheries on the Kenai and Russian rivers described under paragraph (e)(10)(iv)(D) of this section, residents of Hope, Cooper Landing, and Ninilchik may take sockeye, Chinook, coho, pink, and chum salmon through a separate rod and reel fishery in the Kenai River drainage. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Permits must be returned to the Federal fisheries manager by the due date listed on the permit. Incidentally caught fish, other than salmon, are subject to regulations found in paragraphs (e)(10)(iv)(F) and (G) of this section. Seasons, areas (including seasonal riverbank closures), harvest and possession limits, and methods and means (including motor boat restrictions) for take are the same as for the taking of these salmon species under State of Alaska fishing regulations (5 AAC 56, 5 AAC 57 and 5 AAC 77.54), except for the following harvest and possession limits:

(1) In the Kenai River below Skilak Lake, fishing is allowed with up to two baited single or treble hooks June 15–August 31.

(2) For early-run Chinook salmon less than 46 inches or 55 inches or longer, daily harvest and possession limits are two per day and two in possession.

(3) For late-run Chinook salmon 20 inches and longer, daily harvest and possession limits are two per day and two in possession.

(4) Annual harvest limits for any combination of early- and late-run Chinook salmon are four for each permit holder.

(5) For other salmon 16 inches and longer, the combined daily harvest and possession limits are six per day and six in possession, of which no more than four per day and four in possession may be coho salmon, except for the Sanctuary Area and Russian River, for which no more than two per day and two in possession may be coho salmon.

Kasilof River experimental community gillnet fishery regulations

(1) Residents of Ninilchik may harvest Sockeye, Chinook, Coho, and Pink salmon through an experimental community gillnet fishery in the Federal public waters of the upper mainstem of the Kasilof River from a Federal regulatory marker on the river below the outlet of Tustumena Lake downstream to the Tustumena Lake boat launch July 1-31. The experimental community gillnet fishery will expire 5 years after approval of the first operational plan.

(1) Only one community gillnet can be operated on the Kasilof River. The gillnet cannot be over 10 fathoms in length, and may not obstruct more than half of the river width with stationary fishing gear. Subsistence stationary gillnet gear may not be set within 200 feet of other subsistence stationary gear.

(2) One registration permit will be available and will be awarded by the Federal in-season fishery manager, in consultation with the Kenai National Wildlife Refuge manager, based on the merits of the operational plan. The registration permit will be issued to an organization that, as the community gillnet owner, will be responsible for its use in consultation with the Federal fishery manager. The experimental community gillnet will be subject to compliance with Kenai National Wildlife Refuge regulations and restrictions.

(i) Prior to the season, provide a written operational plan to the Federal fishery manager including a description of fishing method, mesh size requirements, fishing time and location, and how fish will be offered and distributed among households and residents of Ninilchik;

(ii) After the season, provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, persons or households operating the gear, hours of operation, and number of each species caught and retained or released.

(3) The gillnet owner (organization) may operate the net for subsistence purposes on behalf of residents of Ninilchik by requesting a subsistence fishing permit that:

(i) Identifies a person who will be responsible for fishing the gillnet;

(ii) Includes provisions for recording daily catches, the household to whom the catch was given, and other information determined to be necessary for effective resource management by the Federal fishery manager.

(4) Fishing for Sockeye, Chinook, Coho and Pink salmon will be closed by Federal Special Action prior to the operational plan end dates if the annual total harvest limits for any salmon species is reached or suspended.

(5) Salmon taken in the gillnet fishery will be included as part of dip net/rod and reel fishery annual total harvest limits for the Kasilof River. All fish harvested must be reported to the in-season manager within 72 hours of leaving the fishing location.

(i) A portion of the total annual harvest limits for the Kasilof River will be allocated

to the experimental community gillnet fishery.

(ii) The gillnet fishery will be closed once the allocation limit is reached.

(6) Salmon taken in the experimental community gillnet fishery will be included as part of the dip net/rod and reel fishery annual household limits for the Kasilof River.

(7) Residents of Ninilchik may retain other species incidentally caught in the Kasilof River. When the retention of rainbow/steelhead trout has been restricted under Federal subsistence regulations, the gillnet fishery will be closed.

(8) Before leaving the site, all harvested fish must be marked by removing their dorsal fin, and all retained fish must be recorded on the fishing permit.

(9) Failure to respond to reporting requirements or return the completed harvest permit by the due date listed on the permit may result in issuance of a violation notice and will make you ineligible to receive a subsistence permit during the following regulatory year.

Kenai River experimental community gillnet fishery regulations

(J) Residents of Ninilchik may harvest Sockeye, Chinook, Coho, and Pink salmon with a gillnet in the Federal public waters of the Kenai River. Residents of Ninilchik may retain other species incidentally caught in the Kenai River except for Rainbow trout and Dolly Varden 18 inches or longer. Rainbow trout and Dolly Varden 18 inches or greater must be released.

(1) Only one community gillnet can be operated on the Kenai River. The gillnet cannot be over 10 fathoms in length to take salmon, and may not obstruct more than half of the river width with stationary fishing gear. Subsistence stationary gillnet gear may not be set within 200 feet of other subsistence stationary gear.

(2) One registration permit will be available and will be awarded by the Federal in-season fishery manager, in consultation with the Kenai National Wildlife Refuge manager, based on the merits of the operational plan. The registration permit will be issued to an organization that, as the community gillnet owner, will be responsible for its use and removal in consultation with the Federal fishery manager. As part of the permit, the organization must:

(i) Prior to the season, provide a written operational plan to the Federal fishery manager including a description of how fishing time and fish will be offered and distributed among households and residents of Ninilchik;

(ii) After the season, provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, persons or households operating the gear, hours of operation, and number of each species caught and retained or released.

(3) The gillnet owner (organization) may operate the net for subsistence purposes on behalf of residents of Ninilchik by requesting a subsistence fishing permit that:

- (i) Identifies a person who will be responsible for fishing the gillnet;*
- (ii) Includes provisions for recording daily catches, the household to whom the catch was given, and other information determined to be necessary for effective resource management by the Federal fishery manager.*
- (4) Fishing will be allowed from June 15 through August 15 on the Kenai River unless closed or otherwise restricted by Federal special action.*
- (5) Salmon taken in the gillnet fishery will be included as part of the dip net/rod and reel fishery annual total harvest limits for the Kenai River and as part of dip net/rod and reel household annual limits of participating households.*
- (6) Fishing for each salmon species will end and the fishery will be closed by Federal special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.*

Proposed Federal Regulation

Kenai River dip net/rod and reel fishery regulations

§100.27(e)(10) Cook Inlet Area.

(iv) You may take only salmon, trout, Dolly Varden, and other char under the authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56 and 5 AAC 57) unless modified herein. Additionally, for Federally managed waters of the Kasilof and Kenai River drainages:

*(D) Residents of Hope, Cooper Landing, and Ninilchik may take only sockeye salmon through a dip net and a rod and reel fishery at one specified site on the Russian River, ~~and~~ sockeye, ~~late-run Chinook~~, coho, and pink salmon through a dip net/rod and reel fishery at two specified sites on the Kenai River below Skilak Lake, **and Chinook salmon through a dip net/rod and reel fishery at one specified site on the Kenai River below Skilak Lake** and as provided in this section. For Ninilchik residents, salmon taken in the Kasilof River Federal subsistence fish wheel, **experimental community gillnet**, and dip net/rod and reel fishery will be included as part of each household's annual limit for the Kenai and Russian Rivers' dip net and rod and reel fishery. For both Kenai River fishing sites below Skilak Lake, incidentally caught fish may be retained for subsistence uses, except for ~~early-run~~ Chinook salmon (unless otherwise provided for), rainbow trout 18 inches or longer, and Dolly Varden 18 inches or longer, which must be released. For the Russian River fishing site, incidentally caught fish may be retained for subsistence uses, except for ~~early- and late-run~~ Chinook salmon, coho salmon, rainbow trout, and Dolly Varden, which must be released. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing site, and permits must be returned to the manager by the due date listed on the permit. Chum salmon that are retained are to be included*

within the annual limit for sockeye salmon. Only residents of Cooper Landing, Hope, and Ninilchik may retain incidentally caught resident species..

(1) The household dip net and rod and reel gear fishery is limited to three sites:

(i) At the Kenai River Moose Range Meadows site, dip netting is allowed only from a boat from a Federal regulatory marker on the Kenai River at about river mile 29 downstream approximately 2.5 miles to another marker on the Kenai River at about river mile 26.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to two baited single or treble hooks June 15-August 31. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56 and 5 AAC 57 and 5 AAC 77.540).

ii) At the Kenai River Mile 48 site, dip netting is allowed while either standing in the river or from a boat, from Federal regulatory markers on both sides of the Kenai River at about river mile 48 (approximately 2 miles below the outlet of Skilak Lake) downstream approximately 2.5 miles to a marker on the Kenai River at about river mile 45.5. Residents using rod and reel gear at this fishery site may fish from boats or from shore with up to two baited single or treble hooks June 15-August 31. **Chinook Salmon may not be harvested at this site and any Chinook Salmon incidentally caught must be immediately released.** Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56, 5 AAC 57, and 5 AAC 77.540).

(iii) At the Russian River Falls site, dip netting is allowed from a Federal regulatory marker near the upstream end of the fish ladder at Russian River Falls downstream to a Federal regulatory marker approximately 600 yards below Russian River Falls. Residents using rod and reel gear at this fishery site may not fish with bait at any time.

(2) Fishing seasons are as follows:

(i) For sockeye salmon at all fishery sites: June 15-August 15;

(ii) For ~~late-run Chinook~~, pink, and coho salmon at both Kenai River fishery sites only: July 16-September 30; ~~and~~

(iii) For Chinook Salmon at the Kenai River Moose Range Meadows fishery site only: July 16 – September 30; and

~~(iii)~~ (iv) Fishing for sockeye, ~~late-run~~ Chinook, coho, or pink salmon will close by special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action

(3) Each household may harvest their annual Sockeye, ~~late-run~~ Chinook, Coho, or Pink

salmon limits in one or more days, and each household member may fish with a dip net or rod and reel during this time. Salmon taken in the Kenai River system dip net and rod and reel fishery by Ninilchik households will be included as part of those household's annual limits for the Kasilof River.

(i) For Sockeye Salmon—annual total harvest limit of 4,000 (including any retained Chum Salmon); annual household limits of 25 for each permit holder and 5 additional for each household member;

(ii) For ~~late run~~ Chinook Salmon—~~annual total harvest limit of 1,000~~; annual household limits of ~~10~~ 4 for each permit holder and 2 additional for each household member;

(iii) For Coho Salmon—annual total harvest limit of 3,000; annual household limits of 20 for each permit holder and 5 additional for each household member; and

(iv) For Pink Salmon—annual total harvest limit of 2,000; annual household limits of 15 for each permit holder and 5 additional for each household member.

Kenai River separate rod and reel fishery regulations

(E) For Federally managed waters of the Kenai River and its tributaries, in addition to the dip net and rod and reel fisheries on the Kenai and Russian rivers described under paragraph (e)(10)(iv)(D) of this section, residents of Hope, Cooper Landing, and Ninilchik may take sockeye, Chinook, coho, pink, and chum salmon through a separate rod and reel fishery in the Kenai River drainage. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Permits must be returned to the Federal fisheries manager by the due date listed on the permit. Incidentally caught fish, other than salmon, are subject to regulations found in paragraphs (e)(10)(iv)(F) and (G) of this section. Seasons, areas (including seasonal riverbank closures), harvest and possession limits, and methods and means (including motor boat restrictions) for take are the same as for the taking of these salmon species under State of Alaska fishing regulations (5 AAC 56, 5 AAC 57 and 5 AAC 77.54), except for the following harvest and possession limits:

(1) In the Kenai River below Skilak Lake, fishing is allowed with up to two baited single or treble hooks June 15–August 31.

~~(2) For early run Chinook salmon less than 46 inches or 55 inches or longer, daily harvest and possession limits are two per day and two in possession.~~

~~(3) For late run Chinook salmon 20 inches and longer, daily harvest and possession limits are two per day and two in possession.~~

(2) For the Kenai River Moose Range Meadows fishery site only: Chinook Salmon less than 46 inches or 55 inches or longer may be harvested from July 16 – August 31 with daily harvest and possession limits of two per day and four in possession.

(3) In the Kenai River from Federal regulatory markers at the outlet of Skilak Lake at

about river mile 50 downstream approximately 4.5 miles to a marker on the Kenai River at about river mile 45.5, fishing for Chinook Salmon is prohibited. Chinook salmon may not be harvested at this site and any Chinook Salmon incidentally caught must be immediately released.

(4) Annual harvest limits for ~~any combination of early and late run~~ Chinook salmon are four for each permit holder.

(5) For other salmon 16 inches and longer, the combined daily harvest and possession limits are six per day and six in possession, of which no more than four per day and four in possession may be coho salmon, except for the Sanctuary Area and Russian River, for which no more than two per day and two in possession may be coho salmon.

Existing State Regulations

5 AAC 57.120. General provisions for seasons, bag, possession, annual, and size limits, and methods and means for the Kenai River Drainage Area.

(a) Unless otherwise specified in 5 ACC 57.121 – 5 AAC 57.123 or by emergency order issues under AS 16.05.60, the following general seasons, bag, possession, annual and size limits, and methods and means that apply to sport fishing for finfish in the Kenai River Drainage Area:

(1) salmon may be landed only with the aid of a landing net or by hand;

(2) king salmon 20 inches or greater in length as follows:

(A) may be taken only from January 1 - July 31, in the Kenai River from its mouth upstream to an ADF&G regulatory marker located at the outlet of Skilak Lake, with a bag and possession limit of one fish, as follows:

(i) from January 1 - June 30, from its mouth upstream to an ADF&G regulatory marker located at the outlet of Skilak Lake, and from July 1 - July 14, from an ADF&G regulatory marker located approximately 300 yards downstream from the mouth of the Slikok Creek upstream to an ADF&G regulatory marker located at the outlet of Skilak Lake, only king salmon that are less than 42 inches in length or 55 inches or greater in length may be retained;

(ii) if retention is permitted under this subparagraph, a king salmon 20 inches or greater in length that is removed from the water must be retained and becomes part of the bag limit of the person originally hooking it; a person may not remove a king salmon from the water before releasing the fish; except as provided in (b)(1) of this section, there is an annual limit of two king salmon and a harvest record is required as specified in 5 AAC 75.006;

(iii) a king salmon 55 inches or greater in length taken from the Kenai River from January 1 - July 31 must be sealed as specified in 5 AAC 57.160;

(iv) from January 1 - July 14, a person may not possess a king salmon that has been

filleted, headed, mutilated, or otherwise disfigured in a manner that prevents determination of the length of fish taken until the fish is permanently offloaded from a vessel if the fish was taken from a vessel or permanently transported away from the fishing site if the fish was taken from the riverbank; for the purposes of this sub-subparagraph, "fishing site" means the riverbank where the fish was hooked and removed from the water becoming part of the angler's bag limit;

(B) king salmon 20 inches or greater in length may not be taken

(i) in the Kenai River upstream from an ADF&G regulatory marker located at the outlet of Skilak Lake, including Kenai Lake; and

(ii) in the Kenai River drainage lakes and tributaries including Kenai Lake tributaries, except the lower Moose River;

(C) a person, after taking and retaining a king salmon 20 inches or greater in length from the Kenai River, may not sport fish from a boat in the Kenai River downstream from an ADF&G regulatory marker located at the outlet of Skilak Lake for any species of fish on that same day;

(3) king salmon less than 20 inches in length may be taken in

(A) flowing waters and unstocked lakes and ponds only from January 1 - July 31; bag and possession limit of 10 fish;

5 AAC 57.121. Special provisions for the seasons, bag, possession, and size limits, and methods and means for the Lower Section of the Kenai River Drainage Area.

(a) Unless otherwise specified in 5 ACC 57.121 – 5 AAC 57.123 or by emergency order issues under AS 16.05.60, the following general seasons, bag, possession, annual and size limits, and methods and means that apply to sport fishing for finfish in the Kenai River Drainage Area:

(1) sport fishing gear restrictions:

(A) from January 1 - June 30, in the Kenai River, and from July 1 - July 14, in the Kenai River from an ADF&G regulatory marker located approximately 300 yards downstream from the mouth of Slikok Creek upstream to an ADF&G regulatory marker located at the outlet of Skilak Lake, only one unbaited, single-hook, artificial lure may be used;

(B) from July 1 - July 31, in the Kenai River from its mouth upstream to an ADF&G regulatory marker located approximately 300 yards downstream from the mouth of Slikok Creek, and from July 15 - July 31, in the Kenai River from its mouth upstream to an ADF&G regulatory marker located at the outlet of Skilak Lake, only one single hook may be used;

(C) from September 1 - December 31, in the Kenai River from the mouth of the Upper Killey River upstream to an ADF&G regulatory marker located at the outlet of Skilak Lake, only unbaited, artificial lures may be used;

(D) from December 1 - December 31, in the Kenai River from its mouth upstream to an ADF&G regulatory marker located at the outlet of Skilak Lake, only unbaited, artificial lures may be used;

(E) from May 15 - August 15, the Moose River from its confluence with the Kenai River upstream to the upstream edge of the Sterling Highway Bridge, and the waters of the Kenai River within a 100-yard radius of the Moose River, are fly-fishing-only waters;

(F) from January 1 - July 31, the following waters are fly-fishing-only waters:

(i) that portion of the Kenai River from an ADF&G regulatory marker located approximately 300 yards downstream from the mouth of Slikok Creek, upstream to an ADF&G regulatory marker located approximately 300 yards upstream from the mouth of Slikok Creek;

(ii) that portion of the Kenai River from an ADF&G regulatory marker located approximately one mile downstream from the mouth of Funny River, upstream to an ADF&G regulatory marker located approximately 200 yards upstream from the mouth of the Funny River;

(G) from January 1 - July 31, that portion of the Kenai River from an ADF&G regulatory marker located approximately three-quarters of a mile downstream from the mouth of the Lower Killey River, upstream to an ADF&G regulatory marker located approximately one mile upstream from the mouth of the Lower Killey River, is fly-fishing-only waters;

(H) repealed 5/18/2014;

(I) in Mackey Lakes, Derks Lake, Sevena Lake, Union Lake, and the unnamed lakes on Tote Road, five lines may be used to fish for northern pike through the ice; allowable gear is limited to standard ice fishing gear as specified in 5 AAC 57.120(9) (B); fishing gear must be closely attended as specified in 5 AAC 75.033; all other species of fish caught must be released immediately;

(J) during times when the retention of king salmon is prohibited under 5 AAC 57.160(d) (2)(A) or 5 AAC 21.359(e) (1), only one unbaited, barbless, single-hook, artificial lure may be used when sport fishing for king salmon; in this subparagraph, "barbless" means the hook is manufactured without a barb or the barb has been completely removed or compressed so the barb is in complete contact with the shaft of the hook;

(2) the following waters of the Kenai River are closed to sport fishing, as follows:

(A) from April 15 - August 15, Slikok Creek;

(B) from January 1 - December 31, the flowing waters of Soldotna Creek upstream of ADF&G markers located approximately 100 feet upstream from its confluence with the Kenai River;

(C) from May 2 - June 10, the flowing waters of Soldotna Creek downstream from an ADF&G regulatory marker located approximately 100 feet upstream from its confluence

with the Kenai River;

(D) from January 1 - July 31, that portion of the Kenai River from an ADF&G regulatory marker located approximately one mile downstream from the mouth of the Funny River, upstream to an ADF&G regulatory marker located approximately 200 yards upstream from the mouth of the Funny River, is closed to the taking of king salmon;

(E) from June 11 - August 14, the Funny River from the Kenai River upstream to the Funny River Road Bridge;

(F) from May 2 - June 10, the flowing waters of Moose River upstream of the upper edge of the Sterling Highway Bridge;

(G) from January 1 - July 31, that portion of the Kenai River from an ADF&G regulatory marker located approximately three-quarters of a mile downstream from the mouth of the Lower Killey River, upstream to an ADF&G regulatory marker located approximately one mile upstream from the mouth of the Lower Killey River, is closed to the taking of king salmon;

Extent of Federal Public Water

Federal public waters are defined and described under 36 CFR 242.3 and 50 CFR100.3. For the Kenai River, Federal public waters under consideration include all waters of the Kenai River within and adjacent to the exterior boundaries of the Kenai National Wildlife Refuge and Chugach National Forest (**Map 1**). This includes Kenai Lake and its tributaries and all water downstream to the confluence of the upper branch of the Killey River (approximately RM 45.5), the mainstem Kenai River between RM 26.5 and RM 29 (known locally as Moose Range Meadows), and most of the upper reaches of tributaries below Skilak Lake including the Moose, Killey and Funny Rivers.

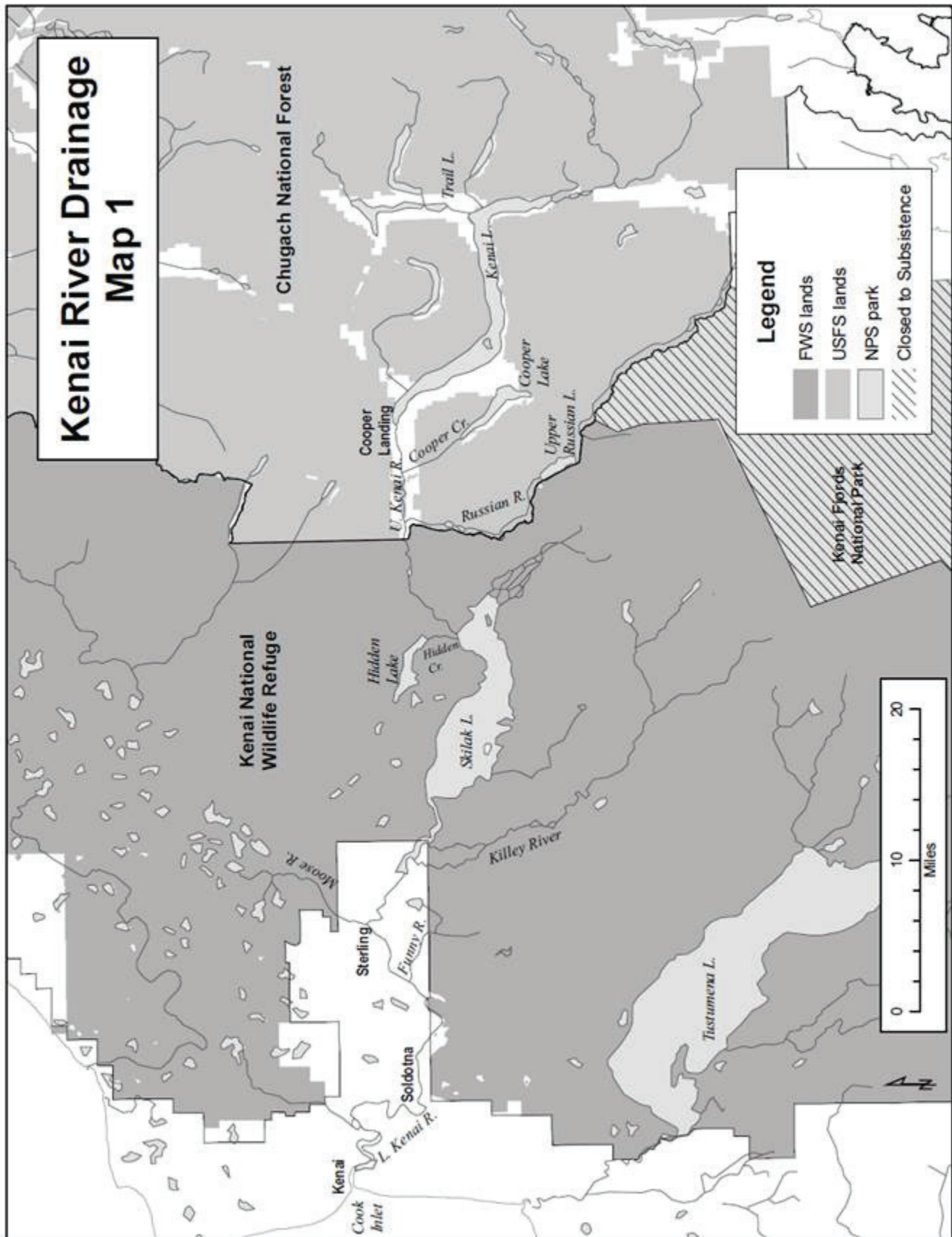
Customary and Traditional Use Determinations

Residents of the communities of Cooper Landing, Hope, and Ninilchik have a customary and traditional use determination for all fish in the Kenai Peninsula District, waters north of and including the Kenai River drainage within the Kenai Nation Wildlife Refuge and the Chugach National Forest.

Regulatory History

Pre- and Early Statehood Fisheries

Prior to 1952, freshwater streams in the Kenai Peninsula were open to subsistence fishing, but poorly managed commercial fisheries, a growing local and Alaska State resident population, and increased user pressure decimated salmon runs. In 1952, as part of efforts to rebuild salmon runs, all streams and lakes of the Kenai Peninsula were closed to subsistence fishing under Territory of Alaska regulations. Only rod and reel fishing was allowed for “personal use” (Fall et al. 2004).



Contemporary State Fisheries

Overall, the State of Alaska manages commercial and sport salmon fisheries statewide based on the principles and criteria listed in the State's Policy for the management of sustainable salmon fisheries, 5AAC 39.222 (**Appendix A**). A State regulatory management plan for Upper Cook Inlet salmon (5 AAC 21.363) provides the Alaska Board of Fisheries guiding principles and provisions for adopting management plans for specific stocks. In 1992, the State classified most of the Cook Inlet Area, including the Kenai and Kasilof River drainages, as a nonsubsistence area (5AAC 99.015(3)). The only State subsistence fisheries in Cook Inlet occur in areas that are not accessible from the road system, including the Tyonek, Windy Bay, Port Chatham, and Port Graham subdistricts, as well as portions of Seldovia Bay and the Yentna River drainage.

The Kenai River fisheries are complex and intensively managed by the State of Alaska. There are five management plans that apply to Kenai River salmon stocks:

- Upper Cook Inlet Salmon Management Plan (5 AAC 21.363)
- Kenai River and Kasilof River Early-Run King Salmon Conservation Management Plan (5 AAC 56.070)
- Kenai River Late-Run King Salmon Management Plan (5 AAC 21.359)
- Kenai River Late-Run Sockeye Salmon Management Plan (5 AAC 21.360)
- Kenai River Coho Salmon Management Plan (5 AAC 56.080)

These plans provide goals for sustained yield, guidance for mixed-species and mixed-stock fisheries, and instructions for allocation between competing fisheries. Most of the initial Federal subsistence fishing regulations for the Kenai River that were put in place during the period of 2006 – 2008, were based on these plans to mirror State of Alaska regulations, conservation efforts, and management.

The State also has a regulatory management plan for Upper Cook Inlet personal use salmon fisheries (5 AAC 77.540). This plan established four personal use fisheries in Cook Inlet: Kasilof River dip net, Kasilof River set gillnet, Kenai River dip net, and Fish Creek dip net. Unlike subsistence fisheries, personal use fisheries do not have a priority over other existing uses. Personal use fisheries are open to all residents of Alaska, require a household permit and sport fishing license, occur in marine and intertidal waters, and are well downstream of Federal public waters in the Kenai River drainage. These fisheries target Sockeye Salmon, the species of greatest abundance and for which the best stock assessment information is available. Annual harvest limits are 25 salmon for the head of each household and 10 salmon for each additional household member. The limit is combined for all four fisheries. Incidentally caught Coho, Pink, and Chum Salmon may be retained as part of the annual limit. Each household is limited to one Chinook Salmon in the Kenai River dip net fishery.

Finally, the State administers up to twelve educational fisheries each year in the Cook Inlet area under the provisions of 5 AAC 93.200 – 93.235 (Nelson et al. 1999, Fall et al. 2004). Around half of these educational fisheries occur in marine waters near the mouths of Kenai Peninsula Rivers. The purpose of educational fisheries is to allow groups to practice traditional, contemporary, or experimental methods for locating, harvesting, or processing fishery resources. Educational fisheries like person use fisheries, but unlike

subsistence fisheries, do not have statutory priority over other fisheries. Therefore, during times of resource shortages, educational fisheries could be restricted before or at the same time as commercial, sport and personal use fisheries are restricted.

From 2010 to 2016, numerous State emergency orders were put in place to protect Chinook salmon in the Kenai River due to conservation concerns (**Table 1**)

Table 1. Emergency Orders issued by the Alaska Department of Fish and Game for Chinook Salmon in the Kenai River drainage between 2010 and 2016

Alaska Department of Fish and Game Chinook Salmon Emergency Orders in the Kenai River				
Year	Number	Start Date	End Date	Action
2010	2-KS-1-12-10	6/5/2010	7/14/2010	Partial season closure for sport fishery
2010	2-KS-1-16-10	6/12/2010	7/14/2010	Restricted reopening for sport fishery
2010	2-KS-1-19-10	6/15/2010	7/31/2010	Reopen back to standard sport fishing regulations
2011	2-KS-1-17-11	6/29/2011	7/14/2011	Restrict sport fishery
2011	2-KS-1-20-11	7/15/2011	7/31/2011	Continue duration of restricted sport fishery
2012	2-KS-1-11-12	6/15/2012	7/14/2012	Restrict sport fishery
2013	2-KS-1-11-13	5/16/2013	7/14/2013	Restrict sport fishery
2013	2-KS-1-22-13	6/20/2013	7/14/2013	Close sport fishery in some areas, restrict in others
2013	2-KS-1-24-13	7/1/2013	7/31/2013	Restrict sport fishery
2013	2-KS-1-34-13	7/10/2013	7/31/2013	Prohibit retention of Chinook Salmon in personal use fishery
2013	2-KS-1-36-13	7/15/2013	7/31/2013	Close sport fishery
2013	2-KS-1-43-13	7/25/2013	7/31/2013	Allow harvest of fish less than 20 inches or greater than 55 inches
2013	2-KS-1-45-13	7/28/2013	7/31/2013	Close sport fishery
2013	2-KS-1-46-13	8/1/2013	8/15/2013	Prohibit use of bait and limit gear in the sport fishery
2014	2-KS-1-04-14	5/1/2014	7/31/2014	Close sport fishery for early-run
2014	2-KS-1-26-14	7/1/2014	7/31/2014	Prohibit use of bait in the sport fishery
2014	2-KS-1-27-14	7/10/2014	7/31/2014	Prohibit retention of Chinook Salmon in personal use fishery
2014	2-KS-1-40-14	7/19/2014	7/31/2014	Restrict sport fishery to unbaited single barbless hook, no retention
2014	2-KS-1-42-14	7/26/2014	7/31/2014	Close sport fishery
2015	2-KS-1-05-15	5/1/2015	7/31/2015	Close sport fishery for early-run
2015	2-KS-1-35-15	7/1/2015	7/31/2015	Prohibit use of bait in the sport fishery
2015	2-KS-1-46-15	7/25/2015	7/31/2015	Restore use of bait in sport fishery, no Chinook retention
2016	2-KS-1-03-16	5/1/2016	7/31/2016	Close sport fishery for early-run
2016	2-KS-1-19-16	6/18/2016	6/30/2016	Allow harvest in sport fishery from mouth of river to Slikok Creek
2016	2-KS-1-24-16	7/1/2016	7/31/2016	Prohibit use of bait in the sport fishery
2016	2-KS-1-28-16	7/1/2016	7/31/2016	Maintain bait prohibition in the sport fishery
2016	2-KS-1-33-16	7/9/2016	7/31/2016	Restore use of bait in the sport fishery

Federal Subsistence Fisheries Regulations in the Cook Inlet Area

In 2002, Federal subsistence regulations for harvest in the Cook Inlet Area were established for salmon, trout, and Dolly Varden. A Federal subsistence permit was required and seasons, harvest and possession

limits, and methods and means for take were the same as those in Alaska sport fishing regulations. This fishery was established as an interim measure to provide some subsistence opportunity in the Cook Inlet Area for Federally qualified rural residents. Initially, there were no customary and traditional use determinations for salmon, trout and Dolly Varden in Cook Inlet; so all rural residents of Alaska could harvest under Federal regulations.

In January 2006, the Federal Subsistence Board made customary and traditional use determinations for Hope and Cooper Landing residents for all fish in the Kenai River Area, and for Ninilchik residents for all fish within the Kasilof River drainage within the Kenai National Wildlife Refuge. In November 2010, the Board made a customary and traditional use determination for Ninilchik residents for all fish in the Kenai River Area within the Kenai National Wildlife Refuge and the Chugach National Forest.

For the 2007 regulatory cycle, two additional steps were included in the usual analysis and review process for regulatory proposals; 1) the formation of a stakeholder subcommittee of the Southcentral Council, which met twice in Soldotna in February 2007, to review the analyses and suggest changes, and 2) a review by the NTC, the proponent of some of the proposals, to assess, and provide feedback on, the changes suggested by the subcommittee, and to suggest other changes. Both of these steps took place prior to the Southcentral Council's March 2007 meeting. Several suggested changes which resulted from these extra steps, were incorporated into the analyses as modifications to the proposed regulations and presented to the Council and, ultimately, the Board (OSM 2007).

At the time, the Board typically held public meetings twice a year to make decisions on proposals to change Federal subsistence regulations throughout the State; once in the Spring (April or May) for wildlife regulations and once in the Winter (December or January) for fisheries proposals. In May 2007, the Board held a third public meeting solely to hear public testimony on, deliberate and make decisions for the Kenai Peninsula fisheries proposals of the 2007 regulatory cycle. The meeting lasted three days (FSB. 2007a).

During its May 2007 meeting, the Board adopted proposals that established dip net/rod and reel salmon fisheries on the Kasilof and Kenai Rivers; increased previously established harvest, possession, and annual limits for salmon and selected resident species for existing rod and reel fisheries on the Kasilof and Kenai River drainages; and allowed use of up to two single or treble hooks and bait for rod and reel fishing during specified dates for both systems. Sockeye Salmon annual harvest limits were set at 4,000 fish, with an annual household limit of 25 for each permit holder, and an additional 5 for each household member; late-run Chinook Salmon annual harvest limits were set at 1,000 fish, with an annual household limit of 10 for each permit holder, and an additional 2 fish per each household member; Coho Salmon annual harvest limits were set at 3,000 fish, with an additional household limit of 20 for each permit holder, with an additional 5 fish for each household member; and Pink Salmon annual harvest limits were set at 2,000 fish, with an annual household limit of 15 for each permit holder, and an additional 5 per each household member. Any Rainbow Trout or Dolly Varden 18 inches or greater in length were required to be released alive.

Additionally, during the 2007 regulatory cycle, there were several proposals that included requests for the use of gillnets in the Kenai River drainage. These included Proposals FP07-27B and C (by NTC) and

FP07-29 (by Mr. Robert Gibson of Cooper Landing). FP07-27B and C requested a community set gillnet fishery for Chinook, Sockeye, and Pink Salmon in the Kasilof and Kenai Rivers and a community set gillnet fishery for Coho Salmon in the Kenai River. FP07-29 requested that gillnets with different mesh sizes be used to harvest Sockeye Salmon, Coho Salmon, Pink Salmon, Rainbow Trout, Dolly Varden, Lake Trout, and whitefish species in several lakes in the Kenai River drainage. The recommendation of the Southcentral Council was to move forward with only the dip net and rod and reel salmon fisheries described above. Justification for this recommendation was that a dip net fishery at Moose Range Meadows provides additional subsistence opportunity and that limiting this fishery to dip nets from boats addresses habitat and private property concerns in this area. The Southcentral Council also stated that allowing incidental harvest of Rainbow Trout and Dolly Varden/Arctic Char less than 18 inches in dip net fisheries below Skilak Lake is consistent with conservation practices and provides a reasonable alternative to expanded harvest opportunity in the rod and reel fishery. Lastly, the Southcentral Council stated that providing up to two baited hooks in the rod and reel fishery below Skilak Lake from January 1 to August 31 provides an additional opportunity for Chinook and Coho Salmon, and is consistent with conservation practices for these species.

During the 2008 regulatory cycle, the NTC submitted Proposal FP08-08 to allow the salmon dip net fishery to occur from the shore (river bank), as well as from boats, within the Federal public waters of the Kenai River in the Moose Range Meadows area. The Southcentral Council voted 5-4 to support the proposal, after a lengthy discussion during its fall 2007 meeting. The Southcentral Council decided that allowing subsistence dip net fishing from shore as well as from a boat would provide more of a subsistence preference in this area of the Kenai River. The Southcentral Council also stated that limiting the dip net fishery at Moose Range Meadows to boats would limit participation by Federally qualified subsistence users without access to a boat and that while there are habitat and private property concerns in the area, it should be possible to allow some subsistence fishing from shore on Federal public lands that can be accessed without the use of a boat. During the Board's December 2007 meeting, some Board members expressed concerns about allowing dip netting from the shore because this area is prime Chinook Salmon rearing habitat with bank closures in place for habitat protection, that the area was not a safe place to use dip nets, and that opening the area to fishing from the shore would not be consistent with recognized principles of fish and wildlife management. Other Board members pointed out that adoption of the proposal would provide a "meaningful subsistence preference". A motion was put forth to support Proposal FP08-08. The motion failed on a three/three tie vote (FSB. 2007b).

Also during the 2008 cycle, the Southcentral Council submitted Proposal FP08-09 to establish a temporary community fish wheel on both the Kenai and Kasilof Rivers for residents of Ninilchik, Hope, and Cooper Landing. The Council contended that the fish wheels would provide a more effective means for Federally qualified subsistence users to harvest salmon. The Council requested the establishment of fish wheels as a gear type be temporary to evaluate the feasibility of operating this type of gear. The Board, at its December 2007 meeting, adopted the proposal, with modification, to allow fish wheels to be classified as a gear type, but only in the Kasilof River. The Board felt that there were too many logistical issues to be dealt with on the Kenai River, especially with three communities having the possibility of running a single fish wheel. The Board specified that only one fish wheel with a live box would be allowed in the upper mainstem of the Kasilof River. A permit would be required to use the fish wheel and that an operational

plan must be submitted to and approved by the Federal in-season manager, before the permit would be awarded. Individuals operating the fish wheel would need to have a Federal subsistence fishing permit and all harvest limits on the permit would apply to the fish wheel. Salmon harvested by the fish wheel were included as part of each household’s annual limit and all fish harvested were to be reported to the in-season manager with 72 hours of leaving the fishing location. The Board, at its January 2013 meeting, supported FP13-15 to remove the expiration date for the community fish wheel salmon fishery on the Kasilof River allowing continued operation of the fish wheel (FSB 2013).

For the 2009 regulatory cycle, the NTC submitted Proposal FP09-08, again requesting the Board to allow the salmon dip net fishery to occur from the shore (river bank), as well as from boats, within the Federal public waters of the Kenai River in the Moose Range Meadows area. Proposal FP09-08 was put on the Board’s consensus agenda due to opposition of the proposal by both the Southcentral Council and the Alaska Department of Fish and Game (ADF&G). The Council’s stated reason for opposing FP09-08 was that “no Federal lands are available to allow fishing from the shore without serious damage to the river bank.” The Board adopted the consensus agenda without discussion. As a result, Proposal FP09-08 failed (FSB 2009).

For the 2015 regulatory cycle, Proposal FP15-10 was submitted by NTC to establish a community gillnet fishery in the Kenai River in order to provide additional subsistence harvest opportunities for residents of Ninilchik. The proponent requested the use of a single community gillnet that was 10 fathoms or less in length for the harvest of salmon. Similar to the fish wheel regulations, an operational plan would be required to be developed by a local organization on behalf of Ninilchik residents, and approved by the Federal in-season manager before a fishing permit would be authorized. The operational plan would include deployment locations, fishing times, and a methodology for distributing the harvest. All salmon taken in the Kenai River community gillnet fishery would be included as part of the existing annual households’ limit for Ninilchik residents, and fishing for salmon would be closed by Federal special action prior to regulatory end dates if the annual total harvest limit for that species was reached or for other reasons as required. Proposal FP15-10 was adopted at the Board’s January 2015 public meeting (FSB 2015).

From 2010 to 2015, numerous Federal special actions were put in place to protect Chinook salmon in the Kenai River due to conservation concerns (**Table 2**)

Table 2. Federal special actions for Chinook Salmon in Federal public waters of the Kenai River drainage between 2010 and 2015

Chinook Salmon Federal Special Actions for Federal public waters of the Kenai River				
Year	Number	Start Date	End Date	Action
2010	10-KS-01-10	6/4/2010	7/14/2010	Close to subsistence fishing for early-run
2010	10-KS-02-10	6/15/2010	7/14/2010	Reopen under restricted subsistence harvest guidelines for early-run
2010	10-KS-03-10	6/15/2010	8/31/2010	Open to subsistence fishing under normal regulations
2011	10-KS-02-11	7/15/2011	7/31/2011	Restrict harvest of early-run
2012	10-KS-01-12	6/15/2012	7/14/2012	Restrict harvest of early-run
2012	10-KS-02-12	6/22/2012	7/14/2012	Close to subsistence fishing for early-run
2012	10-KS-03-12	7/16/2012	7/31/2012	Close to subsistence fishing for late-run

2013	10-KS-02-13	6/20/2013	7/14/2013	Close to subsistence fishing for Chinook Salmon
2013	10-KS-03-13	7/15/2013	8/15/2013	Extend closure of subsistence fishing for Chinook Salmon
2014	10-KS-01-14	6/19/2014	7/14/2014	Close to subsistence fishing for Chinook Salmon
2014	10-KS-02-14	7/15/2014	8/17/2014	Extend closure of subsistence fishing for Chinook Salmon
2015	10-KS-01-15	6/18/2015	8/15/2015	Close to subsistence fishing for early-run

Current Events

There has been a substantial amount of activity related to subsistence fisheries on the Kenai River since January 2015. This includes submission of over 700 Requests for Reconsiderations (RFR) to the Board, proposals to rescind the community gillnet regulations (FP17-06 &07), a proposal to alter the community gillnet regulations (FP17-10), litigation related to USFWS rejection of NTC submitted operational plans for the fishery, Emergency Special Action FSA16-02 that temporarily removed regulatory conflicts that had previously prevented the community gillnet fishery from operating in 2016, and this proposal.

The more than 700 RFRs submitted request that the Board reverse its decision and rescind regulations generated as a result of adopting FP15-10. This is the largest number of RFRs received by the Federal Subsistence Management Program to date in response to any regulatory proposal adopted by the Board. Two of the groups that filed RFRs also submitted proposals for the 2017 -2019 Fisheries Regulations requesting that the Board rescind the regulations generated by FP15-10. The proponents of regulatory proposal FP17-06 are Federally qualified subsistence users from two of the three communities that have a Customary and Traditional Use Determination for fish in the Kenai River (Hope and Cooper Landing). Proposal FP17-07 was jointly submitted by the Assistant Regional Director for Fisheries and Ecological Services, and the Regional Chief of Refuges, U.S. Fish and Wildlife Service, Region 7, Alaska. To date, no decision has been made on the RFRs.

In October 2015, NTC filed a lawsuit against the Federal Subsistence Board for its failure to override the USFWS decision to not approve an operational plan for the community gillnet on the Kenai River in 2015. The regulation adopted by the Board at its January 2015 meeting required NTC to submit an operational plan (to be approved by the Federal in-season manager) to address conservation concerns raised by biologists in their opposition to Proposal FP15-10. NTC’s plan in 2015 was not considered because river closures were in place. Immediately before the Board’s July 2015 work session, NTC submitted an emergency special action request asking the Board to override the Federal in-season manager’s decision. The Board elected to not grant the request. Following this decision, NTC filed suit. *Ninilchik Traditional Council v. Towarak et al.*, Case No. 3:15-cv-0205 JWS (D. Alaska).

On June 28, 2016, the NTC submitted a Special Action Request (FSA 16-02) to the Board to implement the subsistence gillnet fishery for the Kenai River. On July 14, 2016, NTC amended FSA 16-02 to reflect that portions of the initial request were no longer valid due to the passage of time.

On July 27, 2016, the Board approved Emergency Special Action Request FSA16-02 with modification, providing for the implementation of a Kenai River community gillnet fishery for residents of Ninilchik. The Board designated this fishery as experimental to see if a set gillnet could be used in certain locations on the Kenai River with minimal impact to Chinook Salmon, Rainbow Trout and Dolly Varden. The Board

stipulated that the fishery may be conducted in the Moose Range Meadows area of the Kenai National Wildlife Refuge, with a gillnet up to 10 fathom (60') in length with 5 ¼" mesh, anchored to the bank. The fishery allows for the retention of up to 50 Chinook Salmon, all other salmon within current Federal regulation limits, and any incidentally caught Rainbow Trout and Dolly Varden. Genetic samples will be collected from all Chinook Salmon. The State bank closures, as adopted into Federal subsistence regulations, were temporarily removed to allow for the Kenai River community gillnet fishery; however, Kenai National Wildlife Refuge regulations at 50 CFR 36.39(i) remain in effect and prohibit access within an area 25 feet upland of ordinary high water on either shore of the Kenai River between RM 25.1 and RM 28.1.

At the conclusion of the 2016 experimental community gillnet fishery on August 15, the Ninilchik community has caught 755 Sockeye Salmon, 7 Pink Salmon, 1 Chinook Salmon, 12 Coho Salmon and 2 Dolly Varden, while harvesting 723 Sockeye Salmon, 6 Pink Salmon, 1 Chinook Salmon, and 12 Coho Salmon. They also have released 29 Sockeye Salmon, 1 Pink Salmon, and 2 Dolly Varden. No Rainbow Trout or Steelhead were caught, harvested, or released during the experimental community gillnet fishery.

Biological Background and Harvest History

All Pacific salmon species spawn within the Kenai River drainage, and the runs are harvested in State commercial, sport, personal use, and educational fisheries, as well as Federal subsistence fisheries (Begich et al. 2013). The State's Upper Cook Inlet Salmon Management Plan (5 AAC 21.363) establishes long-term direction for the management of Upper Cook Inlet salmon stocks. It provides mandatory criteria that the Alaska Board of Fisheries must consider when adopting management plans for specific fish stocks, and establishes a set of guiding principles for the adoption of regulations governing salmon fisheries. The plan focuses the commercial fisheries take on late-run Sockeye Salmon, while early-run Sockeye, early- and late-run Chinook, and Coho Salmon runs are primarily managed for sport fisheries. Considerable information has been compiled on abundance and distribution of Sockeye, Chinook, and Coho Salmon runs, but little information is available on either Pink or Chum Salmon runs. Spawning escapement goals have been set for Sockeye and Chinook Salmon runs, and sustainable harvest levels have been estimated for Sockeye, Chinook, and Coho Salmon. Escapement is monitored by sonar at RM 14 between mid-May and mid-August. Additionally, a gillnet at RM 9 is used to provide the relative proportion of large Chinook Salmon, small Chinook Salmon, and Sockeye Salmon for apportionment of sonar counts (ADF&G 2016a).

Chinook Salmon in the Kenai River

A series of radio-telemetry studies and in-river abundance estimation techniques have identified differential run times and spawning distributions for Chinook Salmon returning to the Kenai River. Indices of run strength for Chinook Salmon entry times into the Kenai River indicate a bimodal distribution with the early component of the run peaking between 8 and 20 June and a later component peaking between 17 and 25 July (Hammarstrom and Larson 1986; Conrad and Larson 1987; Conrad 1988; Carlon and Alexandersdottir 1989; Alexandersdottir and Marsh 1990; Miller et al. 2011; Reimer 2013). Chinook Salmon entering the Kenai River during July and August are considered "late-run" fish and almost exclusively spawn during August and early September in the mainstem Kenai River (Burger et al. 1985; Bendock and

Alexandersdottir 1991, 1992; Reimer 2013). Each run, early and late, are managed independently primarily because of differences in run size, run timing, and spatial distribution of spawning fish.

Chinook Salmon abundance in the Kenai River and throughout Alaska has been decreasing since around 2007 (ADF&G Chinook Salmon Research Team 2013). Some stocks are also exhibiting declining trends in size and age, including Kenai River Chinook Salmon that spawn on the Kenai National Wildlife Refuge, either in tributary streams (Boersma and Gates 2016) or the main-stem Kenai River (Lewis et al. 2015). Several potential, but as yet unproven, causal factors for this downward trend in abundance, include: size-selective harvest, competitive interactions, and changing environmental conditions (Lewis et al. 2015). Mainstem spawning areas were identified between RM 13 and RM 80, with higher spawning densities documented between RMs 14 – 15, 17 – 21, and 46 – 47, and with the section between RM 46 and 47 shown to support the highest number of spawners (Reimer 2013). Of the 50 river miles in the drainage available for sport fishing for Chinook Salmon (all below Skilak Lake), only about 5 miles are within Federal public waters (RM 48 – 45.5 and RM 29 – 26.5).

Early-Run Chinook Salmon

Early-run Chinook Salmon enter the Kenai River from about mid-May through late-June. Most early-run Chinook Salmon spawn in Kenai River tributaries below the outlet of Skilak Lake, and most of these spawners are bound for the Killey and Funny Rivers. In general, about 80% of the early-run Chinook Salmon spawn in either the Funny or the Killey Rivers, while only about 7% of all early-run Chinook Salmon spawn in tributaries above Skilak Lake (Bendock and Alexandersdottir 1992, Burger et al. 1983). In the mainstem Kenai River, staging behavior (preparing for spawning) generally runs from early- to mid-July with most spawning occurring from mid-July through August. During this time a small segment of early run Chinook Salmon (7-20% of the total run) also utilize the main stem Kenai River to spawn (Bendock and Alexandersdottir 1992, Burger et al. 1983). For Chinook Salmon, the stretch of river encompassing river miles 46 and 47 on the Kenai National Wildlife Refuge represents some of the highest densities of spawners in the entire watershed (Reimer 2013).

The State's optimal escapement goal (OEG)¹ range for early-run Chinook Salmon is 5,300 to 9,000 fish for the Kenai River system. Escapement is monitored by sonar at RM 14 between mid-May and mid-August. Additionally, a gillnet at RM 9 is used to provide the relative proportion of large Chinook Salmon, small Chinook Salmon, and Sockeye Salmon for apportionment of sonar counts (ADF&G 2016a). The spawning escapement for the years 2006 – 2015 averaged 7,473 fish, with a range of 4,460 fish in 2013 to 13,282 in 2006. The spawning escapement in 2014 was 5,776 fish and in 2015 was 6,190 fish (ADF&G 2016b).

The State's Kenai River and Kasilof River Early-Run King Salmon Conservation Management Plan (5 AAC 57.160) establishes escapement objectives and guidelines for the management of all existing fisheries harvesting this run. This plan also tries to ensure that the age and size composition of the harvest closely

¹ An optimum escapement goal, which may be expressed as a range, allows for sustainable runs based on biological needs of the stock and ensures healthy returns for commercial, sport, subsistence, cost-recovery, and personal use harvests. Optimum escapement goals are set by the State of Alaska Board of Fisheries (ADF&G. 2016a).

approximates that of the run. The primary harvest of this run occurs within the sport fishery. Most of the sport harvest is taken within the Kenai River, although the Deep Creek marine sport fishery takes an undetermined, but likely small number, of Kenai River early-run Chinook salmon based on tag recoveries (King and Breakfield, 2002). The State manages other fisheries to minimize the harvest of this run. The commercial and personal use fisheries open after most early-run Chinook Salmon have entered the Kenai River, and the personal use fishery has a seasonal limit of 1 Chinook Salmon per household. The Kenaitze Indian Tribe's educational fishery has historically had a seasonal limit of 300 Chinook salmon, but in 2014 the limit was decreased to 50 Chinook salmon to conserve returning fish.

The early-run Chinook Salmon OEG range mentioned above is set by this plan. To determine whether or not the escapement goal will or will not be achieved, daily sonar estimates of Chinook Salmon passing the sonar site (at RM 14) and estimates of the sport harvest from creel surveys are utilized in a run timing model to project total in-river return, total harvest and final spawning escapement. If escapement is projected to fall below the lower end of the OEG range, the fishery is incrementally restricted to catch-and-release only and ultimately to closure, if necessary. Bait cannot be used until escapement is projected to fall within the OEG range. To help prevent the harvest of 5-ocean fish², there is a slot limit that specifies the size of Chinook Salmon that may be retained (less than 42 inches in length or greater than 55 inches in length). The slot limit is in effect from 1 January to 30 June from the Kenai River mouth upstream to the outlet of Skilak Lake, and from 1 to 14 July from the Slikok Creek upstream to the outlet of Skilak Lake.

All sport fishing for early-run Chinook Salmon in the Kenai River occurs below Skilak Lake. The bag and possession limit is 1 Chinook Salmon per day and 1 in possession. Additionally, there is an annual limit of 2 Chinook Salmon from the Kenai River. Only Chinook Salmon less than 42 inches or greater than 55 inches can be retained in the sport fishery. Sport fishery harvests of early-run Kenai River Chinook Salmon during 2004-2013 have ranged from 0 to 4,693, with an average of 2,334 (Begich et al. 2013). The Kenaitze Indian Tribe's educational fishery harvest has ranged from 11 to 76 early-run Chinook Salmon during 2004-2013, with an average of 42 fish (Begich et al. 2013). No estimates of the number of early-run Kenai River Chinook salmon harvested in commercial or personal use fisheries are available, but due to the timing of these fisheries these harvests are assumed to be negligible.

Late-Run Chinook Salmon

Late-run Chinook Salmon enter the Kenai River from about late-June through late-July. Most late-run Chinook Salmon spawn in the mainstem Kenai River. An estimated 20% – 40% spawn between RM 10 and the Soldotna Bridge at RM 21 (ADF&G 2016c), more than half between the Soldotna Bridge and the outlet of Skilak Lake, and about 9% of the total late run spawns within or above Skilak Lake (Bendock and Alexandersdottir 1992, Hammarstrom et al. 1985, Burger et al. 1983). In the mainstem Kenai River, staging behavior generally runs from late-July to mid-August, with most spawning occurring from mid-August to mid-September.

² 5-ocean fish have spent five years in the ocean before returning to their natal streams to spawn.

The sustainable escapement goal (SEG)³ range for late-run Chinook Salmon is 17,800 to 37,500 fish. As with the early run, escapement is monitored by sonar at RM 14 between mid-May and mid-August. Additionally, a gillnet at RM 9 is used to provide the relative proportion of large Chinook Salmon, small Chinook Salmon, and Sockeye Salmon for apportionment of sonar counts (ADF&G 2016a). The spawning escapement for the years 2006 – 2015 averaged 26,613 fish with a range of 16,527 fish in 2010 to 48,950 in 2006. The spawning escapement in 2014 was 17,446 fish and in 2015 was 22,654 fish (ADF&G 2016b).

The State's Kenai River Late-Run King Salmon Management Plan (5 AAC 21.359) establishes escapement objectives and guidelines for the management of all existing fisheries harvesting this run. While this run is primarily managed for use by the sport fishery, the incidental harvest in commercial fisheries is substantial. Most of the sport harvest is taken below the Soldotna Bridge within the Kenai River, although some are taken in marine waters in the Deep Creek sport fishery. The bag and possession limit is 1 Chinook Salmon per day and 1 in possession. Additionally, there is an annual limit of 2 Chinook Salmon from the Kenai River. Most of the commercial harvest is taken in the East Side set gillnet fishery. The personal use fishery has a seasonal limit of 1 Chinook Salmon per household, and the Kenaitze Tribe's educational fishery had a seasonal limit of 50 Chinook Salmon in 2014. To determine whether or not the escapement goal will or will not be achieved, daily sonar estimates of Chinook Salmon passing the sonar site and estimates of the sport harvest from creel surveys are utilized in a run timing model to project total inriver return, total harvest and final spawning escapement. If escapement is projected to fall below the lower end of the SEG range, the fishery is restricted by several steps, including prohibiting use of bait, to catch-and-release only with barbless hooks, and ultimately to closure, if necessary.

The harvest of late-run Chinook Salmon is monitored in the commercial, personal use, sport, and educational fisheries (Begich et al. 2013). Commercial fishery harvests during 2004–2013 have ranged from 640 to 16,925 Kenai River late-run Chinook Salmon, with an average of 7,380 fish. Harvests in the Deep Creek marine sport fishery have ranged from 30 to 996 Kenai River late-run Chinook Salmon during 2003–2012, with an average of 446 fish. Sport fishery harvests in the Kenai River have ranged from 103 to 18,214 late-run Chinook Salmon during 2003-2012, with an average of 9,926. Personal use dip net fishery harvests have ranged from 11 to 1,509 late-run Chinook Salmon during 2004–2013, with an average of 904 fish. Kenaitze Tribe's educational fishery harvests have ranged from 0 to 21 late-run Chinook salmon during 2004–2013, with an average of 9 fish.

Catch and Release Mortality

A number of studies have been conducted to examine unintended mortality in catch and release fisheries.

³ A sustainable escapement goal is a level of escapement, indicated by an index or an escapement estimate, that is known to provide for sustained yield over a 5 to 10 year period, used in situations where a biological escapement goal cannot be estimated due to the absence of a stock specific catch estimate; the SEG is the primary management objective for the escapement, unless an optimal escapement goal or inriver run goal has been adopted by the State of Alaska Board of Fisheries, and will be developed from the best biological information; the SEG will be determined by the Alaska Department of Fish and Game and will be stated as a range that takes into account data uncertainty; the Department will seek to maintain escapements within the bounds of the SEG (from 5 AAC 39.222(f)) (ADF&G 2016a).

Rates of unintended mortality from catch and release fishing vary across studies due to factors such as species, life stage, water temperature, and gear type. A literature review of 18 studies by Taylor and White (1992) found a 3.8 percent mortality rate associated with fly-fishing, a 4.9% rate associated with lures, and a 31.4% rate associated with bait. Another review of 7 studies by Schill and Scarpella (1997) found a 4.5% mean mortality rate for barbed hooks compared to 4.2% for barbless. Lindsay et al. 2004 found a 12.2% rate of mortality in Chinook Salmon in the lower Willamette River of Oregon, while Bendock and Alexandersdottir (1990) found rates of 13% for male and 7% for female Chinook Salmon in the Kenai River. DeCicco (1994) found rates below 2% for Dolly Varden from the Nome and Snake rivers of Northwest Alaska. Estimated catch and release mortality ranges for the early-run Chinook Salmon sports fishery in the Kenai River range from 0 to 257 fish (Begich et al. 2013). Estimated catch and release mortality ranges for the late-run Chinook Salmon sports fishery in the Kenai River range from 79 to 1,267 fish, which equates to an average estimated mortality rate of around 1% of the in-river run total before sport fish harvest has been removed (Begich et al. 2013). Although no estimates of catch and release mortality exist for Rainbow Trout, a recent stock assessment performed in the Kenai River drainage (Eskelin and Evans 2013) reported that over 92% of the Rainbow Trout were observed to have hooking injuries. The authors suggested that it was likely that the trout in some sections of the river are caught and released multiple times. No estimates of catch and release mortality exist for Dolly Varden.

Overall, some amount of mortality is a recognized consequence of catch and release fisheries, including those currently authorized in the Kenai River.

Gillnet Release Mortality

Research has also been conducted to examine the rates of mortality for a variety of fish caught and released from gill and tangle nets (WDFW 2014). The studies summarized in this literature review come from 13 papers based in a variety of locations ranging from Bristol Bay to Finland. The study sites were mainly concentrated in Washington or British Columbia, with only two sites in Alaska (Bristol Bay and Kodiak). The study years for these projects ranged from 1955 to 2007 (median ~ 2000) and a majority of them focus on salmonid species being captured and immediately released in estuarine locations. Variables considered in these studies included mesh size, fish size, soak time, water temperature, location type, maturity state, and migration duration. Those studies that focus on fish released from gillnets demonstrated a wide range of mortality. Immediate mortality rates ranged between 0.5% and 98% depending on the variables considered and within the context of the studies considered in the literature review. For example, the lowest mortality rate was for Chinook Salmon in the spring (cooler water) in a freshwater environment with a 5.5 inch mesh gillnet whereas the 98% mortality was in July (warmer water) in an estuary environment with an 8 inch mesh gillnet. Long-term mortality rates ranged between 2.3% and 60.6%, again depending on the variable and within the context of the studies considered in the literature review.

Overall, unintended mortality is a recognized consequence of releasing fish captured in gillnets.

Federal Subsistence Harvest

Rural residents of Cooper Landing, Hope and Ninilchik have harvested fish in the Kenai River drainage under Federal subsistence regulations since 2007. In addition to the rod and reel fishery in Federal waters

of the Kenai River, there exist three areas in the Kenai River drainage in which Federally-qualified subsistence users of Cooper Landing, Hope and Ninilchik may harvest salmon by dip net and rod and reel, as well as a separate community gillnet fishery for the residents of Ninilchik.

Russian River Falls

Cooper Landing and Hope residents have fished almost exclusively in the Russian River Falls area over the past nine years. Cooper Landing residents have reported a harvest of 8,609 Sockeye Salmon since 2007; 7,905 in the dip net fishery with an annual average of 878 fish, and 704 in the rod and reel fishery with an average of 89 fish (**Table 3**). Hope residents have reported a harvest of 2,357 Sockeye Salmon since 2007; 2,142 in the dip net fishery with an average of 238 fish, and 215 Sockeye Salmon in the dip net fishery with an annual average of 24 fish (**Table 4**). Ninilchik residents have harvested in the Russian River Falls area to a much lesser extent. They have utilized the dip net fishery in six of the nine years that it has been a harvest option, with a reported harvest of 155 Sockeye Salmon, and an annual average of 26 fish over the six years. They have utilized the rod and reel fishery three of the nine years (2007–2009), with a reported harvest of 281 Sockeye Salmon; an average of 94 for the three years (**Table 5**). There has been no reported harvest of Chinook Salmon in the Russian River Falls area under Federal regulation.

Kenai River below Skilak Lake, RM 45.5 to RM 48

For the years 2007–2015, a total of 30 Sockeye Salmon have been reported as harvested in this area, all by Ninilchik residents using dip nets, and all in the year 2009 (**Table 5**). There has been no reported harvest by Cooper Landing and Hope residents in this area (**Tables 3 & 4**). There has been no reported harvest of Chinook Salmon in this area under Federal regulation.

Kenai River, Moose Range Meadows, RM 26.5 to RM 29

Cooper Landing residents reported harvesting 44 Sockeye Salmon in the rod and reel fishery for the years 2011–2015, but have not reported harvest of any fish in the dip net fishery for this area (**Table 3**). Hope residents have not reported harvest of any fish in either the dip net or the rod and reel fisheries in this area (**Table 4**). In 2007, Ninilchik residents reported a harvest of 12 Sockeye Salmon in the dip net fishery in this area. There has been no reported harvest in the dip net fishery since. In the rod and reel fishery, Ninilchik residents reported a total harvest of 741 Sockeye Salmon for the years 2008–2015, an annual average of 93 fish. They also reported harvesting 5 Coho Salmon in 2008 (**Table 5**). There has been no reported harvest of Chinook Salmon in the Moose Range Meadows area under Federal regulation.

Table 3. Kenai River Federal Subsistence Salmon Harvest, 2007 – 2015, Cooper Landing Residents

Dip Net Fisheries

Year	Russian River Falls			Kenai River, RM 45.5 to 48			Moose Range Meadows			Total
	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	
2007	437	n/a	n/a	0	0	0	0	0	0	437
2008	960			0	0	0	0	0	0	960
2009	706			0	0	0	0	0	0	706
2010	622			0	0	0	0	0	0	622
2011	794			0	0	0	0	0	0	794
2012	998			0	0	0	0	0	0	998
2013	996			0	0	0	0	0	0	996
2014	1216			0	0	0	0	0	0	1216
2015	1176			0	0	0	0	0	0	1176
TOTAL	7905									7905
AVG	878									878

Rod and Reel Fisheries

Year	Upper Kenai/Russian River						Moose Range Meadows			Total
	Sockeye	Coho	Chinook				Sockeye	Coho	Chinook	
2007	169	5	n/a				0	0	0	174
2008	108	7					0	0	0	115
2009	46	9					0	0	0	55
2010	57	0					0	0	0	57
2011	46	0					6	0	0	52
2012	43	0					11	0	0	54
2013	49	4					12	0	0	61
2014	97	2					9	0	0	108
2015	89	0					6	0	0	95
TOTAL	704	27					44	0	0	771
AVG	78	3					5			86

Source: USFWS 2007 – 2015

Table 4. Kenai River Federal Subsistence Salmon Harvest, 2007 – 2015, Hope Residents

Dip Net Fisheries

Year	Russian River Falls			Kenai River, RM 45.5 to 48			Moose Range Meadows			Total
	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	
2007	85	n/a	n/a	0	0	0	0	0	0	85
2008	280			0	0	0	0	0	0	280
2009	103			0	0	0	0	0	0	103
2010	172			0	0	0	0	0	0	172
2011	159			0	0	0	0	0	0	159
2012	287			0	0	0	0	0	0	287
2013	252			0	0	0	0	0	0	252
2014	402			0	0	0	0	0	0	402
2015	402			0	0	0	0	0	0	402
TOTAL	2142									2142
AVG	238									238

Rod and Reel Fisheries

Year	Upper Kenai/Russian River						Moose Range Meadows			Total
	Sockeye	Coho	Chinook				Sockeye	Coho	Chinook	
2007	169	5	n/a				0	0	0	174
2008	6	0					0	0	0	6
2009	18	0					0	0	0	18
2010	0	0					0	0	0	0
2011	0	0					0	0	0	0
2012	0	0					0	0	0	0
2013	19	0					0	0	0	19
2014	3	0					0	0	0	3
2015	0	0					0	0	0	0
TOTAL	215	5								220
AVG	24	0.6								24

Source: USFWS 2007 – 2015

Table 5. Kenai River Federal Subsistence Salmon Harvest, 2007 – 2015, Ninilchik Residents

Dip Net Fisheries

Year	Russian River Falls			Kenai River, RM 45.5 to 48			Moose Range Meadows			Total
	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	
2007	5	n/a	n/a	0	0	0	12	0	0	17
2008	41			0	0	0	0	0	0	41
2009	0			30	0	0	0	0	0	30
2010	10			0	0	0	0	0	0	10
2011	0			0	0	0	0	0	0	0
2012	0			0	0	0	0	0	0	0
2013	19			0	0	0	0	0	0	19
2014	54			0	0	0	0	0	0	54
2015	26			0	0	0	0	0	0	26
TOTAL	155			30			12			197
AVG	17			3			1.3			22

Rod and Reel Fisheries

Year	Upper Kenai/Russian River						Moose Range Meadows			Total
	Sockeye	Coho	Chinook				Sockeye	Coho	Chinook	
2007	169	5	n/a				0	0	0	174
2008	11	0					202	5	0	218
2009	101	0					93	0	0	194
2010	0	0					42	0	0	42
2011	0	0					84	0	0	84
2012	0	0					75	0	0	75
2013	0	0					61	0	0	61
2014	0	0					115	0	0	115
2015	0	0					69	0	0	69
TOTAL	281	5					741	5		1032
AVG	31	0.6					82	0.6		115

Source: USFWS 2007 – 2015

Cultural Knowledge and Traditional Practices

The Kenai River watershed is within the traditional territory of the *Dena'ina* Athabaskans, which dates to around 1000 A.D. The area extends from Kachemak Bay on the south end of the Kenai Peninsula, west across Cook Inlet to Lake Clark and the Stony River and northeast to the Susitna Basin. Borders are shared with the traditional territory of the *Sugpiaq* (Alutiiq) which includes the southern portion of the Kenai Peninsula, bridging the *Sugpiaq* territories of Prince William Sound with Kodiak Island and the Alaska Peninsula (de Laguna 1934, Krauss 1982, Stanek 1980).

Non-Native settlement of the Kenai Peninsula began in the 18th century with the Russians and the fur trade, and later mining efforts in Kachemak Bay. At the end of the 19th century, commercial fishing brought about new settlements, such as the herring saltery at Seldovia in 1896. The next major non-Native settlement period began during the Gold Rush era at the end of the 19th century. Hope and Cooper Landing settlements are related to this period. Homesteading in the Homer region occurred from 1915 through 1940. With the construction of roads and local oil development after in the 1950s, the population of the Kenai Peninsula increased substantially through in-migration of people born outside Alaska.

From the early 1900s, the annual subsistence pattern of the *Dena'ina* included commercial fishing in the spring and summer at the mouth of the Kenai River before moving up-river in the fall to harvest Coho Salmon and freshwater fish, hunt moose, and trap furbearers. This cycle continued until the 1940s when the creation of the Kenai National Moose Range disrupted traditional harvest patterns. Despite new federal refuge enforcement efforts, many *Dena'ina* continued to access their Stepanka camps, long used settlements up the Kenai River near Skilak Lake (Fall et al. 2004:16–20).

Commercial and subsistence fishing were also an important aspect of the annual cycle of the Kenai Peninsula homesteaders. In freshwater, gillnets and seines were used in the Kenai, Skilak, and Tustumena Lakes to harvest lake trout, grayling, whitefish, and char. Trappers in the upper Kenai River area maintained gillnets and caught salmon and trout for personal use. Other uses mentioned were taking Coho Salmon through the ice in the winter and steelhead below Skilak Lake in the late 1940s and early 1950s (Fall et al. 2004:20-21). Andrew Berg, who lived from 1869 to 1939 and was a guide on the Kenai Peninsula, documented his use of subsistence resources including harvesting trout in Tustumena Lake and Dolly Varden, salmon, and whitefish at the mouth of Indian Creek (Cassidy and Titus 2003).

Subsistence fishing in the freshwaters of the Kenai Peninsula was prohibited from 1952 until the Federal Subsistence Board created a subsistence fishery in 2002 which mirrored the State sport fishing regulations. Since statehood, legal availability of fishery resources in Federal public waters has been defined by State sport fishing regulations, and these regulations do not provide for harvest of all species or harvest by traditional methods and means. In this area, preferred traditional methods and means include nets, an efficient method and means of harvest for subsistence users who traditionally harvest as much fish as they can process at once. Rod and reel is considered an authorized subsistence gear type under Federal subsistence regulations and under State regulations in some parts of the state. In some cases under State regulations, rod and reel has been recognized as traditional gear in places where fish fences or traps are no longer a legal means to harvest fish and rod and reel is the only legal alternative (Williams et al. 2005:31–32).

In 1952, gillnets were made illegal in many freshwaters, and the Kenai Peninsula *Dena'ina* ceased using gillnets during their fall occupation of their upriver harvest sites. The Stepanka fishery, that had been a

traditional, long-standing source of salmon for the *Dena'ina* (Kenaitze) Indians, was closed. As a result of this closure, snagging became the primary harvest method until it was made illegal in 1973. Local residents turned to sport fishing without snagging, and continued to fish the beaches of Cook Inlet with gillnets in the State subsistence fishery. In the 1970s, sport fishing had grown in popularity and the Kenai had become a favorite spot for fishing and recreation. The Kenai Peninsula is unique in that rural communities are interspersed among much larger nonrural communities. By the early 1980s the Alaska Board of Fisheries added more restrictions on subsistence and personal use fishing along the Cook Inlet beaches, closing beaches to subsistence gillnetting. By the mid-1990s, only two personal use fisheries remained at the mouth of the Kenai and Kasilof rivers (Fall et al. 2004:22–23; 30).

Regulations relating to areas, seasons, and methods have changed consistently over the past 54 years, and have become more restrictive, requiring residents to take different approaches to obtaining subsistence resources. For example, in the case of salmon, as regulations and conditions have changed, residents have adapted their traditional practices to continue to obtain salmon—trade it, buy it, or harvest it in new ways under various regulatory regimes (Georgette 1983:186–187). In 1993, as the result of a lawsuit filed by the Kenaitze Tribe, a State judge ordered the development of educational fisheries for the NTC, the Knik Tribal Council, the Native Village of Eklutna and the Kenaitze Tribe (Loshbaugh 1993:1, 14). The educational fishery provided another means for residents to harvest salmon using gillnets. The educational permits, however, were a compromise: “Villagers—who have traditionally focused on early-run king salmon will be catching mostly reds under the proposed permit” (Loshbaugh 1993:14).

Other Alternatives Considered

As currently written, Federal subsistence regulations for the Kenai and Kasilof rivers under section §___.27(e)(10)(iv) are confusing and at times contradictory. It may be worth the Board’s consideration to provide for administrative revisions to achieve clarity.

Effects of the Proposal

There are eight separate components to Fisheries Proposal FP17-08. If adopted, the following effects may apply:

The effects on regulations that authorize the dip net/rod and reel fishery at the one specified site on the Russian River and the two specified sites on the Kenai River below Skilak Lake for the residents of Hope, Cooper Landing, and Ninilchik are the following:

- Regulations would no longer distinguish between the early and late runs of Chinook Salmon;
- Harvest of Chinook Salmon would be prohibited (and require immediate release of any unintentional captured fish) in the Federal public waters directly below Skilak Lake from RM 48 downstream to RM 45.5.
- Harvest of Chinook Salmon by approved methods would be allowed in the Moose Range Meadows area from approximately RM 29 downstream to RM 26.5 between July 16 and September 30.

- The annual total harvest limit of 1,000 Chinook Salmon would be removed, and the annual household limit of 10 Chinook Salmon would be reduced to 4.
- Regulations would specify that salmon taken in the Kasilof River experimental community gillnet by the residents of Ninilchik will be included in each household's annual limits for the Kenai and Russian river's dip net/rod and reel fishery.

The effects on regulations that authorize the separate rod and reel fishery in the Federally managed waters of the Kenai River and its tributaries for the residents of Hope, Cooper Landing, and Ninilchik are the following:

- Regulations would no longer distinguish between the early and late runs of Chinook Salmon;
- Harvest of Chinook Salmon would be allowed in the Moose Range Meadows area from approximately RM 29 downstream to RM 26.5 between July 16 and August 31, with daily harvest limits of 2 and in possession limits of 4, and only if those fish are less than 46 inches or 55 inches or longer;
- Harvest of Chinook Salmon would be prohibited (and require immediate release of any unintentional captured fish) in the Federal public waters directly below Skilak Lake from RM 50 downstream to RM 45.5.

The removal of all language distinguishing between the early and late runs of Chinook salmon from both sections of regulation would simplify Federal subsistence regulation language, and would be more similar to State fishing regulations where no distinction is made for separate runs of Chinook Salmon in the Kenai River. The harvest of Chinook Salmon would be dictated by dates rather than by limits on each specific run. Current regulatory conflicts between the season associated with the Kenai River community gillnet fishery (June 15 – August 15) and the season allowed for Chinook Salmon harvest (July 16 to September 30) would remain.

The prohibition of harvest and the requirement for immediate release of Chinook Salmon below Skilak Lake from both sections of regulation would protect an area of the river from fishing where a large proportion of these fish spawn. There is some difference in the closures in that the dip net/rod and reel fishery would close in the specified area from RM 48 downstream to RM 45.5, while the separate rod and reel fishery would close from RM 50 downstream to RM 45.5. These differences in area already exist in regulation as the dip net/rod and reel fishery is specific to this area, while the separate rod and reel fishery is limited to Federal public waters and also State sport fishing regulations, which close fishing to Chinook Salmon at RM 50. If adopted, the section of the river shown to support the highest number of Chinook Salmon spawners would be afforded additional protections. However, Federal regulations would become more restrictive in this section of the river than State regulations. Federally qualified subsistence users and non-Federally qualified users could still harvest Chinook Salmon in this section of the river under State regulations that currently allow for the harvest of Chinook Salmon; however, the State bag and possession limit of one Chinook Salmon and an annual limit of two in the Kenai River would be a decrease from the current Federal harvest limit of 10. There has been no reported harvest of Chinook Salmon in this section

of the river by Federally qualified subsistence users under Federal regulations since the fishery opened in 2007. The proponent of this proposal has submitted a companion proposal to the State of Alaska Board of Fisheries (BOF) to close this section of the river to sport fishing for Chinook Salmon. If the proposal to the BOF is validated in August 2016, it will be taken up by the BOF during its February – March 2017 meeting in Anchorage, more than a month after the January 2017 meeting of the Federal Subsistence Board.

Restricting Chinook Salmon harvest under both regulatory sections to the Moose Range Meadows area in the lower Kenai River (RM 29 downstream to RM 26.5) would limit harvest for Chinook Salmon to this one location in the drainage. The dip net/rod and reel fishery does not allow for Chinook Salmon harvest in the Russian River, and the area just below Skilak Lake would be closed. The separate rod and reel fishery allows fishing in all open Federal public waters in the Kenai River drainage, with the caveat that seasons, area (including seasonal riverbank closures), harvest and possession limits, and methods and means (including motorboat restrictions) for take are the same as for the taking of salmon under State of Alaska sport fishing regulations (5 AAC 56, 5 AAC 57, and 5 AAC 77.54). Within the Kenai River drainage, the State sport fishing regulations only allow fishing for Chinook Salmon from the mouth of the river upstream to (but not including) Skilak Lake, making this the one portion of the drainage that Federally qualified subsistence users could harvest Chinook Salmon. This would also have the effect of eliminating the area just downstream of Skilak Lake (RM 45.5 – 48) as an option for the Kenai River community gillnet fishery due to the likelihood of harvest of Chinook Salmon.

The dip net/rod and reel fishery for Chinook Salmon in the Moose Range Meadows area would be open from July 16 to September 30, which is the date range currently in regulation for harvest of late-run Chinook under this fishery. The separate rod and reel fishery for Chinook Salmon in the Moose Range Meadows area would be open from July 16 to August 31. This would reduce the season for the separate rod and reel fishery by approximately one month, as it currently opens on June 15. The end date of August 31 would remain the same as current regulation. Fishing effort on the earlier portion of the Chinook Salmon run would be limited in this section of the river, providing additional protections for this portion of the run. Time allowed for harvest of this species by Federally qualified subsistence users would also be reduced. Regulatory conflict between the season associated with the Kenai River community gillnet fishery (June 15 – August 15) and the season allowed for Chinook Salmon harvest (July 16 to September 30) would remain.

The separate rod and reel fishery for Chinook Salmon in the Moose Range Meadows area would require fish to be less than 46 inches or 55 inches or longer for retention. This is the slot limit currently in place for Chinook Salmon harvested in this fishery prior to July 16, which would no longer be an option due to the change in start of season for this fishery from June 15 to July 16, and would be new for fish harvested in this fishery July 16 and later. This would afford protections to 5-ocean fish that match what the State has in place, except that the State's slot limit is slightly greater at 42 inches to 55 inches, and the State's slot limit is in place in this section of the Kenai River only until July 14. This would make the Federal regulations for Chinook Salmon more restrictive than State regulations in this section of the river at this time of the year, decrease the length of the fishery for Chinook Salmon by one month, and would introduce regulatory complexity between Federal and State regulations.

The annual total harvest limit of 1,000 Chinook Salmon in the dip net/rod and reel fishery would be removed, and the annual household limit would be decreased from the current quantity of 10 to a new quantity of 4. The additional two fish per each additional household member would remain the same. There are currently 950 occupied households (161 Cooper Landing CDP, 97 Hope CDP, 10 Sunrise CDP, 412 Ninilchik CDP, 270 Happy Valley CDP) in the communities with Customary and Traditional use determinations for the Kenai River. Under the proposed limits, residents of Hope and Cooper Landing would have their annual household limits for the Kenai River dip net/rod and reel fishery decreased from 10 Chinook Salmon to 4 Chinook Salmon. Residents of Ninilchik would continue to be able to harvest up to 10 Chinook Salmon from the Kenai River dip net/rod and reel fishery as their annual household limit for this fishery is set by the Kasilof River dip net/rod and reel limits (**Table 6**). The removal of the 1,000 Chinook Salmon total harvest guideline for this fishery would affect all three communities the same (**Table 7**). Under the current Chinook Salmon limit of 1,000 total and 10 per household, the total annual limit would be reached prior to the individual household limit if there was active fishing for this species. By removing the 1000 Chinook Salmon total limit, more than 7,892 Chinook Salmon could be harvested (6,820 for Ninilchik households and 1,072 by Hope and Cooper Landing households) if all households participated. This would be a substantial increase in the harvest of this resource from this area. The decrease in annual harvest limits by households from 10 to 4 would affect Hope and Cooper Landing households more than Ninilchik households, and likely some individual users more than others.

Table 6. Annual household limits for Kenai and Kasilof River fisheries by residents of Ninilchik

River	Fishery	Limit Location	Regulatory Section
Kasilof	Dip Net/Rod-and-Reel	Kasilof River Dip Net/Rod-and-Reel	§ __.27(i)(10)(iv)(A)(4)(i-v)
		Kenai River Dip Net/Rod-and-Reel	§ __.27 (i)(10)(iv)(D)
Kasilof	Experimental Gillnet	Kasilof River Dip Net/Rod-and-Reel	§ __.27(i)(10)(iv)(I)(6)
		<i>Kenai River Dip Net/Rod-and-Reel**</i>	§ __.27(i)(10)(iv)(D)**
Kasilof	Fish Wheel	Kasilof River Dip Net/Rod-and-Reel	§ __.27(i)(10)(iv)(H)(6)
		Kenai River Dip Net/Rod-and-Reel	§ __.27(i)(10)(iv)(D)
Kenai	Dip Net/Rod-and-Reel	Kasilof River Dip Net/Rod-and-Reel	§ __.27(i)(10)(iv)(A)(4)
		Kasilof River Dip Net/Rod-and-Reel	§ __.27(i)(10)(iv)(D)(3)
Kenai	Gillnet	Kenai River Dip Net/Rod-and-Reel	§ __.27(i)(10)(iv)(J)(5)

**Proposed addition by FP17-08

Table 7. Annual total limits for Kenai and Kasilof River fisheries by residents of Ninilchik

River	Fishery	Limit Location	Regulatory Section
Kasilof	Dip Net/Rod-and-Reel	Kasilof River Dip Net/Rod-and-Reel	§ __.27(i)(10)(iv)(A)(4)(i-v)
Kasilof	Experimental Gillnet	Kasilof River Dip Net/Rod-and-Reel	§ __.27(i)(10)(iv)(I)(5)
Kasilof	Fish Wheel	Kasilof River Dip Net/Rod-and-Reel	§ __.27(i)(10)(iv)(H)(6)
Kenai*	Dip Net/Rod-and-Reel*	Kenai River Dip Net/Rod-and-Reel	§ __.27(i)(10)(iv)(D)(3)(i-v)
Kenai*	Gillnet*	Kenai River Dip Net/Rod-and-Reel	§ __.27 (i)(10)(iv)(J)(5)

*Same locations for Hope and Cooper Landing

The separate rod and reel fishery for Chinook Salmon in the Moose Range Meadows area would allow for daily harvest and possession limits of 2 per day and 4 in possession. The daily limit would remain the same as currently allowed for this fishery, but the in-possession limit would increase from the current quantity of 2. This would allow Federally qualified users to have in possession their annual household limit of 4 specified for this fishery.

Lastly, the dip net/rod and reel fishery regulations would specify that salmon taken in the Kasilof River experimental community gillnet fishery by the residents of Ninilchik would be included in each household's annual limits for the Kenai and Russian River's dip net/rod and reel fishery. This would link the experimental community gillnet annual household limit to both the Kenai River dip net/rod and reel limits as well as the Kasilof River dip net/rod and reel limits; which is already the case for the Kasilof River dip net/rod and reel fishery and the fish wheel fishery (**Table 6**). Regulatory issues may arise all three of the Kasilof River fisheries are linked to both sets of regulations and the annual household limit for Chinook Salmon is decreased for the Kenai River dip net/rod and reel fishery as proposed (from 10 to 4). Law enforcement will have to determine whether to enforce the annual limit of 10 or 4 for the Kasilof River fisheries, and there will be the potential for subsistence users receiving citations when they did not actually break the law. These same regulatory issues will remain in effect for the Kasilof River dip net/rod and reel fishery and the Kasilof River fish wheel fishery if the decreased annual household limit for the Kenai is adopted, but the Kasilof River experimental gillnet harvest is not linked to the Kenai River dip net/rod and reel annual harvest limits.

OSM PRELIMINARY CONCLUSION

Given that this proposal would affect the Kenai River community gillnet fishery, the RFR process related to that fishery is ongoing, and the State of Alaska Board of Fisheries will be addressing requests for similar regulatory changes after the Board take up this proposal in January, OSM is offering two potential courses of action for consideration. Option 1 assumes that the RFR process is ongoing: either the Board has not reached a decision about the threshold analysis or has determined that one or more claims meet the threshold for further analysis. Option 2 assumes that the RFR process has been completed and the Kenai River community gillnet fishery regulations remain in place without modification.

Option 1:

Defer Proposal FP17-08.

Justification

Adoption of this proposal would make Federal regulations more restrictive than current State regulations with regards to the harvest of Chinook Salmon in the Federal public waters of the Kenai River between RM 45.5 and RM 50 below Skilak Lake. The proponent of this proposal has submitted two companion proposals to the BOF to close 4.5 miles of the Kenai River below Skilak Lake to sport fishing for Chinook Salmon (Proposal 155) and to extend the time of the protective slot limit and single hook/no bait restrictions through July 31 upstream of the Slikok Creek closure area (Proposal 159). If the proposals are validated in August 2016, they will be taken up by the BOF during its February – March 2017 meeting in Anchorage,

more than a month after than the January 2017 meeting of the Federal Subsistence Board.

In addition, with simultaneous RFR and legal efforts occurring at this time for issues related to the community gillnet fishery on the Kenai River, it is recommended by OSM that any decisions on FP17-08 be deferred so as not to preclude any decisions on FP15-10 that have yet to be made by the Board through the RFR process or contradict any potential direction that may be received from the U.S. District Court as a result of the pending litigation.

Option 2:

Overview

The proponent submitted Proposal FP17-08 asking the Board to address the following issues:

Issue 1

The proponent requests the Board remove all language distinguishing the early and late runs of Chinook Salmon from the Russian and Kenai rivers dip net/rod and reel fishery regulations (§____.27(i)(10)(iv)(D)).

Points to Consider:

1. The removal of the distinction between these runs would simplify Federal subsistence regulations.
2. The harvest of Chinook Salmon would be dictated by dates rather than by limits on each specific run, similar to what the State currently does.
3. Regulatory conflicts with the community gillnet fishery would remain. Current regulations prohibit the take of Chinook Salmon before July 16, while the community gillnet fishery begins June 15.

OSM Recommendation: Support. Removal of the early-run and late-run language clarifies regulations, and this change would have no distinct impact on users or the resource.

Issue 2

The proponent requests the Board prohibit harvest and require immediate release of Chinook Salmon below Skilak Lake from RM 48 downstream to RM 45.5 in the Russian and Kenai rivers dip net/rod and reel fishery regulations (§____.27(i)(10)(iv)(D)).

Points to Consider:

1. If implemented, a large portion of Chinook Salmon spawning habitat in the drainage would be protected.
2. This change would make Federal subsistence regulations more restrictive than current State regulations in this area of the river.

3. Fishing could continue under State sport fishing regulations in this section of the river, but harvest opportunity would be limited to one per day and two total, rather than the current Federal subsistence harvest limit of 10 for the Kenai River under this fishery.
4. This area of the river would be eliminated as an option for the Kenai River community gillnet.

OSM Recommendation: Oppose. Closing this section of the river to subsistence harvest of Chinook Salmon would impose stricter regulations on Federally qualified subsistence users within Federal public waters than are currently in place for non-subsistence users in those same waters.

Issue 3

The proponent requests the Board specify that Chinook Salmon may be harvested in the Moose Range Meadows area from approximately RM 29 downstream to RM 26.5 between July 16 and September 30 in the Russian and Kenai rivers dip net/rod and reel fishery regulations (§ ____.27(i)(10)(iv)(D)).

Points to Consider:

1. The dates suggested for this new Chinook Salmon regulation would remain the same as are currently allowed under the dip net/rod and reel fishery.
2. If implemented as written, this would have the same effect as Issue 2 in that it would allow fishing for Chinook Salmon under the dip net/rod and reel fishery only at the Moose Range Meadows site; thereby closing the area directly downstream of Skilak Lake to the take of Chinook Salmon by dip net, rod and reel, and community gillnet fisheries.
3. This change would make Federal subsistence regulations more restrictive than current State regulations for the area directly below Skilak Lake (RM 48 to RM 45.5).

OSM Recommendation: Oppose. This would limit harvest opportunity for Chinook Salmon by Federally qualified subsistence users to 2.5 miles of the Kenai River drainage, and would impose stricter regulations on Federally qualified subsistence users within Federal public waters than are currently in place for non-subsistence users.

Issue 4

The proponent requests the Board remove the 1,000 fish annual total harvest limit for Chinook Salmon, and decrease the annual household limit from 10 to four in the Kenai River dip net/rod and reel fishery regulations (§ ____.27(i)(10)(iv)(D)).

Points to Consider:

1. There are currently 950 occupied households in communities with customary and traditional use determinations for the Kenai River.

2. Decreasing the annual household limit from 10 to 4 would decrease harvest opportunity in the Kenai River dip net/rod and reel fishery only for those households that wanted Chinook Salmon in Hope and Cooper Landing. Annual household limits for this fishery by the residents of Ninilchik are linked to the Kasilof River annual household limits, and harvest opportunity would remain at 10 Chinook Salmon.
3. A household annual limit of four would also match the limit of four Chinook Salmon currently allowed in the separate Kenai River rod and reel fishery.
4. Removing the 1,000 Chinook Salmon total annual harvest limit (and implementing the 4 fish household limit) could have the effect of increasing the harvest of this species to 7,892 or more based on households in communities with customary and traditional determinations.

*OSM Recommendation: Oppose. Annual household limit regulations for the Kenai and Kasilof River fisheries are overly complex and contradictory (see **Table 6**). Removing the annual total harvest limit may actually increase harvest of Chinook Salmon, and lowering the annual household limit for the Kenai River dip net/rod and reel fishery will create lower annual household limits for Hope and Cooper Landing residents compared to Ninilchik Residents.*

Issue 5

The proponent requests the Board specify in the Russian and Kenai rivers dip net/rod and reel fishery regulations (§ __.27(i)(10)(iv)(D)) that salmon taken in the Kasilof River experimental community gillnet fishery by the residents of Ninilchik be included in each household's annual household limit for the Kenai River dip net/rod and reel fishery.

Points to Consider:

1. The proponent's goal for this change is to provide regulatory clarity.
2. This change would make salmon harvest from the Kasilof River experimental community gillnet count towards annual household limits for the Kenai River dip net/rod and reel fishery.
3. Salmon harvest in the Kasilof River experimental community gillnet fishery regulations ((§ __.27(i)(10)(iv)(I)) currently count towards the annual household limits for the Kasilof River dip net/rod and reel fishery, and would now be linked to both household limits.
4. Annual household limits for the Kasilof River dip net/rod and reel fishery and the Kasilof River fish wheel fishery are also linked to both the annual limits for the Kenai River dip net/rod and reel fishery and the Kasilof River dip net/rod and reel fishery.
5. This would create additional regulatory conflicts in Federal subsistence regulations. Law enforcement will have to determine whether to enforce annual limits of 10 or 4 for Chinook Salmon for the Kasilof River fisheries if Chinook Salmon household limits for the Kenai River dip net/rod and reel fishery are decreased, and there will be the potential for subsistence users receiving

citations when they did not actually break the law.

6. Even if the Kasilof River experimental gillnet harvest is not linked to the Kenai River dip net/rod and reel annual harvest limits, these same regulatory issues will remain in effect for the Kasilof River dip net/rod and reel and fish wheel fisheries if the annual household limit decrease (from 10 to 4) is adopted for the Kenai.

OSM Recommendation: Oppose. This change would create more regulatory complexity. The Board should consider creating a single annual household limit in regulation for residents of all three communities with customary and traditional determinations, and striking the limits that are currently listed in §__.27(i)(10)(iv)(A)(4)(i-v), §__.27(i)(10)(iv)(D), §__.27(i)(10)(iv)(D)(3), §__.27(i)(10)(iv)(H)(6), §__.27(i)(10)(iv)(I)(6), and §__.27(i)(10)(iv)(J)(5).

Issue 6

The proponent requests the Board remove all language distinguishing the early and late runs of Chinook Salmon from the Kenai River separate rod and reel fishery regulation (§__.27(i)(10)(iv)(E)).

Points to Consider:

1. The removal of the distinction between these runs would simplify Federal subsistence regulations.
2. The harvest of Chinook Salmon would be dictated by dates rather than by limits on each specific run, similar to what the State currently does.

OSM Recommendation: Support. Removal of the early-run and late-run language clarifies regulations, and this change would have no distinct impact on users or the resource.

Issue 7

The proponent requests the Board specify that Chinook Salmon harvest under the Kenai River separate rod and reel fishery regulation (§__.27(i)(10)(iv)(E)) be restricted to the Moose Range Meadows area from approximately RM 29 downstream to RM 26.5, between July 16 and August 31, with daily harvest and possession limits of two per day and four in possession, and only if fish are less than 46 inches or 55 inches or longer.

Points to Consider:

1. The proponent's stated goal for this change is to provide additional protections for early-run Chinook Salmon during their residence in freshwater and on their spawning grounds.
2. If adopted, this would reduce the season for harvest of Chinook Salmon in this fishery by approximately one month as it currently opens June 15.
3. This would match the start dates for Chinook Salmon harvest with the dip net/rod and reel fishery

(July 16), but the end dates would remain different (August 31 and September 30).

4. The slot limit (less than 46 inches or 55 inches and greater) is currently in place for Chinook Salmon harvested prior to July 16, but would be new for the time period from July 16 to August 31.
5. State regulations also have a slot limit (less than 42 inches or 55 inches and greater), but it extends only to July 14. This would make Federal regulations more restrictive than State regulations.
6. The daily harvest limit would remain the same for Chinook Salmon in this fishery, but the possession limit would increase by two to a total of four. This would match the annual household limit for this fishery.

OSM Recommendation: Oppose. These changes would impose stricter regulations on Federally qualified subsistence users within Federal public waters than are currently in place for non-subsistence users in those same waters.

Issue 8

The proponent requests the Board prohibit harvest and require immediate release of Chinook Salmon below Skilak Lake from RM 50 downstream to RM 45.5 in the Kenai River separate rod and reel fishery regulation (§ __.27(i)(10)(iv)(E)).

Points to Consider:

1. If implemented, a large portion of Chinook Salmon spawning habitat in the drainage would be protected.
2. This change would make Federal subsistence regulations more restrictive than current State regulations in this area of the river.
3. Fishing could continue for both Federally qualified subsistence users and non-Federally qualified users under State sport fishing regulations in this section of the river. However, harvest opportunity for Federally qualified subsistence users would be reduced to one per day and two total under State regulations, rather than the current Federal subsistence harvest limit of 10 for the Kenai River under this fishery.
4. This area of the river would be eliminated as an option for the Kenai River community gillnet.

OSM Recommendation: Oppose. Closing this section of the river to subsistence harvest of Chinook Salmon would impose stricter regulations on Federally qualified subsistence users within Federal public waters than are currently in place for non-subsistence users in those same waters.

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WRITTEN PUBLIC COMMENTS



Wednesday, May 25, 2016

ATTN: Theo Matuskowitz
Federal Subsistence Board
Office of Subsistence Management
1011 E. Tudor Road, MS-121 An-
chorage, AK 99503-6199 Subsistence@fws.gov

FSB 2017 – 2019 Fisheries Proposals

Dear Federal Subsistence Board / Southcentral Regional Advisory Council;

Kenai River Sportfishing Association (KRSA) is a 501 c 3 charitable non-profit organization, with a focus on fishery conservation for the Kenai River, greater Cook Inlet and Alaska. We provide these comments on the FSB 2017 – 2019 Fisheries Proposals, specifically those for the Cook Inlet region, FP17-06 – 10.

KRSA supports fisheries management regulations that accomplish two objectives: 1) provide meaningful access and opportunity to subsistence, personal use, sport and commercial fisheries, and 2) follow necessary fishery conservation principles. With respect to time, area, methods and means for subsistence, personal use and sport fisheries within the Kenai River drainage, we support the use of selective gear to harvest fish, such as rod and reel and dip nets. We do not support the use of non-selective gear, such as gillnets, to harvest fish within the Kenai River drainage.

The reason is that selective gear, as opposed to non-selective gear, allows for the live release and high probability of survival for fish that are designated for non-retention for conservation purposes, such as the continued viability of specific fish stocks. Slot limits for fish stocks in fisheries management are similar to hunting restrictions, such as antler restrictions for moose (spike or fork antler, or 50-inch spread, or at least three brow tines on one antler). Judicial review on antler restrictions for subsistence moose hunting determined that a meaningful subsistence priority is not absolute and must be reasonably balanced with conservation issues and other uses.

Conservation based fishery regulations on the Kenai River include non-retention of slot-limit Chinook and of rainbow trout / Dolly Varden over 18 inches, for waters below Skilak Lake. Above Skilak Lake there is no retention of Chinook or rainbow trout / Dolly Varden over 16 inches. On the Kasilof River such regulations include the non-retention of Steelhead Trout.

As such, KRSA supports the adoption of FP17 – 06 and FP17 – 07, which would remove gillnets as a method and means for gear in subsistence fisheries on the Kenai River. We concur with the fisheries conservation rationale as outlined in these respective proposals for this change. FP17-08 is a complex proposal that seeks to both streamline and change regulations, and we have no comment on each of the subcomponents at this time.

FP17-09 and FP17-10 seek to extend the window of time for use of a community gillnet (NTC) on the Kasilof and Kenai Rivers respectively. On the Kasilof River, the proposal seeks to change the use of a community gillnet from July 1 – July 31 to May 1 – November 15. We do not support the proposed expansion of the time frame due to fishery conservation concerns relating to the retention of Chinook salmon and Steelhead Trout during the expanded timeframe. On the Kenai River, the proposal seeks to change the use of a community gillnet from June 15 – August 15 to May 1 – November 15. We do not support the proposed expansion of time frame due to fishery conservation concerns relating to the retention of Chinook salmon, rainbow trout and Dolly Varden. The rationale of the fishery conservation concern is clearly outlined in the USFWS proposals FP17 – 07 and FP17 – 08.

We encourage both the Southcentral RAC and the Federal Subsistence Board remove the use of gillnets as gear for subsistence fisheries on the Kenai River, and to keep in place the time frame for its use on the Kasilof River. The justification is based on well documented fishery conservation issues that have been articulated thoroughly by both federal and state fishery professionals.

Thank you for your time and consideration on this matter.

Respectfully,

Ricky Gease, Executive Director
Kenai River Sportfishing Association

Chris Degernes
PO Box 683
Cooper Landing, AK 99572
Jaeger06@hotmail.com

May 22, 2016

Office of Subsistence Management
Attn: Regulations Specialist
1011 East Tudor Road, Mail Stop 121
Anchorage, Alaska 99503-6199

Re: Comments on Federal Subsistence Management Program 2017-2019 Fisheries Proposals Dear Mr.

Matuskowitz:

I have reviewed the specific proposals relating to regulation changes within the Cook Inlet area, specifically addressing the Kenai River. I support the recommendations found within FP 17-06, FP 17-07 and FP 17-08, while I oppose the proposals made within FP 17-09 and FP 17-10.

I am an authorized federal subsistence permittee residing in Cooper Landing and have utilized the dip net fishery at the Russian River Falls for a number of years. I believe that the conservation and sustainable management of our anadromous and resident fish is paramount to providing for the long term sustainability of our fisheries, thereby supporting our continued quality of life. If a particular method of harvest (i.e., gill net use) creates a risk to certain populations of fish, then it should be prohibited in favor of more discriminate type of harvest (i.e., rod and reel, dip net, etc.) Expediency and efficiency should not be factors in deciding what method of harvest may be permitted.

I urge that the new regulations delete permanently any provision authorizing gill nets on the Kenai River for subsistence harvest purposes, and that all Kenai River Chinook salmon are afforded protection while their numbers are at such historically low numbers. Thank you for considering my comments.

Sincerely, Chris Degernes

May 17, 2016

Michael Adams
PO Box 847
Cooper Landing, AK 99572

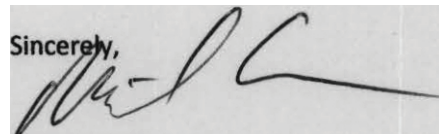
Attn: Theo Matuskowitz
Federal Subsistence Board
Office of Subsistence Management
1011 E. Tudor Rd., MS-121
Anchorage, Ak 99503-6199

I am a subsistence fisherman and I rely heavily on the Kenai River. I support FP17-08.

One of the tenants of a sustainable subsistence lifestyle is conservation. This lesson has been handed down in nearly all families who rely on a subsistence lifestyle. As more and more data is compiled we have the ability to make better decisions on where and when we can sustainably harvest our food so that our children and grandchildren have the opportunity to participate in the lifestyle that we value so much.

FP17-08 clearly defines the scientific reasons for a more conservative approach to fishing specific areas of the Kenai River for Chinook salmon at a time when we are facing a statewide decline in Chinook stocks. I believe this proposal has the intent of protecting important spawning grounds from potential overharvest while still allowing us (subsistence users) an adequate priority for harvest.

Please vote Yes on FP-17-08

Sincerely,


Michael Adams
38053 Snug
Harbor Road
Cooper Landing,
AK 99572



Mckinney, Kayla <kayla_mckinney@fws.gov>

Fwd: Cook Inlet Area Fisheries proposals

AK Subsistence, FW7 <subsistence@fws.gov>

Wed, Jun 1, 2016 at 6:04 PM

To: Gene Peltola <gene_peltola@fws.gov>, Stewart Cogswell <stewart_cogswell@fws.gov>, George Pappas <george_pappas@fws.gov>, Jennifer Hardin <jennifer_hardin@fws.gov>, Ameer Howard <ameer_howard@fws.gov>, Theo Matuskowitz <theo_matuskowitz@fws.gov>, Kayla Mckinney <kayla_mckinney@fws.gov>

----- Forwarded message -----

From: **George Heim** <gheim2000@gmail.com>

Date: Thu, May 26, 2016 at 7:33 PM

Subject: Cook Inlet Area Fisheries proposals

To: subsistence@fws.gov

To Whom It May Concern:

I am writing to express support for FP-17-06, FP-17-07, & FP-17-08 and to oppose FP-17-09, & FP-17-10.

The Cooper Landing Advisory Committee held a meeting on May 14th to discuss these proposals. Due to predictable schedule conflicts for the AC members at this time of year and the short notice between publishing the proposals and due date for comments, we were not able to convene a quorum. However, the members present were unanimous in supporting proposals to remove gill nets from the Kenai and to close a section of the Kenai River that is important for Chinook spawning activities and to oppose liberalization of gill nets in the Kasilof and to expand gill nets in the Kenai.

We were concerned about bycatch of non-target species in both waters including rainbow trout, dolly varden and king salmon in the Kenai and steelhead and king salmon in the Kasilof. Of particular concern was the possibility that rainbow trout in the Kenai and Steelhead in the Kasilof would be caught in the nets. Since there is no retention allowed for these species in those waters, and since any fish in a gill net is very likely to be killed persons operating the nets would be in violation of both State and Federal regulation and subject to penalties. Obviously, this is not a desirable situation. Even if a fish is released from the net alive, it will have been injured and is likely to die after release. This would be wanton waste and should not be allowed.

Sincerely,

George Heim, President

Cooper Landing Advisory Committee to ADF&G

Fisheries Proposal: FP17-08

907-599-2000
PO Box 725
Cooper Landing, AK 99572

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OSM is in receipt of your comments. Thank

you

May 22, 2016

Comment on
FP17-08 + 09

Theo Matuskowitz
Federal Subsistence Board
Office of Subsistence Management
1011 E. Tudor Road, MS-121
Anchorage, Alaska 99503-6199

Dear Theo,

I am opposed to proposal FP17-07, Muilchik's proposal to place a gill net across the Kenai River as well as FP17-08 that restricts when & where a person may take late run Chinook. In addition, I am opposed to proposal FP17-09 that requests that only residents of Muilchik may harvest salmon, with a gill net on the Kasloof and Kenai Rivers. These proposals go against conservation efforts to maintain a healthy number of salmon for future generations on these rivers.

As a member of the Cooper Landing Community for the last twelve years I am grateful for the ability to subsistence fish through traditional means using rod and reel and dip net because these methods prove that we can maintain and conserve the Kenai River for salmon.

Thank you for the opportunity to have a voice in continuing to protect conservation efforts as well as subsistence fishing rights on the Kenai River.

Gratefully,
Joyce Koppert

FP17-09 Executive Summary	
General Description	<p>Proposal FP17-09, requests removal of experimental title, expansion of seasonal dates, and numerous other changes to the regulations for the Kasilof River experimental community gillnet fishery. As written, this would be a replacement of all current regulatory language for this section.</p> <p><i>Submitted by: The Ninilchik Traditional Council.</i></p>
Proposed Regulation	<p>§ __.27(e)(10)(iv)(I) § __.27(e)(10)(I) <i>The Ninilchik Traditional Council (NTC) may operate a community gillnet to provide for the subsistence uses of fish for the residents of Ninilchik. The community gillnet may be operated in the Federal public waters of the upper mainstream of the Kasilof River from a Federal regulatory marker on the river below the outlet of Tustumena Lake downstream to the Tustumena Lake boat launch from May 1st – November 15th . The gillnet fishery shall target the harvest of Sockeye, Chinook, Coho, and Pink Salmon. Other non-salmon fish harvested by the gillnet may be retained.</i></p> <p><i>(1) The Ninilchik Traditional Council shall provide notice to the Office of Subsistence Management no later than February 1st of its intent to operate a gillnet fishery. No later than April 1st, a subsistence gillnet permit will be issued by the Office of Subsistence Management in consultation with the Federal in-season fishery manager, the Kenai National Wildlife Refuge Manager, and the Ninilchik Traditional Council.</i></p> <p><i>(2) The permit conditions shall include:</i></p> <p><i>(i) Provisions that the gillnet may be not be over 10 fathoms in length, shall be constructed such that it is directed at harvesting Sockeye, Chinook, Coho, and Pink Salmon, may not obstruct more than half of the river width with stationary fishing gear, and may not be set within 200 feet of other subsistence stationary gear.</i></p> <p><i>(ii) Identification of the person or persons who will be responsible for the overall operation of the gillnet as well as a means for identifying persons authorized to supervise members of the community engaged in fishing the net.</i></p> <p><i>(iii) Provisions for recording daily catches, ensuring that</i></p>

	<p><i>removal of the dorsal fins of harvested fish, and identifying the Ninilchik households to whom the catch was distributed.</i></p> <p><i>(iv) Provisions for NTC’s reporting of all harvested fish within 72 hours of leaving the gillnet location.</i></p> <p><i>(v) Identification of a collaborative process for making determinations about potential closures or other actions affecting the gillnet fishery through which NTC and the SCRAC are fully informed and consulted prior to the implementation of any such action.</i></p> <p><i>(3) Salmon taken in the gillnet fishery will be included as part of dip net/rod and reel fishery annual total harvest limits for the Kasilof River.</i></p>
<p>OSM Preliminary Conclusion</p>	<p>For Proposal FP17-09</p> <p>Issue 1 (see pages 20 – 21): Oppose</p> <p>Issue 2 (see page 21): Support with Modification</p> <p>Issue 3 (see page 22): Oppose</p> <p>Issue 4 (see pages 22 – 23): Oppose</p> <p>Issue 5 (see page 23): Support with Modification</p> <p>Issue 6 (see pages 23 – 24): Oppose</p> <p>Issue 7 (see pages 24 – 25): Oppose</p>
<p>Southcentral Regional Advisory Council Recommendation</p>	
<p>Interagency Staff Committee Comments</p>	
<p>ADF&G Comments</p>	
<p>Written Public Comments</p>	<p>6 Oppose</p>

DRAFT STAFF ANALYSIS
FP17-09

ISSUES

Proposal FP17-09, submitted by the Ninilchik Traditional Council (NTC), requests that the Federal Subsistence Board (Board): 1) remove the “experimental” condition of the Kasilof River community gillnet salmon fishery; 2) increase the annual duration of the fishery; 3) make the Office of Subsistence Management (OSM) the issuer of the registration permit (rather than the Federal in-season fishery manager); 4) replace the operational plan requirement of the permit with specific permit conditions; 5) name NTC in regulation as the coordinator of the community gillnet fishery; 6) remove the post-season reporting requirement; and 7) establish a collaborative process through which NTC and the Southcentral Alaska Subsistence Regional Advisory Council (Council) are informed and consulted prior to any potential closures or other actions by the Federal in-season fishery manager. This would be a replacement of all current regulatory language for §__.27(e)(10)(I).

DISCUSSION

The proponent wants to convert the experimental community gillnet fishery into a permanent community gillnet fishery, and states that “the gillnet fishery is essential to provide for meaningful subsistence fishing opportunity.” The proponent is also requesting specific permit conditions instead of requiring an operational plan. The proponent states that the current reporting requirements are “undue and excessively burdensome, that the operational plan process is vulnerable to abuse, that there are currently unreasonable sanctions against subsistence users, and that the current practices of State and Federal managers is to give preference to sport and commercial users before subsistence users.” They also note that NTC represents the entire community of Ninilchik, and has put forth all of the effort to date to establish and run this fishery, and therefore should be designated in Federal regulation as the entity that coordinates the community gillnet fishery.

The proponent asserts that these changes would provide “more security that the residents of Ninilchik will actually have the opportunity for a gillnet fishery.” The proponent seeks to provide regulatory clarity, to provide reasonable choices to subsistence users, and to provide for the retention of all fish harvested in the gillnet, as is consistent with customary and traditional values and practices. The proponent verified the requests during a phone conversation that took place on June 9, 2016, and informed OSM that the requests could be dealt with individually or as a whole.

The community gillnet fishery for the Kasilof River, unlike the community gillnet fishery on the Kenai River, was designated as a 5-year “experimental fishery” when these fisheries were adopted by the Board in 2015.

Existing Federal Regulation

§__.27(e)(10) Cook Inlet Area.

(iv) You may take only salmon, trout, Dolly Varden, and other char under the authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56 and 5 AAC 57) unless modified herein. Additionally, for Federally managed waters of the Kasilof and Kenai River drainages:

(I) Residents of Ninilchik may harvest Sockeye, Chinook, Coho, and Pink salmon through an experimental community gillnet fishery in the Federal public waters of the upper mainstem of the Kasilof River from a Federal regulatory marker on the river below the outlet of Tustumena Lake downstream to the Tustumena Lake boat launch July 1-31. The experimental community gillnet fishery will expire 5 years after approval of the first operational plan.

(1) Only one community gillnet can be operated on the Kasilof River. The gillnet cannot be over 10 fathoms in length, and may not obstruct more than half of the river width with stationary fishing gear. Subsistence stationary gillnet gear may not be set within 200 feet of other subsistence stationary gear.

(2) One registration permit will be available and will be awarded by the Federal in-season fishery manager, in consultation with the Kenai National Wildlife Refuge manager, based on the merits of the operational plan. The registration permit will be issued to an organization that, as the community gillnet owner, will be responsible for its use in consultation with the Federal fishery manager. The experimental community gillnet will be subject to compliance with Kenai National Wildlife Refuge regulations and restrictions.

(i) Prior to the season, provide a written operational plan to the Federal fishery manager including a description of fishing method, mesh size requirements, fishing time and location, and how fish will be offered and distributed among households and residents of Ninilchik;

(ii) After the season, provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, persons or households operating the gear, hours of operation, and number of each species caught and retained or released.

(3) The gillnet owner (organization) may operate the net for subsistence purposes on behalf of residents of Ninilchik by requesting a subsistence fishing permit that:

(i) Identifies a person who will be responsible for fishing the gillnet;

(ii) Includes provisions for recording daily catches, the household to whom the catch was given, and other information determined to be necessary for effective resource management by the Federal fishery manager.

(4) Fishing for Sockeye, Chinook, Coho and Pink salmon will be closed by Federal Special Action prior to the operational plan end dates if the annual total harvest limits for any salmon species is reached or suspended.

(5) Salmon taken in the gillnet fishery will be included as part of dip net/rod and reel fishery

annual total harvest limits for the Kasilof River. All fish harvested must be reported to the in-season manager within 72 hours of leaving the fishing location.

(i) A portion of the total annual harvest limits for the Kasilof River will be allocated to the experimental community gillnet fishery.

(ii) The gillnet fishery will be closed once the allocation limit is reached.

(6) Salmon taken in the experimental community gillnet fishery will be included as part of the dip net/rod and reel fishery annual household limits for the Kasilof River.

(7) Residents of Ninilchik may retain other species incidentally caught in the Kasilof River. When the retention of rainbow/steelhead trout has been restricted under Federal subsistence regulations, the gillnet fishery will be closed.

(8) Before leaving the site, all harvested fish must be marked by removing their dorsal fin, and all retained fish must be recorded on the fishing permit.

(9) Failure to respond to reporting requirements or return the completed harvest permit by the due date listed on the permit may result in issuance of a violation notice and will make you ineligible to receive a subsistence permit during the following regulatory year.

Proposed Federal Regulation

§ ____.27(e)(10) Cook Inlet Area.

(iv) You may take only salmon, trout, Dolly Varden, and other char under the authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56 and 5 AAC 57) unless modified herein. Additionally, for Federally managed waters of the Kasilof and Kenai River drainages:

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~~(1) Only one community gillnet can be operated on the Kasilof River. The gillnet cannot be over 10 fathoms in length, and may not obstruct more than half of the river width with stationary fishing gear. Subsistence stationary gillnet gear may not be set within 200 feet of other subsistence stationary gear.~~

~~(2) One registration permit will be available and will be awarded by the Federal in-season fishery manager, in consultation with the Kenai National Wildlife Refuge manager, based on the merits of the operational plan. The registration permit will be issued to an organization that, as the community gillnet owner, will be responsible for its use in consultation with the Federal fishery manager. The experimental community gillnet will~~

~~be subject to compliance with Kenai National Wildlife Refuge regulations and restrictions.~~

~~(i) Prior to the season, provide a written operational plan to the Federal fishery manager including a description of fishing method, mesh size requirements, fishing time and location, and how fish will be offered and distributed among households and residents of Ninilchik;~~

~~(ii) After the season, provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, persons or households operating the gear, hours of operation, and number of each species caught and retained or released.~~

~~(3) The gillnet owner (organization) may operate the net for subsistence purposes on behalf of residents of Ninilchik by requesting a subsistence fishing permit that:~~

~~(i) Identifies a person who will be responsible for fishing the gillnet;~~

~~(ii) Includes provisions for recording daily catches, the household to whom the catch was given, and other information determined to be necessary for effective resource management by the Federal fishery manager.~~

~~(4) Fishing for Sockeye, Chinook, Coho and Pink salmon will be closed by Federal Special Action prior to the operational plan end dates if the annual total harvest limits for any salmon species is reached or suspended.~~

~~(5) Salmon taken in the gillnet fishery will be included as part of dip net/rod and reel fishery annual total harvest limits for the Kasilof River. All fish harvested must be reported to the in-season manager within 72 hours of leaving the fishing location.~~

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~~(8) Before leaving the site, all harvested fish must be marked by removing their dorsal fin, and all retained fish must be recorded on the fishing permit.~~

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§ __.27(e)(10)(I) The Ninilchik Traditional Council (NTC) may operate a community gillnet to provide for the subsistence uses of fish for the residents of Ninilchik. The community gillnet

may be operated in the Federal public waters of the upper mainstream of the Kasilof River from a Federal regulatory marker on the river below the outlet of Tustumena Lake downstream to the Tustumena Lake boat launch from May 1st – November 15th . The gillnet fishery shall target the harvest of Sockeye, Chinook, Coho, and Pink Salmon. Other non-salmon fish harvested by the gillnet may be retained.

(1) The Ninilchik Traditional Council shall provide notice to the Office of Subsistence Management no later than February 1st of its intent to operate a gillnet fishery. No later than April 1st, a subsistence gillnet permit will be issued by the Office of Subsistence Management in consultation with the Federal in-season fishery manager, the Kenai National Wildlife Refuge Manager, and the Ninilchik Traditional Council.

(2) The permit conditions shall include:

(i) Provisions that the gillnet may be not be over 10 fathoms in length, shall be constructed such that it is directed at harvesting Sockeye, Chinook, Coho, and Pink Salmon, may not obstruct more than half of the river width with stationary fishing gear, and may not be set within 200 feet of other subsistence stationary gear.

(ii) Identification of the person or persons who will be responsible for the overall operation of the gillnet as well as a means for identifying persons authorized to supervise members of the community engaged in fishing the net.

(iii) Provisions for recording daily catches, ensuring that removal of the dorsal fins of harvested fish, and identifying the Ninilchik households to whom the catch was distributed.

(iv) Provisions for NTC's reporting of all harvested fish within 72 hours of leaving the gillnet location.

(v) Identification of a collaborative process for making determinations about potential closures or other actions affecting the gillnet fishery through which NTC and the SCRAC are fully informed and consulted prior to the implementation of any such action.

(3) Salmon taken in the gillnet fishery will be included as part of dip net/rod and reel fishery annual total harvest limits for the Kasilof River.

Existing State Regulations

The Kenai Peninsula is a designated nonsubsistence use area by the State. As such, the State's subsistence priority does not apply on the Kenai Peninsula and the Alaska Board of Fisheries may not authorize subsistence fisheries in nonsubsistence areas. Under State regulations, personal use fisheries and educational fishery permits provide opportunities for harvesting fish with gear other than rod and reel in nonsubsistence areas. Management of Kasilof River fisheries is conducted through several fisheries management plans, as outlined in the Regulatory History section below.

Extent of Federal Public Water

Federal public waters are defined and described under 36 CFR 242.3 and 50 CFR100.3. For the Kasilof River, Federal public waters under consideration include all waters of the Kasilof River within and adjacent to the exterior boundaries of the Kenai National Wildlife Refuge (**Map 1**). This includes approximately the upper seven miles of the Kasilof River from the outlet of Tustumena Lake downstream to Silver Salmon Rapids. This proposal applies to the area within those waters from a Federal regulatory marker on the Kasilof River below the outlet of Tustumena Lake downstream to the Tustumena Lake boat launch.

Customary and Traditional Use Determinations

Residents of the community of Ninilchik have a customary and traditional use determination for all fish in the Kasilof River drainage.

Regulatory History

Pre- and Early Statehood Fisheries

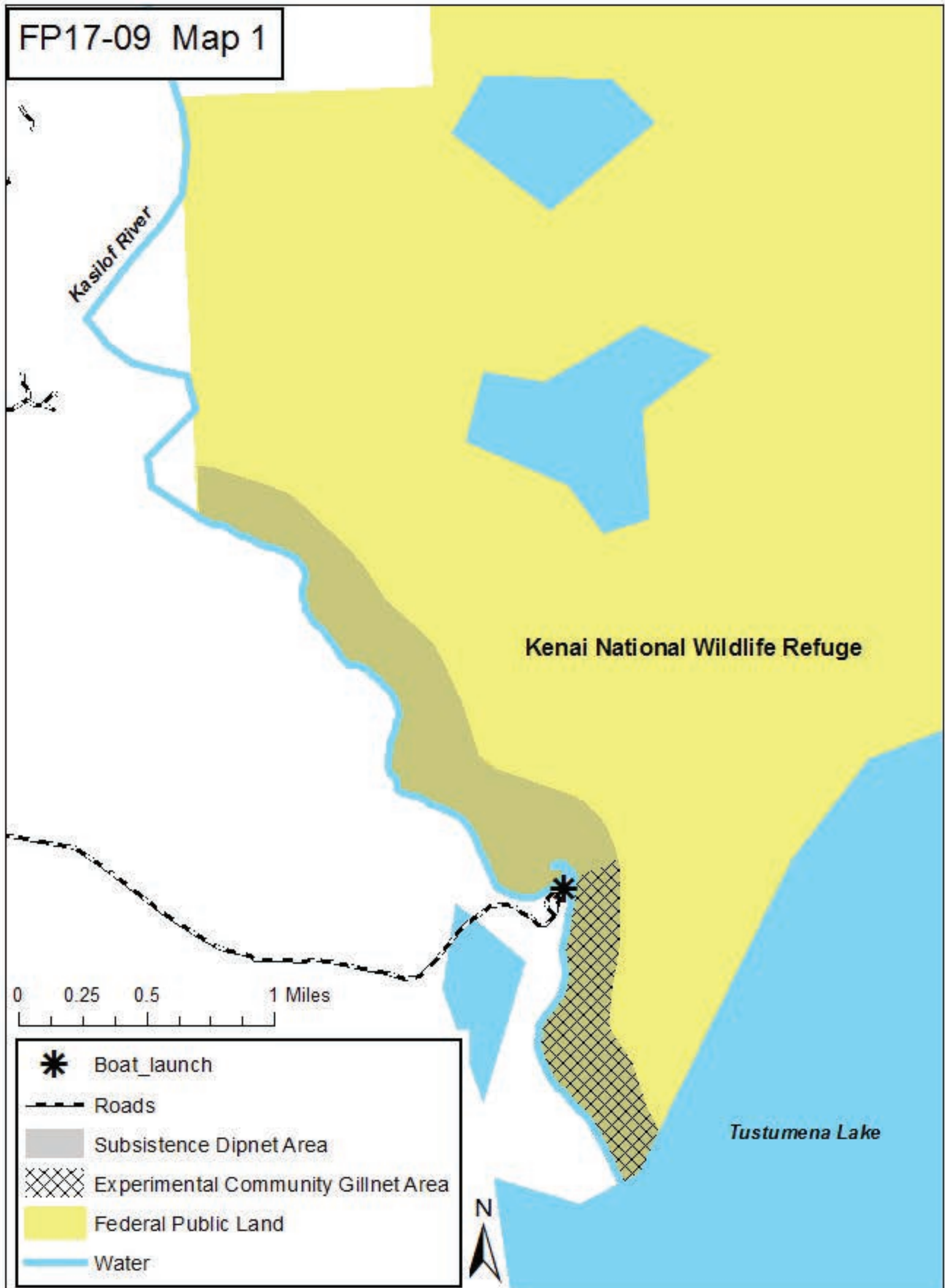
Prior to 1952, freshwater streams in the Kenai Peninsula were open to subsistence fishing, but poorly managed commercial fisheries, a growing local and territory-wide population, and increased user pressure decimated salmon runs. In 1952, as part of efforts to rebuild salmon runs, all streams and lakes of the Kenai Peninsula were closed to subsistence fishing under Territory of Alaska regulations. Only rod and reel fishing was allowed for “personal use” (Fall et al. 2004).

Contemporary State Fisheries

Overall, the State of Alaska manages commercial and sport salmon fisheries statewide based on the principles and criteria listed in the State’s Policy for the management of sustainable salmon fisheries, 5AAC 39.222 (**Appendix A**). A State regulatory management plan for Upper Cook Inlet salmon (5 AAC 21.363) provides the Alaska Board of Fisheries guiding principles and provisions for adopting management plans for specific stocks. In 1992, the State classified most of the Cook Inlet Area, including the Kenai and Kasilof River drainages, as a nonsubsistence area (5AAC 99.015(3)). The only State subsistence fisheries in Cook Inlet occur in areas that are not accessible from the road system, including the Tyonek, Windy Bay, Port Chatham, and Port Graham subdistricts, as well as portions of Seldovia Bay and the Yentna River drainage.

Commercial and sport fisheries are complex and intensively managed by the Alaska Department of Fish and Game (ADF&G). There are three main management plans that apply to Kenai and Kasilof river salmon stocks: Upper Cook Inlet Management Plan (5 AAC 21.363), Kenai River and Kasilof River Early-Run King Salmon Conservation Management Plan (5 AAC 57.160), and Kasilof River Salmon Management Plan (5 AAC 21.365). These plans provide goals for sustained yield, guidance for mixed-species and mixed-stock fisheries, and instructions for allocation between competing fisheries.

The ADF&G also has a regulatory management plan for Upper Cook Inlet personal use salmon fisheries (5



AAC 77.540). This plan established four personal use fisheries in Cook Inlet, including the Kenai River dip net fishery. Unlike subsistence fisheries, personal use fisheries do not have a priority over other existing uses. Personal use fisheries are open to all residents of Alaska, require a household permit and sport fishing license, and occur in marine and intertidal waters outside of Federal public lands. These fisheries target Sockeye Salmon, the species of greatest abundance and for which the best stock assessment information is available. Annual harvest limits are 25 salmon for the head of each household and 10 salmon for each additional household member. The limit is combined for all four fisheries. Incidentally caught Coho, Pink, and Chum Salmon may be retained as part of the annual limit. Each household is limited to one Chinook Salmon in the Kenai River dip net fishery.

Finally, the State administers up to twelve educational fisheries each year in the Cook Inlet area under the provisions of 5 AAC 93.200 – 93.235 (Nelson et al. 1999, Fall et al. 2004). Around half of these educational fisheries occur in marine waters at the mouths of Kenai Peninsula rivers. The purpose of educational fisheries is to allow groups to practice traditional, contemporary, or experimental methods for locating, harvesting, or processing fishery resources. Educational fisheries, unlike subsistence fisheries, do not have priority over other fisheries. Therefore, during times of resource shortages, educational fisheries may be restricted before or at the same time as commercial, sport, and personal use fisheries.

Educational fishery permits have been issued to five local groups in the Kenai/Kasilof/Ninilchik area: the Kasilof Regional Historical Association, the Kenaitze Indian Tribe, Ninilchik Emergency Services, Ninilchik Native Decedents, and Ninilchik Traditional Council (Nelson et al. 1999, Begich et al. 2013; Kerkvliet et al. 2013; Shields and Dupuis 2016). The Kenaitze Indian Tribe has participated in an educational fishery since 1989, and has established educational fisheries in the marine environment adjacent to the Kasilof, Kenai, and Swanson rivers, as well as limited fishing within the freshwaters of the Kenai and Swanson rivers. The Ninilchik Traditional Council has participated in an educational fishery since 1993 for the Ninilchik area fisheries and since 2007 for the Kasilof area fisheries. They are permitted to use two set gillnets in the marine waters near the mouth of the Ninilchik River (only 1 prior to June 22), one set gillnet in the marine waters near the mouth of the Kasilof River, and other traditional means in freshwaters of the Ninilchik River below the Sterling Highway bridge. In 1998, a group of NTC members formed a new organization called Ninilchik Native Decedents and the allocation was divided evenly between the two groups. They are permitted to use one set gillnet in the marine waters near the mouth of the Ninilchik River and other traditional means in freshwaters of the Ninilchik River below the Sterling Highway bridge. Ninilchik Emergency Services has participated in an educational fishery since 2003 in the Ninilchik area. They are permitted to use one set gillnet in the marine waters near the mouth of the Ninilchik River. The Kasilof Regional Historical Association has participated in an educational fishery since 2008, and is permitted a single set gillnet in the marine waters near the mouth of the Kasilof River. Permits for each group dictate total harvest, as well as specific limits for Chinook and Coho Salmon (**Table 1**).

Table 1. Harvest quota for each group, by species, and by location for Kasilof and Ninilchik River educational fisheries. Total quota is the number of all salmon species allowed for harvest, while Chinook and Coho Salmon quotas are specific limits for those species (Begich 2016a, pers. comm.; Kerkvliet 2016, pers. comm.).

Group	Total quota	Location(s)	Chinook quota	Coho quota
<i>Ninilchik Traditional Council</i>				
	2,800	Marine waters adjacent to the Kasilof River	100	300
		Marine waters near the Ninilchik River and freshwaters of the Ninilchik River below the Sterling Highway Bridge	100	200
<i>Ninilchik Native Descendants</i>				
	2,800	Marine waters adjacent to the Ninilchik River	50	150
<i>Ninilchik Emergency Services</i>				
	250	Marine waters adjacent to the Ninilchik River	25	50
<i>Kenaitze Indian Tribe</i>				
	10,000	Marine waters adjacent to the Kasilof River	-	500
		Marine waters adjacent to the Swanson River mouth and freshwaters of the Swanson River adjacent to the boat landing	25	200
		Marine waters adjacent to the Kenai River mouth and freshwaters of the Kenai River from one-quarter mile upstream of the Warren Ames Bridge downstream to the mouth	50	1,000
<i>Kasilof Regional Historical Assn.</i>				
	300	Marine waters adjacent to the Kasilof River	10	50

Federal Subsistence Fisheries in the Cook Inlet Area

In 2002, Federal subsistence regulations for harvest in the Cook Inlet Area were established for salmon, trout, and Dolly Varden. A Federal subsistence permit was required and seasons, harvest and possession limits, and methods and means for take were the same as those in Alaska sport fishing regulations. This fishery was established as an interim measure to provide some subsistence opportunity in the Cook Inlet Area for Federally qualified rural residents. Initially, there were no customary and traditional use determinations for salmon, trout and Dolly Varden in Cook Inlet; so all rural residents of Alaska could harvest under Federal regulations.

In January 2006, the Federal Subsistence Board made customary and traditional use determinations for Hope and Cooper Landing residents for all fish in the Kenai River Area, and for Ninilchik residents for all fish within the Kasilof River drainage within the Kenai National Wildlife Refuge. In November 2010, the Board made a customary and traditional use determination for Ninilchik residents for all fish in the Kenai River Area within the Kenai National Wildlife Refuge and the Chugach National Forest.

For the 2007 regulatory cycle, two additional steps were included in the usual analysis and review process for regulatory proposals; 1) the formation of a stakeholder subcommittee of the Southcentral Council, which met twice in Soldotna in February 2007, to review the analyses and suggest changes, and 2) a review by the NTC, the proponent of some of the proposals, to assess, and provide feedback on, the changes suggested by the subcommittee, and to suggest other changes. Both of these steps took place prior to the

Southcentral Council's March 2007 meeting. Several suggested changes which resulted from these extra steps, were incorporated into the analyses as modifications to the proposed regulations and presented to the Council and, ultimately, the Board (OSM 2007).

At the time, the Board typically held public meetings twice a year to make decisions on proposals to change Federal subsistence regulations throughout the State; once in the Spring (April or May) for wildlife regulations and once in the Winter (December or January) for fisheries proposals. In May 2007, the Board held a third public meeting solely to hear public testimony on, deliberate and make decisions for the Kenai Peninsula fisheries proposals of the 2007 regulatory cycle. The meeting lasted three days (FSB 2007a).

During its May 2007 meeting, the Board adopted proposals that established dip net/rod and reel salmon fisheries on the Kasilof and Kenai Rivers, increased previously established harvest, possession, and annual limits for salmon and selected resident species for existing Federal subsistence rod and reel fisheries on the Kasilof and Kenai River drainages, and allowed use of up to two single or treble hooks and bait for rod and reel fishing during specified dates for both systems (proposal FP07-27). Sockeye Salmon annual harvest limits were set at 4,000 fish, with an annual household limit of 25 for each permit holder, and an additional 5 per each household member. Chinook, Coho, and Pink salmon annual harvest limits were each set at 500 fish, with an annual household limit of 10 for each permit holder, and an additional 2 per each household member. Also during the May 2007 meeting, the Board adopted Proposal FP07-27D to establish a winter season subsistence fishery at Tustumena Lake with jigging through the ice and gillnets fished under the ice for lake trout, rainbow trout and Dolly Varden/Arctic char (proposal FP07-30).

Additionally, during the 2007 regulatory cycle, there were several proposals that included requests for the use of gillnets in the Kenai River drainage. These included Proposals FP07-27B and C (by NTC) and FP07-29 (by Mr. Robert Gibson of Cooper Landing). FP07-27B and C requested a community set gillnet fishery for Chinook, Sockeye, and Pink Salmon in the Kasilof and Kenai Rivers and a community set gillnet fishery for Coho Salmon in the Kenai River. FP07-29 requested that gillnets with different mesh sizes be used to harvest Sockeye Salmon, Coho Salmon, Pink Salmon, Rainbow Trout, Dolly Varden, Lake Trout, and whitefish species in several lakes in the Kenai River drainage. The recommendation of the Southcentral Council was to move forward with only the dip net and rod and reel salmon fisheries described above. Justification for this recommendation was that a dip net fishery at Moose Range Meadows provides additional subsistence opportunity and that limiting this fishery to dip nets from boats addresses habitat and private property concerns in this area. The Southcentral Council also stated that allowing incidental harvest of Rainbow Trout and Dolly Varden/Arctic Char less than 18 inches in dip net fisheries below Skilak Lake is consistent with conservation practices and provides a reasonable alternative to expanded harvest opportunity in the rod and reel fishery. Lastly, the Southcentral Council stated that providing up to two baited hooks in the rod and reel fishery below Skilak Lake from January 1 to August 31 provides an additional opportunity for Chinook and Coho Salmon, and is consistent with conservation practices for these species.

During the 2008 cycle, the Southcentral Council submitted Proposal FP08-09 to establish a temporary community fish wheel on both the Kenai and Kasilof Rivers for residents of Ninilchik, Hope, and Cooper Landing. The Council contended that the fish wheels would provide a more effective means for Federally

qualified subsistence users to harvest salmon. The Council requested the establishment of fish wheels as a gear type be temporary to evaluate the feasibility of operating this type of gear. The Board, at its December 2007 meeting, adopted the proposal, with modification, to allow fish wheels to be classified as a gear type, but only in the Kasilof River. The Board felt that there were too many logistical issues to be dealt with on the Kenai River, especially with three communities having the possibility of running a single fish wheel. The Board specified that only one fish wheel with a live box would be allowed in the upper mainstem of the Kasilof River. A permit would be required to use the fish wheel and that an operational plan must be submitted to and approved by the Federal in-season manager, before the permit would be awarded. Individuals operating the fish wheel would need to have a Federal subsistence fishing permit and all harvest limits on the permit would apply to the fish wheel. Salmon harvested by the fish wheel were included as part of each household's annual limit and all fish harvested were to be reported to the in-season manager with 72 hours of leaving the fishing location (FSB 2007b). The Board, at its January 2013 meeting, supported FP13-15 to remove the expiration date for the community fish wheel salmon fishery on the Kasilof River allowing continued operation of the fish wheel (FSB 2013).

For the 2015 regulatory cycle, NTC submitted Proposal FP15-11 to establish a community gillnet fishery on the Kasilof River. They contended that previous efforts to establish a meaningful subsistence fishery had been unsuccessful, and that good faith efforts had been made to attempt to use the fish wheel. They requested a single community net to avoid the proliferation of nets and decrease conservation concerns, and suggested an operational plan similar to what had been done with the fish wheel. The Council unanimously supported the proposal and stated that the U.S. Fish and Wildlife Service (USFWS) conservation concerns could be addressed in the operational plan.

Although the USFWS had numerous concerns with implementing this fishery with a non-selective gear type that has the potential to harvest large numbers of fish in relatively short periods of time, they supported initiating the experimental fishery based on their assessment that the Service's three primary concerns associated with gillnet use in the Kasilof River could be addressed (Anderson 2016, pers. comm.). These concerns are: 1) fishing a gillnet in a known spawning area for Steelhead; 2) potential for take of Steelhead and late-run Chinook Salmon, which are in low abundance in the watershed and cannot sustain much harvest; and 3) establishing a fishery that conflicts with existing Federal subsistence regulations, which prohibit the harvest of Steelhead after August 15. USFWS staff recommendations for modifying Proposal FP15-11 to address these primary concerns included establishing time and area restrictions for the fishery to avoid fishing in important salmon spawning areas and the harvest of spawning fish and restricting gillnet use to a period of time when Steelhead are not present in the system. USFWS supported the modified fishery as all fish captured in the experimental gillnet fishery, regardless of species or size, would be legal to harvest under Federal subsistence regulations. The Board adopted FP15-11 at its January 2015 meeting with modification as developed and offered by the USFWS, to provide for a harvest opportunity for the residents of Ninilchik. These modifications included (but were not limited to) an expiration date five years from the approval of the operational plan and a season of Jul. 1 to Jul. 31. This timing window provided conservation for both Steelhead kelts (fish that have spawned and are returning to the marine environment), which leave the river by late June, and late-run Chinook Salmon, which start entering the system towards the end of July. The first operational plan was approved on July 13, 2015 and fishing commenced that same day.

The 2016 operational plan was approved and signed by all parties on June 10, 2016, with no substantial changes from the 2015 plan. The fishery was operational between July 1 and 31, 2016.

Current Events

For 2016, anticipated poor early-run Chinook Salmon returns to the Kasilof River resulted in restrictions to the Chinook Salmon sport fishery by ADF&G. Between May 1 and June 30, 2016, sport fishing for early-run Chinook Salmon in the Kasilof River was restricted to only allow harvest of naturally produced Chinook Salmon on Tuesdays and Saturdays, with retention of hatchery produced Chinook Salmon on all days of the week, and a bag limit of two fish (Begich 2016b). Any naturally produced Chinook Salmon caught incidentally while fishing on non-retention days could not be removed from the water and had to be released immediately. Kasilof River early-run Chinook Salmon had been in a period of low productivity between 2009 and 2015, but monitoring indicated that the 2016 run may be progressing from low to more average production levels. These fish, however, return primarily to Crooked Creek in the lower Kasilof River drainage and were thus not available for harvest by Federal subsistence users.

The 2016 Kasilof River experimental community gillnet fishery was conducted between July 3 and July 27.

Biological Background and Harvest History

Sockeye Salmon

Sockeye Salmon are the most abundant salmon species in the Kasilof River drainage, and the State's Kasilof River Salmon Management Plan (5 AAC 21.365) establishes the current escapement objectives (160,000-340,000 fish) and provides guidelines for the management of fisheries harvesting this run. Kasilof River Sockeye Salmon are harvested in large numbers in mixed-stock commercial salmon fisheries in Cook Inlet (Shields and Dupuis 2016). The Upper Cook Inlet commercial Sockeye Salmon harvest has ranged from 2,045,794 to 5,277,995 Sockeye Salmon during 2005–2014, with a 10-year average harvest of 3,144,107 fish. The sport fishery harvest in the mainstem Kasilof River has ranged from 3,693 to 7,834 Sockeye Salmon during 2004–2013, with a 10-year average harvest of 6,203 fish. Sport fishing for Sockeye Salmon is not permitted within Tustumena Lake or its tributaries. The personal use gillnet and dip net fisheries harvests of Kasilof River salmon have ranged from 58,236 to 116,567 fish during 2006–2015, with a 10-year average harvest of 90,633 fish. Educational fisheries harvests ranged from 12 to 300 fish during the years 2002-2013, with an average harvest of 82 (Begich et al. 2013). In 2015, the Kasilof River escapement was estimated at 470,667 Sockeye Salmon, which exceeded the optimal escapement goal range of 160,000 – 340,000 fish.

Chinook Salmon

The Kasilof River supports both early and late runs of Chinook Salmon. Early-run Chinook Salmon, including the hatchery-produced component, spawn in Crooked Creek during late May and June. Only the headwaters of Crooked Creek lie within the Kenai National Wildlife Refuge, so early-run Chinook Salmon are not generally available for harvest in Federal public waters. Late-run Chinook Salmon spawn in the upper mainstem Kasilof River, including the outlet of Tustumena Lake, during August and September

(Reimer and Fleishman 2012), making them available for harvest by Federally qualified subsistence users.

Mark-recapture experiments were conducted during the 2005-2008 seasons for late-run Kasilof River Chinook Salmon. Probability distributions for estimated abundance indicate the 2006-2008 in-river returns were most likely near 10,000 wild, age 2+ fish (Reimer and Fleishman 2012). The 2005 estimate is considerably less certain although very likely larger than 2006, 2007 or 2008. The largest age class was 4 ocean fish in 2006 and 2007 and 3 ocean fish in 2008 (Reimer and Fleishman 2012).

The spawning distribution of late-run Kasilof River Chinook Salmon was first studied with radio tags in 1987 (Faurot and Jones 1990). Significant spawning areas included Crooked Creek and three areas of the Kasilof River mainstem: near the mouth of Crooked Creek at river mile (RM) 6.9, upstream of the Sterling Highway bridge between RM 9 and 12, and within the Kenai National Wildlife Refuge area between RM15 and 18). Results from radio tags deployed in 2005-2008 identified the same general spawning areas that were identified in the 1987 study. The 2005-2008 data suggests that the upper river area within the Kenai National Wildlife Refuge is utilized by spawning fish that are present starting in late August (Reimer and Fleishman 2012). Specific spawning locations identified by both surveys in the mainstem Kasilof River extended to just downstream of the Tustumena Lake boat ramp.

The early-run supports the larger recreational fishery. The State's Kenai River and Kasilof River Early-Run King Salmon Conservation Management Plan (5 AAC 56-070) established escapement objectives and guidelines for the management of fisheries harvesting this run. No management plan exists for Kasilof River late-run Chinook Salmon. The late-run Kasilof River Chinook Salmon comprise a wild stock and abundance and run timing of the population is unknown (Reimer and Fleishman 2012). Sport fishing for Chinook Salmon occurs on the mainstem Kasilof River, is focused on the enhanced early run of Crooked Creek Chinook Salmon, which can be identified by an adipose fin clip, and is not allowed above the Sterling Highway Bridge after 30 June. Sport fish harvest of wild Chinook Salmon (with an adipose fin), above the bridge prior to July 1, is restricted to Tuesdays, Thursday and Saturdays by regulation.

The 2012 Chinook Salmon sport harvest for the Kasilof River was 927 fish. The total (early- and late-run) sport fishery harvest has ranged between 927 and 4,234 fish during the years 2003–2012, with an average harvest of 3,224 fish (Begich et al. 2013). Estimates of the number of late-run Chinook Salmon within harvests from 2003–2012 range from 55 to 2,164, with an average harvest of 1,116.

There are also personal use and educational fisheries that harvest Kasilof River Chinook Salmon. The 2015 personal use fishery harvest in the Kasilof River was 61 fish (Shields and Dupuis 2016). Harvests from the personal use gillnet and dip net fishery, which is directed at Kasilof River Sockeye Salmon, have ranged from 50 to 378 fish during the years 2006–2015, with an average harvest of 173 fish. Educational fisheries harvests have ranged between 2 to 16 fish during the years 2002–2013, with an average harvest over that span of 6 fish (Begich et al. 2013).

Lastly, Chinook Salmon are harvested during mixed-stock commercial salmon fisheries in the upper Cook Inlet. The 2015 upper Cook Inlet harvest of 10,798 fish was the seventeenth smallest since 1966 (Shields and Dupuis 2016) and was 9% less than the previous 10-year (2005-2014) average annual harvest of 11,914 fish. The moderate decline in Chinook Salmon harvest during the 2015 season was likely caused by a

decreased abundance of Chinook Salmon in the Upper Cook Inlet area and subsequent restrictions placed on the commercial fisheries for Chinook Salmon conservation.

Coho Salmon

Coho Salmon are likely the second most abundant salmon species in the Kasilof River drainage. Radio-telemetry experiments during the 2007-2009 seasons found the upper mainstem to be an important spawning area (Gates et al. 2010). Of those tagged fish that were assigned to a spawning location, the majority were found to be spawning in the mainstem Kasilof River above RM 15 and downstream of the Tustumena Lake boat ramp, while others spawned in Tustumena Lake tributaries, the mainstem Kasilof River below RM 15, or in lower river tributaries. Although Coho Salmon return to the drainage as early as late-July, radio-tagging occurred between mid-August and mid-October when the bulk of the run was in the river. Nearly all tributary spawners were tagged by the second week of September, while the majority of mainstem spawners were tagged after mid-September. Several of the comparatively small lake tributary populations appear to comprise the majority of the early portion of the run, which would make them susceptible to overexploitation in fisheries that target the early component of the run (Bromaghin et al. 2010). However, these results are based on observations from a single year.

Coho Salmon are harvested during mixed-stock commercial salmon fisheries in Cook Inlet. Total annual harvest within these fisheries is usually hundreds of thousands of Coho Salmon. The contribution of Kasilof River Coho Salmon to these harvests is not known. The sport fishery harvest in the mainstem Kasilof River ranged from 1,740 to 4,217 fish during the years 2003–2013, with an average harvest of 3,158 fish (Begich et al. 2013). The sport fishery harvest in Tustumena Lake is much less and has ranged from 0 to 338 fish during this same time period, with an average harvest of 96 fish. Kasilof area educational fisheries harvests have ranged from 0 to 45 fish during 2002-2013, with an average harvest of 20 fish.

Steelhead

The Kasilof River supports a small fall-run population of Steelhead. These fish enter freshwater in the fall to overwinter, spawn in the spring, and emigrate back to the marine environment following spawning (Gates 2009). The majority of overwintering, which occurs between December and March, takes place in the mainstem Kasilof at the outlet to Tustumena Lake, in the lake, and in the mainstem from Crooked Creek to the outlet, in that order (Gates and Boersma 2010). Spawning locations include the mainstem Kasilof River, Kasilof River tributaries, and tributaries to Tustumena Lake. Spawn timing is between late April and late June, and takes place in the mainstem Kasilof River, tributaries of the Kasilof River, and tributaries to Tustumena Lake. Post-spawn kelt emigration occurs between early May and late June. The 2008 and 2009 tagging studies conducted by Gates and Boersma (2010) indicate that while these fish are present throughout the mainstem from RM 5 of the Kasilof River all the way to Tustumena Lake in April, they have generally departed the upper river area by May, and are concentrated downstream of RM 16 in June.

The Kasilof River Steelhead run is primarily targeted by sport fishermen. This run was enhanced by ADF&G to provide additional angling opportunity between the early 1980's and 1996 (Begich et al. 2013), and the 1993 harvest exceeded 2,000 fish (Mills 1994). Present catch and harvest is supported by natural populations. Contemporary sport fishing harvest estimates, as provided from the Alaska Sport Fishing

Survey Database (2016), range between 0 and 111 for the years 2005-2014, with an average harvest of 26 fish per year. Federal subsistence harvest of Steelhead is prohibited after August 15.

Federal Subsistence Harvest

Rural residents of Ninilchik have been allowed to harvest fish in the Kasilof River drainage in Federal public waters under Federal subsistence regulations since 2007, and only residents of Ninilchik may harvest salmon from this drainage under Federal subsistence fishing regulations. Residents of Ninilchik have an annual Sockeye Salmon harvest limit of 4,000 fish, with an annual household limit of 25 for each permit holder and an additional 5 per each additional household member. Chinook, Coho, and Pink salmon annual harvest limits are each set at 500 fish, with an annual household limit of 10 of each species for each permit holder and an additional 2 of each species for each additional household member. Up to 200 Rainbow/Steelhead trout may also be harvested through August 15. These harvest limits cover fish harvested from the Kasilof River drainage, and the fishery will be closed by Federal special action if an annual total harvest limit for a species is reached. From the inception of the Kasilof River Federal Subsistence Fisheries over 99% of the total harvest has been composed of Sockeye Salmon. Two Chinook Salmon were harvested by dip net in 2008, and another two were harvested in 2015 by rod and reel (USFWS 2008, 2015). For the period of 2007 through 2015 the total harvest of Sockeye Salmon has ranged from 1 to 288 fish (**Table 2**).

Table 2. Total harvests of Sockeye Salmon by the community of Ninilchik through the Kasilof River Federal subsistence fisheries (USFWS 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015).

Subsistence Fishery	Year									
	2007	2008	2009	2010	2011	2012	2013	2014	2015	
Dip Net Fisheries	30	108	7	40	1	24	107	45	65	
Rod/Reel and Fishwheel Fisheries	0	0	0	0	0	0	0	0	0	
Experimental Gillnet Fishery	-	-	-	-	-	-	-	-	223	
Total	30	108	7	40	1	24	107	45	288	

In 2015, the first year of the experimental community gillnet fishery took place in Federal public waters of the Kasilof River by residents of the community of Ninilchik (Ninilchik Traditional Council 2015). The fishery was initiated on July 13 and concluded on July 31. Designated fishers pulled the net at 30 minute (or less) intervals to remove fish and clean debris. Captured fish were placed into a plastic mesh recovery box for identification and data recording. Harvested fish were marked, while non-target fish were released alive when possible. Fish were distributed on a first-come first-served system that allowed Federally qualified users to sign up as an interested subsistence permit holder, at which time they informed the fisher of the number of fish they wanted to receive and provided their Federal permit. When an allocation was filled, the next person on the list was contacted to see if they wanted to receive fish. The net was fished for 15 of the 19 days during the permitted period, for a total of 62.4 hours (4.16 hours average per day fishing). A total of 15 Federally qualified users signed up and received 223 Sockeye Salmon out of the total household limit of 465 permitted fish that they were allowed (based on allocation of 25 per household plus an additional 5 fish per each additional household member). One incidentally caught Lake Trout was retained. Additionally, 22 Sockeye Salmon, 15 Pink Salmon, and 1 Dolly Varden were released. There were no incidentally captured Steelhead or Chinook Salmon during the 2015 experimental community

gillnet fishery.

A second year of the experimental community gillnet fishery took place in 2016. The fishery conducted between July 3 and July 27. Preliminary results of the fishery show the Ninilchik community had caught 95 Sockeye Salmon and 1 Chinook Salmon, while harvesting 93 Sockeye Salmon and 1 Chinook Salmon. No Rainbow Trout or Steelhead were caught, harvested, or released during the experimental community gillnet fishery.

Cultural Knowledge and Traditional Practices

The Ninilchik community is comprised of two census-designated places (CDPs): Ninilchik and Happy Valley. ADF&G subsistence use studies conducted in 2002–03 on Ninilchik included Ninilchik and Happy Valley CDPs (Fall et al. 2004). Thus, when reference is made to Ninilchik in this analysis, it includes people living in the Ninilchik CDP as well as the Happy Valley CDP. In the 2010 U.S. Census, Ninilchik CDP had 883 year-round, permanent residents and Happy Valley had 593 year-round permanent residents (U.S. Census 2010); thus the total population for the two CDPs from the last census is 1,476.

The Ninilchik tribal government (which is the NTC) is the only local government in the Ninilchik area. There is no local municipal government, although Ninilchik is part of the Kenai Peninsula Borough. The community of Ninilchik is similar to road-connected rural portions of the Copper River Basin where the local governments of communities are tribal, not municipal (Stratton and Georgette 1984).

The community of Ninilchik is within the traditional territory of the Dena'ina Athabaskans, which dates to around 1000 A.D. The area extends from Kachemak Bay on the Kenai Peninsula, west across Cook Inlet to the Stony River and northeast to the Susitna Basin. Borders are shared with the traditional territory of the Sugpiaq (Alutiiq) which includes the southern portion of the Kenai Peninsula, bridging the Sugpiaq territories of Prince William Sound with Kodiak Island and the Alaska Peninsula (de Laguna 1934, Krauss 1982, Stanek 1980).

Non-Native settlement of the Kenai Peninsula began in the 18th century with the Russians and the fur trade, and later mining efforts in Kachemak Bay. At the end of the 19th century, commercial fishing brought about new settlements, such as the herring saltery at Seldovia in 1896. The next major non-Native settlement period began during the Gold Rush era at the end of the 19th century. With the construction of roads and local oil development in the 1950's, the population of the Kenai Peninsula increased substantially through in-migration of people born outside Alaska.

From the early 1900's, the annual subsistence pattern of the *Dena'ina* included commercial fishing in the spring and summer at the mouth of the Kenai River before moving up-river in the fall to harvest Coho Salmon and freshwater fish, hunt moose, and trap furbearers. This cycle continued until the 1940s when the creation of the Kenai National Moose Range disrupted traditional harvest patterns. Despite new federal refuge enforcement efforts, many *Dena'ina* continued to access their Stepanka camps; long used settlements up the Kenai River near the outlet of Skilak Lake (Fall et al. 2004:16–20).

Subsistence fishing in the freshwaters of the Kenai Peninsula was prohibited from 1952 until the Federal Subsistence Board created a subsistence fishery in 2002 which mirrored the State sport fishing regulations.

Since statehood, legal availability of fishery resources in Federal public waters has been defined by State sport fishing regulations, and these regulations do not provide for harvest of all species or harvest by traditional methods and means. In this area, preferred traditional methods and means include nets, an efficient method and means of harvest for subsistence users who traditionally harvest as much fish as they can process at once. Rod and reel is considered a traditional subsistence gear type under Federal subsistence regulations and under State regulations in some parts of the state. In some cases under State regulations, rod and reel has been recognized as traditional gear in places where fish fences or traps are no longer a legal means to harvest fish and rod and reel is the only legal alternative (Williams et al. 2005:31–32). Georgette (1983:185) noted that some Ninilchik residents said they have never learned to fish successfully with a rod and reel and that fishing with a rod and reel consumes too much of their time.

In 1952, gillnets were made illegal in many freshwaters, and the Kenai Peninsula *Dena'ina* ceased using gillnets during their fall occupation of their upriver harvest sites. The Stepanka fishery, that had been a traditional, long-standing source of salmon for the Dena'ina (Kenaitze) Indians, was closed. As a result of this closure, snagging became the primary harvest method until it was made illegal in 1973. Local residents turned to sport fishing without snagging, and continued to fish the beaches of Cook Inlet with gillnets in the State subsistence fishery. In the 1970's, sport fishing had grown and the Kenai had become a favorite spot for sport fishing. The Kenai Peninsula is unique in that rural communities are interspersed among much larger nonrural communities. By the early 1980's, the Alaska Board of Fisheries added more restrictions on subsistence and personal use fishing along the Cook Inlet beaches, closing beaches to subsistence gillnetting. By the mid-1990s, only two personal use fisheries remained at the mouth of the Kenai and Kasilof rivers (Fall et al. 2004:22–23; 30).

Regulations relating to areas, seasons, and methods have changed consistently over the past 54 years and become more restrictive. The changing regulations have affected access by Ninilchik residents to fish resources over time and have encouraged multiple approaches to obtaining subsistence resources. For example, in the case of salmon, as regulations and conditions have changed, residents have adapted their traditional practices to continue to obtain salmon—trade it, buy it, or harvest it in new ways under various regulatory regimes (Georgette 1983:186–187). In 1993, ten years after the above cited-report was written, a State judge ordered the development of educational fisheries for the NTC, the Knik Tribal Council, the Native Village of Eklutna and the Kenaitze Tribe (Loshbaugh 1993:1, 14). These fisheries were established as the result of lawsuit filed by the Kenaitze Tribe. The educational fishery provided another means for residents of Ninilchik to harvest salmon using gillnets. The educational permits, however, were a compromise: “Villagers—who have traditionally focused on early-run king salmon will be catching mostly reds under the proposed permit” (Loshbaugh 1993:14).

Alternative for Consideration

As currently written, Federal subsistence regulations for the Kenai and Kasilof rivers are confusing and at times contradictory. The Board may want to consider directing OSM to submit a regulatory proposal to review and revise the Cook Inlet subsistence fisheries regulatory section (§___.27(e)(10)(iv)) during the next fisheries regulatory cycle to clarify and simplify regulatory language in an effort to resolve unnecessary complexities and inconsistencies between the regulations for both rivers.

Effects of the Proposal

There are seven separate components to Fisheries Proposal FP17-09. All requested changes are to section §__.27(e)(10)(iv)(I), which authorizes the Kasilof River experimental community gillnet fishery. The request is for a complete rewrite of this regulatory section. If adopted, the following effects may occur:

- The community gillnet would be authorized as a permanent fishery in regulation rather than a five year experimental fishery.
- The fishing season would expand from the current July 1 to July 31 dates to a new May 1 to November 15 season.
- The operational plan requirement would be replaced with standard permit conditions.
- The primary USFWS contact (and issuer of the community gillnet permit) would switch from the Federal in-season manager to OSM.
- NTC would become the only organization authorized in Federal subsistence regulation to coordinate this fishery.
- The annual post season reporting requirement for the fishery would be removed.
- A collaborative process would be established to inform and consult with NTC and the Council prior to potential closures or other Federal actions.

The community gillnet would be authorized as permanent in regulation rather than a five year experimental fishery. Adopting this proposal as written would provide the residents of Ninilchik with a permanent gillnet fishery on the Kasilof River. It would also shorten the experimental period previously authorized by the Board preventing further opportunities for assessment and review.

The alterations of dates for the fishing season would expand from the current July 1 to 31 dates to a new May 1 to November 15 season. This would create a higher probability of harvest in general and harvest of fish species other than Sockeye Salmon. This would provide additional subsistence harvest opportunity for Federally qualified subsistence users from the community of Ninilchik. The expanded season would also increase the potential harvest of spawning Steelhead and outmigrating kelts during the time period prior to July 1, and late-run Chinook Salmon in the time period after July 31; both of which are currently species of concern for Federal and State managers. The requested time period also conflicts with regulations that prohibit the retention of Steelhead after August 15.

The operational plan requirement for the fishery would be replaced with standard permit conditions. The operational plan describes how fishing time and fish will be offered and distributed among households and residents of Ninilchik. Replacing this requirement with static permit conditions would reduce the burden on the proponent prior to, during, and following the fishery each year. However, the removal of the operational plan requirement would decrease the ability of the Federal in-season manager to make annual

adjustments to the fishery as necessary, based on the prior years' harvest. The Federal in-season manager's delegated authority would still allow for issuance of emergency special actions to: open and close Federal subsistence fishing periods or areas provided under codified regulations; specify methods and means; specify permit requirements; set harvest and possession limits; and close and re-open Federal waters to non-subsistence fishing. Removal of the operational plan could also limit the ability to address issues with distribution of harvested fish in the community, should any arise. Additionally, this change would substantially decrease the interaction between the proponent and the Federal in-season manager.

The primary USFWS contact (and issuer of the community gillnet permit) would switch from the Federal in-season manager to OSM. The proponent was contacted to clarify the proposed requests, and confirmed that the request was to switch the primary contact from the in-season manager to OSM. If approved, the Federal Subsistence Board would take over the responsibilities of the Federal in-season manager by rescinding the current delegation of authority. The Board delegates its authority to agency field officials so that decisions can be more responsive and timely for Federally qualified subsistence users in real time situations and to address conservation and safety concerns at a local level. By no longer requiring the Federal in-season manager to issue the community gillnet permit, the interaction between the proponent and the Federal in-season manager would be diminished. Under this scenario, necessary management actions warranted during the fishery would have to go through the Federal Subsistence Management Program's special action request process. Although the special action request process is responsive, in-season fishery management in Alaska may require a more immediate response to protect continued viability of fish populations, to continue subsistence uses, or for issues of public safety. It often takes several weeks to process a special action request. OSM was established to support the Board and its decisions. OSM is not responsible for the management of Federal lands, nor is it identified in ANILCA Title VIII or the Environmental Impact Statement for the Subsistence Management for Federal Public Lands in Alaska as a decision making entity within the Federal Subsistence Management Program.

NTC would become the only organization authorized in Federal subsistence regulation to coordinate this fishery. Ninilchik is the largest rural community on the Kenai Peninsula and has a population of 1,476 people, within 682 households, where 16.2% of its population is Alaska Native (U.S. Census Bureau 2010). As a Federally-recognized tribe, NTC may not be representative of all residents of this relatively diverse community. Currently, three different organizations in Ninilchik (NTC, Ninilchik Native Descendants, and Ninilchik Emergency Services) are permitted by ADF&G to conduct educational fisheries. Authorizing NTC as the only organization allowed to coordinate a community gillnet fishery may discourage Federally-qualified users in the community that are not associated with NTC from participating in this subsistence opportunity. However, NTC has used this approach to operate this fishery for the past two seasons and the Kenai River community gillnet fishery for a portion of the 2016 season.

The annual post season reporting requirement for the fishery would be removed. The proponent states that this requirement is "undue and excessively burdensome" and that it is "not required by other fisheries". The report provides the persons or households operating the gear, hours of operation, and number of each species caught and retained or released. Removing this requirement would decrease the burden on the proponent during and following each fishing season. This information is used to assess the various aspects of the fishery and inform management decisions, and removal of this requirement would make those tasks

more challenging for the Federal in-season manager. This type of information also helps identify data gaps and priority information needs for future research.

A collaborative process would be established to inform and consult with NTC and the Council prior to potential closures or other Federal actions. The creation of a collaborative decision making process prior to initiating actions on the fishery would give the proponent and the Council a greater influence over management than they currently have. In an effort to ensure that in-season management decisions are communicated broadly and fairly, the delegation of authority letter from the Federal Subsistence Board to the Federal in-season manager (**Appendices B and C**) requires that “The Project Leader (Federal in-season manager) will ... notify/consult with local ADF&G managers, Regional Advisory Council members, and other affected Federal conservation unit managers concerning special actions being considered.” Through the delegation of authority, it is the intent of the Board that subsistence management by Federal officials be coordinated with the ADF&G and involves Regional Advisory Council representatives to conserve healthy fish and wildlife populations while providing for subsistence uses. However, due to statutory constraints outlined in the Federal Advisory Committee Act (FACA) that dictates the requirements necessary to convene a Council meeting, which would be needed for the Council to make a recommendation regarding the fishery, the timeframe required would likely render the Council’s involvement ineffective, as in-season management decisions are responsive to real-time conservation and safety concerns, and Council meetings require publication in the Federal Register (a time-consuming effort). Each letter of delegation explicitly stipulates criteria for the review of proposed special actions, guidelines for delegation, and reporting requirements. The Board strives to have complete adherence to these delegation requirements and works throughout the year to maintain relationships and open communications with relevant Councils, agencies, and departments. In addition, the Federal Subsistence Board’s *Government-to-Government Tribal Consultation Policy* already requires government to government consultation with Federally recognized tribes that may be affected by management actions, and the Ninilchik Traditional Council is a Federally recognized tribe. However, in-season management actions are exempted from this policy.

If the proposal is not adopted, the experimental community gillnet fishery would continue for the full five years as originally adopted by the Board in 2015 and stipulated in Federal subsistence regulations.

OSM PRELIMINARY RECOMMENDATIONS

Overview

The proponent submitted Proposal FP17-09 asking the Board to address the following issues:

Issue 1

The proponent requests the Board remove the experimental condition of the Kasilof River community fishery to make it permanent.

Points to Consider:

1. The Board specifically adopted a five-year timeframe for this experimental community gillnet

fishery.

2. The removal of the experimental condition of this community fishery would preclude the review timeline that the Board already agreed upon.
3. Currently, only one partial and one full season for this new fishery have been implemented.

OSM Recommendation: Oppose. The quantity of information provided by this fishery to date does not provide enough data as a basis to remove the experimental nature of the gillnet fishery.

Issue 2

The proponent requests the Board expand the annual duration of the fishery to May 1 through November 15, from the current July 1 to 31.

Points to Consider:

1. The requested expanded timeframe of May 1 through November 15 would create a higher probability of capturing the small stock of Steelhead during their spawning period in the spring, during their emigration period in the spring, and during their immigration period in the fall.
2. The requested expanded timeframe of May 1 through November 15 would increase the probability of fishing a gillnet in a known spawning area for Coho Salmon.
3. The requested expanded timeframe of May 1 through November 15 would increase the probability of establishing a fishery that conflicts with existing Federal subsistence regulations (harvest of Steelhead prohibited after August 15).

OSM Recommendation: Support with Modification to expand the fishery to match the current dates allowed for Chinook and Sockeye Salmon under the Kasilof River Dip Net/Fish Wheel/Rod and Reel fishery in this same location, from June 16 to August 15.

Suggested regulatory language would read:

*(I) Residents of Ninilchik may harvest Sockeye, Chinook, Coho, and Pink salmon through an experimental community gillnet fishery in the Federal public waters of the upper mainstem of the Kasilof River from a Federal regulatory marker on the river below the outlet of Tustumena Lake downstream to the Tustumena Lake boat launch ~~July 1-31~~ **from June 16 through August 15.** The experimental community gillnet fishery will expire 5 years after approval of the first operational plan.*

Issue 3

The proponent requests the Board replace the operational plan requirement of the permit with specific permit conditions.

Points to Consider:

1. The Council and the Board both unanimously supported Proposal FP15-11 to add this fishery with the understanding that the USFWS conservation concerns could be addressed through the annual operational plan.
2. Removal of the operational plan requirement would decrease the opportunity for the Federal in-season manager and community gillnet fishery operating organization to collaborate and make adjustments to the fishery as necessary, based on the prior years' harvest and any other issues that may arise.
3. This change would decrease the potential for collaboration between the proponent and the Federal in-season manager prior the start of the annual season.
4. The change could limit the ability to address issues with distribution of fish in the community and safety concerns, should any arise.
5. This change would decrease the burden on the proponent prior to the fishery each year.

OSM Recommendation: Oppose. This requirement should remain for the duration of the experimental time period for this fishery to address conservation concerns and logistic issues prior to the start of this fishery each year, as the Board intended.

Issue 4

The proponent requests the Board make OSM the issuer of the registration permit for the fishery rather than the Federal in-season manager.

Points to Consider:

1. Moving issuance of permits and management of the fishery to OSM would substantially slow the process as OSM does not currently have delegated authority over the fishery or the infrastructure to conduct in-season management of fisheries.
2. The Federal Subsistence Board would take over the responsibility of the Federal in-season manager by rescinding the delegated authority.
3. Absent the in-season manager, management of the fishery would be conducted through the Federal Subsistence Program's Special Action Request Process or section 805 appointment process.
4. Fishery management in Alaska may require a more immediate response than the Special Action Request Process to protect continued viability of fish populations, continuation of subsistence uses, or for issues of public safety.

OSM Recommendation: Oppose. The Board delegates its authority to agency field officials so that decisions can be more responsive and timely in real time situations to address conservation and safety

concerns at a local level. Running the fishery through OSM and the Board will not allow for that same timely response.

Issue 5

The proponent requests the Board name the Ninilchik Traditional Council as the coordinator of the community gillnet fishery in regulation.

Points to Consider:

1. As a Federally- recognized tribe, NTC may not be representative of all residents of Ninilchik.
2. Designating NTC in regulation as the organization allowed to coordinate a community gillnet fishery may discourage Federally qualified subsistence users in the community not associated with NTC from participating in the fishery.
3. This is effectively how NTC has conducted this fishery for the past two seasons.

OSM Recommendation: support with modification that NTC be named as the coordinator of the community gillnet fishery for the duration of the experimental period. This would allow time for community input on NTC's role prior to a decision by the Board on whether to make this fishery permanent.

Suggested regulatory language would read:

*(2)One registration permit will be available and will be awarded by the Federal in-season fishery manager, in consultation with the Kenai National Wildlife Refuge manager, based on the merits of the operational plan. The registration permit will be issued **during the five year experimental period to the Ninilchik Traditional Council** ~~an organization~~ that, as the community gillnet owner, will be responsible for its use in consultation with the Federal fishery manager. The experimental community gillnet will be subject to compliance with Kenai National Wildlife Refuge regulations and restrictions.*

Issue 6

The proponent requests the Board remove the annual report requirement.

Points to Consider:

1. The current regulation requires that after the season, the organizer of the fishery will provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, persons or households operating the gear, hours of operation, and number of each species caught and retained or released.
2. Removal would mean that much of the information provided to the Federal in-season manager and used to assess the fishery, including number of Federally qualified subsistence users participating in the fishery and any conservation impacts on non-target species, would no longer be required of

the proponent.

3. This would decrease the burden on the proponent during and following the fishery each year.
4. This would make the task of assessing the fishery and its impacts to non-target species more challenging for the Federal in-season manager and the Board each year.
5. Information provided in these types of reports helps to identify data gaps and set priority information needs for future research.

OSM Recommendation: Oppose. Given the biological concerns that have been raised for this fishery, OSM believes that any additional information provided in an annual post season report would be important for assessing the fishery and helping to direct future research.

Issue 7

The proponent requests the Board establish a collective process through which NTC and the Southcentral Council are informed and consulted prior to any potential closures or other actions by the Federal in-season manager.

Points to Consider:

1. Statutory constraints outlined in the Federal Advisory Committee Act (FACA) dictate the necessity for convening a publically-noticed Council meeting, which would be required for the Council to make a recommendation regarding the fishery. The current structure of Title VIII only provides that the Councils may make recommendations to the Board, not to persons with delegated authority. However, consultation with Council chairs (not Councils as a whole) is part of the regulatory process in place for special action requests.
2. The creation of a collaborative decision making process prior to initiating actions on the fishery would give the proponent a greater influence over management than they currently have.
3. If consultation with the entire Council is desired, the timeframe required to convene a Council meeting would likely render the Council's involvement ineffective, as in-season management decisions are responsive to real time conservation and safety concerns, and Council meetings require publication in the Federal Register (a time-consuming effort).
4. In an effort to ensure that in-season management decisions are communicated broadly and fairly, the delegation of authority letter from the Federal Subsistence Board to the Federal in-season manager requires that "The Project Leader (Federal in-season manager) will ... notify/consult with local ADF&G managers, Regional Advisory Council members, and other affected Federal conservation unit managers concerning special actions being considered."
5. Through the delegation of authority, it is the intent of the Board that subsistence management by Federal officials be coordinated with the Alaska Department of Fish and Game and involve Regional Advisory Council representatives to conserve healthy fish and wildlife populations while providing for subsistence uses.

6. While operating under delegated authority from the Board, the Federal in-season manager is obligated to engage in tribal consultation consistent with the Board's *Government-to-Government Tribal Consultation Policy*. Under "Communication," that policy provides, "For in-season management decisions and special actions ... to the extent practicable, two-way communication will take place before decisions are implemented." As NTC happens to be both the party administering the community gillnet and a Federally recognized tribe that may be affected by management decision, government to government consultation with NTC should already be occurring pursuant to that policy. However, an exemption from this policy for in-season management decisions may prevent consultation during the fishery season.
7. Currently, regulations allow fishing during the specified time period (June 15 through August 15) unless closed or otherwise restricted by Federal special action. Additionally, fishing for each salmon species will end and the fishery will be closed by Federal special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action. These restrictions and closures by Federal special action are not provided for in the proposed regulation.

OSM Recommendation: Oppose. The Federal in-season manager, via delegated authority from the Board, is required to perform notification/consultation with affected Regional Advisory Council members and engage in government to government consultation with affected tribes. Additional regulatory language is unnecessary.

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WRITTEN PUBLIC COMMENTS

May 17, 2016

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Cooper Landing, AK 99572

Attn: Theo Matuskowitz Federal Subsistence Board
Office of Subsistence Management
1011 E. Tudor Rd., MS-121
Anchorage, Ak 99503-6199

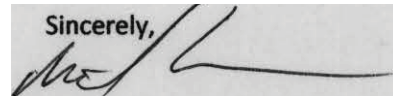
As a Cooper Landing resident and subsistence fisherman I oppose FP17-09 and FP17-10. These proposals attempt to liberalize the gill net fishing season and limits on the Kasilof and Kenai River while completely disregarding conservation measures intended to protect stocks of low abundance and species of concern.

FP17-09: Expanding the season for the gill net fishery on the Kasilof will result in increased steelhead mortality, a species of very low abundance that is currently very conservatively managed. It will also result in an increase in harvest of all river species including an increased catch of spawning king salmon, a species of declining abundance. By including language that allows retention of all bycatch the proposal seems to have the intent of targeting all species in the watershed regardless of abundance and without consideration of available scientific data or traditional knowledge.

FP-17-10: A liberalization of the gill net fishery on the Kenai River is unwarranted based on an existing meaningful priority through the use of expanded rod and reel limits and existing dip net fisheries. I fish the Kenai with these already existing methods and I can attest that they work. It also threatens to undermine the extensive management and conservation measures that have been implemented through the use of scientific data and an understanding of species abundance and spawning strength locality and timing. A gill net fishery located on some of the most essential spawning grounds in the Kenai watershed is by its very nature unsustainable. Expanding the season and limits for this fishery in the face of conservation concerns would have far reaching implications and reflects a lack of concern for the future of the fishery.

These proposals could result in unsustainable harvest of all species in what are arguably the Kenai Peninsula's two most important watersheds without concern for the future of the fisheries and the people who rely on them. A key to sustainable subsistence life is an understanding of species lifecycles and populations. To continually expand harvest opportunity without considering the short term and long term effects on the fishery is irresponsible and does not reflect the traditional values of subsistence and certainly does not reflect a respect for conservation.

Please vote no on FP17-09 and FP17-10 to ensure there are still sustainable numbers of fish, and therefore an opportunity for subsistence, in the years to come.

Sincerely,


Michael Adams

Chris Degernes
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Cooper Landing, AK 99572
Jaeger06@hotmail.com

May 22, 2016

Office of Subsistence Management
Attn: Regulations Specialist
1011 East Tudor Road, Mail Stop 121
Anchorage, Alaska 99503-6199

Re: Comments on Federal Subsistence Management Program 2017-2019 Fisheries Proposals Dear Mr.

Matuskowitz:

I have reviewed the specific proposals relating to regulation changes within the Cook Inlet area, specifically addressing the Kenai River. I support the recommendations found within FP 17-06, FP 17-07 and FP 17-08, while I oppose the proposals made within FP 17-09 and FP 17-10.

I am an authorized federal subsistence permittee residing in Cooper Landing and have utilized the dip net fishery at the Russian River Falls for a number of years. I believe that the conservation and sustainable management of our anadromous and resident fish is paramount to providing for the long term sustainability of our fisheries, thereby supporting our continued quality of life. If a particular method of harvest (i.e., gill net use) creates a risk to certain populations of fish, then it should be prohibited in favor of more discriminate type of harvest (i.e., rod and reel, dip net, etc.) Expediency and efficiency should not be factors in deciding what method of harvest may be permitted.

I urge that the new regulations delete permanently any provision authorizing gill nets on the Kenai River for subsistence harvest purposes, and that all Kenai River Chinook salmon are afforded protection while their numbers are at such historically low numbers. Thank you for considering my comments.

Sincerely, Chris

Degernes



Wednesday, May 25, 2016

ATTN: Theo Matuskowitz
Federal Subsistence Board
Office of Subsistence Management
1011 E. Tudor Road, MS-121 An-
chorage, AK 99503-6199 [Subsist-
ence@fws.gov](mailto:Subsistence@fws.gov)

FSB 2017 – 2019 Fisheries Proposals

Dear Federal Subsistence Board / Southcentral Regional Advisory Council;

Kenai River Sportfishing Association (KRSA) is a 501 c 3 charitable non-profit organization, with a focus on fishery conservation for the Kenai River, greater Cook Inlet and Alaska. We provide these comments on the FSB 2017 – 2019 Fisheries Proposals, specifically those for the Cook Inlet region, FP17-06 – 10.

KRSA supports fisheries management regulations that accomplish two objectives: 1) provide meaningful access and opportunity to subsistence, personal use, sport and commercial fisheries, and 2) follow necessary fishery conservation principles. With respect to time, area, methods and means for subsistence, personal use and sport fisheries within the Kenai River drainage, we support the use of selective gear to harvest fish, such as rod and reel and dip nets. We do not support the use of non-selective gear, such as gillnets, to harvest fish within the Kenai River drainage.

The reason is that selective gear, as opposed to non-selective gear, allows for the live release and high probability of survival for fish that are designated for non-retention for conservation purposes, such as the continued viability of specific fish stocks. Slot limits for fish stocks in fisheries management are similar to hunting restrictions, such as antler restrictions for moose (spike or fork antler, or 50-inch spread, or at least three brow tines on one antler). Judicial review on antler restrictions for subsistence moose hunting determined that a meaningful subsistence priority is not absolute and must be reasonably balanced with conservation issues and other uses.

Conservation based fishery regulations on the Kenai River include non-retention of slot-limit Chinook and of rainbow trout / Dolly Varden over 18 inches, for waters below Skilak Lake. Above Skilak Lake there is no retention of Chinook or rainbow trout / Dolly Varden over 16 inches. On the Kasilof River such regulations include the non-retention of Steelhead Trout.

As such, KRSA supports the adoption of FP17 – 06 and FP17 – 07, which would remove gillnets as a method and means for gear in subsistence fisheries on the Kenai River. We concur with the fisheries

conservation rationale as outlined in these respective proposals for this change. FP17-08 is a complex proposal that seeks to both streamline and change regulations, and we have no comment on each of the subcomponents at this time.

FP17-09 and FP17-10 seek to extend the window of time for use of a community gillnet (NTC) on the Kasilof and Kenai Rivers respectively. On the Kasilof River, the proposal seeks to change the use of a community gillnet from July 1 – July 31 to May 1 – November 15. We do not support the proposed expansion of the time frame due to fishery conservation concerns relating to the retention of Chinook salmon and Steelhead Trout during the expanded timeframe. On the Kenai River, the proposal seeks to change the use of a community gillnet from June 15 – August 15 to May 1 – November 15. We do not support the proposed expansion of time frame due to fishery conservation concerns relating to the retention of Chinook salmon, rainbow trout and Dolly Varden. The rationale of the fishery conservation concern is clearly outlined in the USFWS proposals FP17 – 07 and FP17 – 08.

We encourage both the Southcentral RAC and the Federal Subsistence Board remove the use of gillnets as gear for subsistence fisheries on the Kenai River, and to keep in place the time frame for its use on the Kasilof River. The justification is based on well documented fishery conservation issues that have been articulated thoroughly by both federal and state fishery professionals.

Thank you for your time and consideration on this mat-

ter. Respectfully,

Ricky Gease, Executive Director
Kenai River Sportfishing Association



Mckinney, Kayla
<kayla_mckinney@fws.gov>

Fwd: Cook Inlet Area Fisheries proposals

AK Subsistence. FW7 <subsistence@fws.gov> Wed. Jun 1. 2016 at 6:04 PM
To: Gene Peltola <gene_peltola@fws.gov>, Stewart Cogswell <stewart_cogswell@fws.gov>, George Pappas <george_pappas@fws.gov>, Jennifer Hardin <jennifer_hardin@fws.gov>, Amee Howard
<amee_howard@fws.gov>, Theo Matuskowitz <theo_matuskowitz@fws.gov>, Kayla Mckinney

----- Forwarded message -----

From: **George Heim** <gheim2000@gmail.com>
Date: Thu, May 26, 2016 at 7:33 PM
Subject: Cook Inlet Area Fisheries proposals To:
subsistence@fws.gov

To Whom It May Concern:

I am writing to express support for FP-17-06, FP-17-07, & FP-17-08 and to oppose FP-17-09, & FP-17-10.

The Cooper Landing Advisory Committee held a meeting on May 14th to discuss these proposals. Due to predictable schedule conflicts for the AC members at this time of year and the short notice between publishing the proposals and due date for comments, we were not able to convene a quorum. However, the members present were unanimous in supporting proposals to remove gill nets from the Kenai and to close a section of the Kenai River that is important for Chinook spawning activities and to oppose liberalization of gill nets in the Kasilof and to expand gill nets in the Kenai.

We were concerned about bycatch of non-target species in both waters including rainbow trout, dolly varden and king salmon in the Kenai and steelhead and king salmon in the Kasilof. Of particular concern was the possibility that rainbow trout in the Kenai and Steelhead in the Kasilof would be caught in the nets. Since there is no retention allowed for these species in those waters, and since any fish in a gill net is very likely to be killed persons operating the nets would be in violation of both State and Federal regulation and subject to penalties. Obviously, this is not a desirable situation. Even if a fish is released from the net alive, it will have been injured and is likely to die after release. This would be wanton waste and should not be allowed.

Sincerely,

George Heim, President

Cooper Landing Advisory Committee to ADF&G

907-599-2000
PO Box 725
Cooper Landing, AK 99572

To the Members of the Southcentral Regional Advisory Council: Re: Opposition to FP17-09

As a full time resident of Cooper Landing, I am writing to oppose the approval of the Proposal to Change Federal Subsistence Regulations FP17-09. This proposal by the Ninilchik Traditional Council to operate a community gillnet on the Kasilof River for 6.5 months a year to harvest of all salmon species and retention of non-salmon fish violates the requirements of ANILCA §802. The use of a non-selective fishing tool like a gillnet in the Kenai River is not:

1. “consistent with sound management principles and the conservation of health populations of fish and wildlife”
2. “consistent with management of fish and wildlife in accordance with recognized scientific principles”. (ANILCA §802)

In addition, FP17-09 would also violate section §815 of ANILCA in that a gillnet “permits the level of subsistence uses of fish and wildlife within a conservation system unit to be inconsistent with the healthy (fish) populations”. (ANILCA §815)

Sincerely,
Kathryn L.
Recken
19567 Rusty’s Way
PO Box 747
Cooper Landing, AK 99572 kreck-

en@gmail.com

May 22, 2014

Comment on
FP17-08 + 09

Theo Markowitz
Federal Subsistence Board
Office of Subsistence Management
1011 E. Tudor Road, MS-121
Anchorage, Alaska 99503-6199

Dear Theo,

I am opposed to proposal FP17-07, Kenilchik's proposal to place a gill net across the Kenai River as well as FP17-08 that restricts when & where a person may take late run Chinook. In addition, I am opposed to proposal FP17-09 that requests that only residents of Kenilchik may harvest salmon, with a gill net on the Kaslof and Kenai Rivers. These proposals go against conservation efforts to maintain a healthy number of salmon for future generations on these rivers.

As a member of the Cooper Landing Community for the last twelve years I am grateful for the ability to subsistence fish through traditional means using rod and reel and dip net because these methods prove that we can maintain and conserve the Kenai River for salmon.

Thank you for the opportunity to have a voice in continuing to protect conservation efforts as well as subsistence fishing rights on the Kenai River.

Gratefully,
Joyce Koppert

Appendix A – State of Alaska Sustainable Salmon Fisheries Policy

5 AAC 39.222. Policy for the management of sustainable salmon fisheries

- (a) The Board of Fisheries (board) and Department of Fish and Game (department) recognize that
- (1) while, in the aggregate, Alaska's salmon fisheries are healthy and sustainable largely because of abundant pristine habitat and the application of sound, precautionary, conservation management practices, there is a need for a comprehensive policy for the regulation and management of sustainable salmon fisheries;
 - (2) in formulating fishery management plans designed to achieve maximum or optimum salmon production, the board and department must consider factors including environmental change, habitat loss or degradation, data uncertainty, limited funding for research and management programs, existing harvest patterns, and new fisheries or expanding fisheries;
 - (3) to effectively assure sustained yield and habitat protection for wild salmon stocks, fishery management plans and programs require specific guiding principles and criteria, and the framework for their application contained in this policy.
- (b) The goal of the policy under this section is to ensure conservation of salmon and salmon's required marine and aquatic habitats, protection of customary and traditional subsistence uses and other uses, and the sustained economic health of Alaska's fishing communities.
- (c) Management of salmon fisheries by the state should be based on the following principles and criteria:
- (1) wild salmon stocks and the salmon's habitats should be maintained at levels of resource productivity that assure sustained yields as follows:
 - (A) salmon spawning, rearing, and migratory habitats should be protected as follows:
 - (i) salmon habitats should not be perturbed beyond natural boundaries of variation;
 - (ii) scientific assessments of possible adverse ecological effects of proposed habitat alterations and the impacts of the alterations on salmon populations should be conducted before approval of a proposal;
 - (iii) adverse environmental impacts on wild salmon stocks and the salmon's habitats should be assessed;
 - (iv) all essential salmon habitat in marine, estuarine, and freshwater ecosystems and access of salmon to these habitats should be protected; essential habitats include spawning and incubation areas, freshwater rearing areas, estuarine and nearshore rearing areas, offshore rearing areas, and migratory pathways;
 - (v) salmon habitat in fresh water should be protected on a watershed basis, including appropriate management of riparian zones, water quality, and water quantity;
 - (B) salmon stocks should be protected within spawning, incubating, rearing, and migratory habitats;
 - (C) degraded salmon productivity resulting from habitat loss should be assessed, considered, and controlled by affected user groups, regulatory agencies, and boards when making conservation and allocation decisions;
 - (D) effects and interactions of introduced or enhanced salmon stocks on wild salmon stocks should be assessed; wild salmon stocks and fisheries on those stocks should be protected from adverse impacts from artificial propagation and enhancement efforts;
 - (E) degraded salmon spawning, incubating, rearing, and migratory habitats should be restored to natural levels of productivity where known and desirable;
 - (F) ongoing monitoring should be conducted to determine the current status of habitat and the effectiveness of restoration activities;

- (G) depleted salmon stocks should be allowed to recover or, where appropriate, should be actively restored; diversity should be maintained to the maximum extent possible, at the genetic, population, species, and ecosystem levels;
- (2) salmon fisheries shall be managed to allow escapements within ranges necessary to conserve and sustain potential salmon production and maintain normal ecosystem functioning as follows:
- (A) salmon spawning escapements should be assessed both temporally and geographically; escapement monitoring programs should be appropriate to the scale, intensity, and importance of each salmon stock's use;
 - (B) salmon escapement goals, whether sustainable escapement goals, biological escapement goals, optimal escapement goals, or inriver run goals, should be established in a manner consistent with sustained yield; unless otherwise directed, the department will manage Alaska's salmon fisheries, to the extent possible, for maximum sustained yield;
 - (C) salmon escapement goal ranges should allow for uncertainty associated with measurement techniques, observed variability in the salmon stock measured, changes in climatic and oceanographic conditions, and varying abundance within related populations of the salmon stock measured;
 - (D) salmon escapement should be managed in a manner to maintain genetic and phenotypic characteristics of the stock by assuring appropriate geographic and temporal distribution of spawners as well as consideration of size range, sex ratio, and other population attributes;
 - (E) impacts of fishing, including incidental mortality and other human-induced mortality, should be assessed and considered in harvest management decisions;
 - (F) salmon escapement and harvest management decisions should be made in a manner that protects nontarget salmon stocks or species;
 - (G) the role of salmon in ecosystem functioning should be evaluated and considered in harvest management decisions and setting of salmon escapement goals;
 - (H) salmon abundance trends should be monitored and considered in harvest management decisions;
- (3) effective management systems should be established and applied to regulate human activities that affect salmon as follows:
- (A) salmon management objectives should be appropriate to the scale and intensity of various uses and the biological capacities of target salmon stocks;
 - (B) management objectives should be established in harvest management plans, strategies, guiding principles, and policies, such as for mixed stock fishery harvests, fish disease, genetics, and hatchery production, that are subject to periodic review;
 - (C) when wild salmon stocks are fully allocated, new fisheries or expanding fisheries should be restricted, unless provided for by management plans or by application of the board's allocation criteria;
 - (D) management agencies should have clear authority in statute and regulation to
 - (i) control all sources of fishing mortality on salmon;
 - (ii) protect salmon habitats and control nonfishing sources of mortality;
 - (E) management programs should be effective in
 - (i) controlling human-induced sources of fishing mortality and should incorporate procedures to assure effective monitoring, compliance, control, and enforcement;
 - (ii) protecting salmon habitats and controlling collateral mortality and should incorporate procedures to assure effective monitoring, compliance, control, and enforcement;

- (F) fisheries management implementation and outcomes should be consistent with regulations, regulations should be consistent with statutes, and effectively carry out the purpose of this section;
- (G) the board will recommend to the commissioner the development of effective joint research, assessment, and management arrangements with appropriate management agencies and bodies for salmon stocks that cross state, federal, or international jurisdictional boundaries; the board will recommend the coordination of appropriate procedures for effective monitoring, compliance, control, and enforcement with those of other agencies, states, or nations;
- (H) the board will work, within the limits of its authority, to assure that
 - (i) management activities are accomplished in a timely and responsive manner to implement objectives, based on the best available scientific information;
 - (ii) effective mechanisms for the collection and dissemination of information and data necessary to carry out management activities are developed, maintained, and utilized;
 - (iii) management programs and decision-making procedures are able to clearly distinguish, and effectively deal with, biological and allocation issues;
- (I) the board will recommend to the commissioner and legislature that adequate staff and budget for research, management, and enforcement activities be available to fully implement sustainable salmon fisheries principles;
- (J) proposals for salmon fisheries development or expansion and artificial propagation and enhancement should include assessments required for sustainable management of existing salmon fisheries and wild salmon stocks;
- (K) plans and proposals for development or expansion of salmon fisheries and enhancement programs should effectively document resource assessments, potential impacts, and other information needed to assure sustainable management of wild salmon stocks;
- (L) the board will work with the commissioner and other agencies to develop effective processes for controlling excess fishing capacity;
- (M) procedures should be implemented to regularly evaluate the effectiveness of fishery management and habitat protection actions in sustaining salmon populations, fisheries, and habitat, and to resolve associated problems or deficiencies;
- (N) conservation and management decisions for salmon fisheries should take into account the best available information on biological, environmental, economic, social, and resource use factors;
- (O) research and data collection should be undertaken to improve scientific and technical knowledge of salmon fisheries, including ecosystem interactions, status of salmon populations, and the condition of salmon habitats;
- (P) the best available scientific information on the status of salmon populations and the condition of the salmon's habitats should be routinely updated and subject to peer review;
- (4) public support and involvement for sustained use and protection of salmon resources should be sought and encouraged as follows:
 - (A) effective mechanisms for dispute resolution should be developed and used;
 - (B) pertinent information and decisions should be effectively disseminated to all interested parties in a timely manner;
 - (C) the board's regulatory management and allocation decisions will be made in an open process with public involvement;

(D) an understanding of the proportion of mortality inflicted on each salmon stock by each user group, should be promoted, and the burden of conservation should be allocated across user groups in a manner consistent with applicable state and federal statutes, including AS 16.05.251 (e) and AS 16.05.258 ; in the absence of a regulatory management plan that otherwise allocates or restricts harvests, and when it is necessary to restrict fisheries on salmon stocks where there are known conservation problems, the burden of conservation shall be shared among all fisheries in close proportion to each fisheries' respective use, consistent with state and federal law;

(E) the board will work with the commissioner and other agencies as necessary to assure that adequately funded public information and education programs provide timely materials on salmon conservation, including habitat requirements, threats to salmon habitat, the value of salmon and habitat to the public and ecosystem (fish and wildlife), natural variability and population dynamics, the status of salmon stocks and fisheries, and the regulatory process;

(5) in the face of uncertainty, salmon stocks, fisheries, artificial propagation, and essential habitats shall be managed conservatively as follows:

(A) a precautionary approach, involving the application of prudent foresight that takes into account the uncertainties in salmon fisheries and habitat management, the biological, social, cultural, and economic risks, and the need to take action with incomplete knowledge, should be applied to the regulation and control of harvest and other human-induced sources of salmon mortality; a precautionary approach requires

(i) consideration of the needs of future generations and avoidance of potentially irreversible changes;

(ii) prior identification of undesirable outcomes and of measures that will avoid undesirable outcomes or correct them promptly;

(iii) initiation of any necessary corrective measure without delay and prompt achievement of the measure's purpose, on a time scale not exceeding five years, which is approximately the generation time of most salmon species;

(iv) that where the impact of resource use is uncertain, but likely presents a measurable risk to sustained yield, priority should be given to conserving the productive capacity of the resource;

(v) appropriate placement of the burden of proof, of adherence to the requirements of this subparagraph, on those plans or ongoing activities that pose a risk or hazard to salmon habitat or production;

(B) a precautionary approach should be applied to the regulation of activities that affect essential salmon habitat.

(d) The principles and criteria for sustainable salmon fisheries shall be applied, by the department and the board using the best available information, as follows:

(1) at regular meetings of the board, the department will, to the extent practicable, provide the board with reports on the status of salmon stocks and salmon fisheries under consideration for regulatory changes, which should include

(A) a stock-by-stock assessment of the extent to which the management of salmon stocks and fisheries is consistent with the principles and criteria contained in the policy under this section;

(B) descriptions of habitat status and any habitat concerns;

(C) identification of healthy salmon stocks and sustainable salmon fisheries;

(D) identification of any existing salmon escapement goals, or management actions needed to achieve these goals, that may have allocative consequences such as the

(i) identification of a new fishery or expanding fishery;

- (ii) identification of any salmon stocks, or populations within stocks, that present a concern related to yield, management, or conservation; and
 - (iii) description of management and research options to address salmon stock or habitat concerns;
- (2) in response to the department's salmon stock status reports, reports from other resource agencies, and public input, the board will review the management plan, or consider developing a management plan, for each affected salmon fishery or stock; management plans will be based on the principles and criteria contained in this policy and will
- (A) contain goals and measurable and implementable objectives that are reviewed on a regular basis and utilize the best available scientific information;
 - (B) minimize the adverse effects on salmon habitat caused by fishing;
 - (C) protect, restore, and promote the long-term health and sustainability of the salmon fishery and habitat;
 - (D) prevent overfishing; and
 - (E) provide conservation and management measures that are necessary and appropriate to promote maximum or optimum sustained yield of the fishery resource;
- (3) in the course of review of the salmon stock status reports and management plans described in (1) and (2) of this subsection, the board, in consultation with the department, will determine if any new fisheries or expanding fisheries, stock yield concerns, stock management concerns, or stock conservation concerns exist; if so, the board will, as appropriate, amend or develop salmon fishery management plans to address these concerns; the extent of regulatory action, if any, should be commensurate with the level of concerns and range from milder to stronger as concerns range from new and expanding salmon fisheries through yield concerns, management concerns, and conservation concerns;
- (4) in association with the appropriate management plan, the department and the board will, as appropriate, collaborate in the development and periodic review of an action plan for any new or expanding salmon fisheries, or stocks of concern; action plans should contain goals, measurable and implementable objectives, and provisions, including
- (A) measures required to restore and protect salmon habitat, including necessary coordination with other agencies and organizations;
 - (B) identification of salmon stock or population rebuilding goals and objectives;
 - (C) fishery management actions needed to achieve rebuilding goals and objectives, in proportion to each fishery's use of, and hazards posed to, a salmon stock;
 - (D) descriptions of new or expanding salmon fisheries, management concern, yield concern, or conservation concern; and
 - (E) performance measures appropriate for monitoring and gauging the effectiveness of the action plan that are derived from the principles and criteria contained in this policy;
- (5) each action plan will include a research plan as necessary to provide information to address concerns; research needs and priorities will be evaluated periodically, based on the effectiveness of the monitoring described in (4) of this subsection;
- (6) where actions needed to regulate human activities that affect salmon and salmon's habitat that are outside the authority of the department or the board, the department or board shall correspond with the relevant authority, including the governor, relevant boards and commissions, commissioners, and chairs of appropriate legislative committees, to describe the issue and recommend appropriate action.

(e) Nothing in the policy under this section is intended to expand, reduce, or be inconsistent with, the statutory regulatory authority of the board, the department, or other state agencies with regulatory authority that impacts the fishery resources of the state.

(f) In this section, and in implementing this policy,

(1) "allocation" means the granting of specific harvest privileges, usually by regulation, among or between various user groups; "allocation" includes quotas, time periods, area restrictions, percentage sharing of stocks, and other management measures providing or limiting harvest opportunity;

(2) "allocation criteria" means the factors set out in AS 16.05.251 (e) considered by the board as appropriate to particular allocation decisions under 5 AAC 39.205, 5 AAC 75.017, and 5 AAC 77.007;

(3) "biological escapement goal" or "(BEG)" means the escapement that provides the greatest potential for maximum sustained yield; BEG will be the primary management objective for the escapement unless an optimal escapement or inriver run goal has been adopted; BEG will be developed from the best available biological information, and should be scientifically defensible on the basis of available biological information; BEG will be determined by the department and will be expressed as a range based on factors such as salmon stock productivity and data uncertainty; the department will seek to maintain evenly distributed salmon escapements within the bounds of a BEG;

(4) "burden of conservation" means the restrictions imposed by the board or department upon various users in order to achieve escapement, rebuild, or in some other way conserve a specific salmon stock or group of stocks; this burden, in the absence of a salmon fishery management plan, will be generally applied to users in close proportion to the users' respective harvest of the salmon stock;

(5) "chronic inability" means the continuing or anticipated inability to meet escapement thresholds over a four to five year period, which is approximately the generation time of most salmon species;

(6) "conservation concern" means concern arising from a chronic inability, despite the use of specific management measures, to maintain escapements for a stock above a sustained escapement threshold (SET); a conservation concern is more severe than a management concern;

(7) "depleted salmon stock" means a salmon stock for which there is a conservation concern;

(8) "diversity", in a biological context, means the range of variation exhibited within any level of organization, such as among genotypes within a salmon population, among populations within a salmon stock, among salmon stocks within a species, among salmon species within a community, or among communities within an ecosystem;

(9) "enhanced salmon stock" means a stock of salmon that is undergoing specific manipulation, such as hatchery augmentation or lake fertilization, to enhance its productivity above the level that would naturally occur; "enhanced salmon stock" includes an introduced stock, where no wild salmon stock had occurred before, or a wild salmon stock undergoing manipulation, but does not include a salmon stock undergoing rehabilitation, which is intended to restore a salmon stock's productivity to a higher natural level;

(10) "escapement" means the annual estimated size of the spawning salmon stock; quality of the escapement may be determined not only by numbers of spawners, but also by factors such as sex ratio, age composition, temporal entry into the system, and spatial distribution within the salmon spawning habitat;

(11) "expanding fishery" means a salmon fishery in which effective harvesting effort has recently increased significantly beyond historical levels and where the increase has not resulted from natural fluctuations in salmon abundance;

(12) "expected yields" mean levels at or near the lower range of recent historic harvests if they are deemed sustainable;

- (13) "genetic" means those characteristics (genotypic) of an individual or group of salmon that are expressed genetically, such as allele frequencies or other genetic markers;
- (14) "habitat concern" means the degradation of salmon habitat that results in, or can be anticipated to result in, impacts leading to yield, management, or conservation concerns;
- (15) "harvestable surplus" means the number of salmon from a stock's annual run that is surplus to escapement needs and can reasonably be made available for harvest;
- (16) "healthy salmon stock" means a stock of salmon that has annual runs typically of a size to meet escapement goals and a potential harvestable surplus to support optimum or maximum sustained yield;
- (17) "incidental harvest" means the harvest of fish, or other species, that is captured in addition to the target species of a fishery;
- (18) "incidental mortality" means the mortality imposed on a salmon stock outside of directed fishing, and mortality caused by incidental harvests, interaction with fishing gear, habitat degradation, and other human-related activities;
- (19) "inriver run goal" means a specific management objective for salmon stocks that are subject to harvest upstream of the point where escapement is estimated; the inriver run goal will be set in regulation by the board and is comprised of the SEG, BEG, or OEG, plus specific allocations to inriver fisheries;
- (20) "introduced stock" means a stock of salmon that has been introduced to an area, or portion of an area, where that stock had not previously occurred; an "introduced salmon stock" includes a salmon stock undergoing continued enhancement, or a salmon stock that is left to sustain itself with no additional manipulation;
- (21) "management concern" means a concern arising from a chronic inability, despite use of specific management measures, to maintain escapements for a salmon stock within the bounds of the SEG, BEG, OEG, or other specified management objectives for the fishery; a management concern is not as severe as a conservation concern;
- (22) "maximum sustained yield" or "(MSY)" means the greatest average annual yield from a salmon stock; in practice, MSY is achieved when a level of escapement is maintained within a specific range on an annual basis, regardless of annual run strength; the achievement of MSY requires a high degree of management precision and scientific information regarding the relationship between salmon escapement and subsequent return; the concept of MSY should be interpreted in a broad ecosystem context to take into account species interactions, environmental changes, an array of ecosystem goods and services, and scientific uncertainty;
- (23) "mixed stock fishery" means a fishery that harvests fish from a mixture of stocks;
- (24) "new fishery" means a fishery that new units of effort or expansion of existing effort toward new species, areas, or time periods, results in harvest patterns substantially different from those in previous years, and the difference is not exclusively the result of natural fluctuations in fish abundance;
- (25) "optimal escapement goal" or "(OEG)" means a specific management objective for salmon escapement that considers biological and allocative factors and may differ from the SEG or BEG; an OEG will be sustainable and may be expressed as a range with the lower bound above the level of SET, and will be adopted as a regulation by the board; the department will seek to maintain evenly distributed escapements within the bounds of the OEG;
- (26) "optimum sustained yield" or "(OSY)" means an average annual yield from a salmon stock considered to be optimal in achieving a specific management objective other than maximum yield, such as achievement of a consistent level of sustained yield, protection of a less abundant or less

productive salmon stock or species, enhancement of catch per unit effort in sport fishery, facilitation of a nonconsumptive use, facilitation of a subsistence use, or achievement of a specific allocation;

(27) "overfishing" means a level of fishing on a salmon stock that results in a conservation or management concern;

(28) "phenotypic characteristics" means those characteristics of an individual or group of salmon that are expressed physically, such as body size and length at age;

(29) "rehabilitation" means efforts applied to a salmon stock to restore it to an otherwise natural level of productivity; "rehabilitation" does not include an enhancement, which is intended to augment production above otherwise natural levels;

(30) "return" means the total number of salmon in a stock from a single brood (spawning) year surviving to adulthood; because the ages of adult salmon (except pink salmon) returning to spawn varies, the total return from a brood year will occur over several calendar years; the total return generally includes those mature salmon from a single brood year that are harvested in fisheries plus those that compose the salmon stock's spawning escapement; "return" does not include a run, which is the number of mature salmon in a stock during a single calendar year;

(31) "run" means the total number of salmon in a stock surviving to adulthood and returning to the vicinity of the natal stream in any calendar year, composed of both the harvest of adult salmon plus the escapement; the annual run in any calendar year, except for pink salmon, is composed of several age classes of mature fish from the stock, derived from the spawning of a number of previous brood years;

(32) "salmon" means the five wild anadromous semelparous Pacific salmon species *Oncorhynchus* sp., except steelhead and cutthroat trout, native to Alaska as follows:

- (A) Chinook or king salmon (*O. tshawytscha*);
- (B) sockeye or red salmon (*O. nerka*);
- (C) coho or silver salmon (*O. kisutch*);
- (D) pink or humpback salmon (*O. gorbuscha*); and
- (E) chum or dog salmon (*O. keta*);

(33) "salmon population" means a locally interbreeding group of salmon that is distinguished by a distinct combination of genetic, phenotypic, life history, and habitat characteristics, comprised of an entire stock or a component portion of a stock; the smallest uniquely identifiable spawning aggregation of genetically similar salmon used for monitoring purposes;

(34) "salmon stock" means a locally interbreeding group of salmon that is distinguished by a distinct combination of genetic, phenotypic, life history, and habitat characteristics or an aggregation of two or more interbreeding groups which occur within the same geographic area and is managed as a unit;

(35) "stock of concern" means a stock of salmon for which there is a yield, management, or conservation concern;

(36) "sustainable escapement goal" or "(SEG)" means a level of escapement, indicated by an index or an escapement estimate, that is known to provide for sustained yield over a 5 to 10 year period, used in situations where a BEG cannot be estimated or managed for; the SEG is the primary management objective for the escapement, unless an optimal escapement or inriver run goal has been adopted by the board; the SEG will be developed from the best available biological information; and should be scientifically defensible on the basis of that information; the SEG will be determined by the department and will take into account data uncertainty and be stated as either a "SEG range" or "lower bound SEG"; the department will seek to maintain escapements within the bounds of the SEG range or above the level of a lower bound SEG;

(37) "sustainable salmon fishery" means a salmon fishery that persists and obtains yields on a continuing basis; characterized by fishing activities and habitat alteration, if any, that do not cause or lead to undesirable changes in biological productivity, biological diversity, or ecosystem structure and function, from one human generation to the next;

(38) "sustained yield" means an average annual yield that results from a level of salmon escapement that can be maintained on a continuing basis; a wide range of average annual yield levels is sustainable; a wide range of annual escapement levels can produce sustained yields;

(39) "sustained escapement threshold" or "(SET)" means a threshold level of escapement, below which the ability of the salmon stock to sustain itself is jeopardized; in practice, SET can be estimated based on lower ranges of historical escapement levels, for which the salmon stock has consistently demonstrated the ability to sustain itself; the SET is lower than the lower bound of the BEG and lower than the lower bound of the SEG; the SET is established by the department in consultation with the board, as needed, for salmon stocks of management or conservation concern;

(40) "target species" or "target salmon stocks" means the main, or several major, salmon species of interest toward which a fishery directs its harvest;

(41) "yield" means the number or weight of salmon harvested in a particular year or season from a stock;

(42) "yield concern" means a concern arising from a chronic inability, despite the use of specific management measures, to maintain expected yields, or harvestable surpluses, above a stock's escapement needs; a yield concern is less severe than a management concern, which is less severe than a conservation concern;

(43) "wild salmon stock" means a stock of salmon that originates in a specific location under natural conditions; "wild salmon stock" may include an enhanced or rehabilitated stock if its productivity is augmented by supplemental means, such as lake fertilization or rehabilitative stocking; "wild salmon stock" does not include an introduced stock, except that some introduced salmon stocks may come to be considered "wild" if the stock is self-sustaining for a long period of time;

(44) "action point" means a threshold value for some quantitative indicator of stock run strength at which an explicit management action will be taken to achieve an optimal escapement goal.

History: Eff. 9/30/2000, Register 155; am 11/16/2000, Register 156; am 6/22/2001, Register 158; am 6/10/2010, Register 194

Authority: AS 16.05.251

Appendix B – 2002 Delegation of Authority Letter



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

Federal Subsistence Board

3601 C Street, Suite 1030
Anchorage, Alaska 99503



FOREST SERVICE

FWS/OSM/C:/SonnevilInSeason

MAY - 3 2002

Mr. Gary Sonnevil, Project Leader
U.S. Fish and Wildlife Service
Kenai Fishery Resources Office
43655 Kalifornski Road
Kenai, Alaska 99611

Dear Mr. Sonnevil:

This letter delegates specific regulatory authority from the Federal Subsistence Board to you as Project Leader of the Kenai Fishery Resources Office to issue special actions when necessary to assure the conservation of healthy fish stocks and to provide for subsistence uses of fish in Federal waters subject to ANILCA Title VIII (Federal waters) in the Cook Inlet Area.

Overview

Federal managers are responsible for local management of subsistence fishing by qualified rural residents in Federal waters; this includes the authority to restrict all uses in Federal waters if necessary to conserve healthy fish stocks or to provide for subsistence uses in Federal waters. State managers are responsible for in-season management of State subsistence, commercial, recreational, and personal use fisheries in all waters.

It is the intent of the Federal Subsistence Board that subsistence fisheries management by Federal officials be coordinated with the Alaska Department of Fish and Game and involve Regional Advisory Council representatives to conserve healthy fish stocks while providing for subsistence uses. Federal managers are expected to cooperate with State managers and minimize disruption to resource users and existing agency programs, as agreed to under the Interim Memorandum of Agreement for Coordinated Fisheries and Wildlife Management for Subsistence Uses on Federal Public Lands in Alaska.

FEDERAL FISHERIES MANAGEMENT DELEGATION OF AUTHORITY

1. Delegation: The Project Leader of the Kenai Fishery Resources Office is hereby delegated authority to issue emergency regulations (special actions) affecting fisheries in Federal waters as outlined under **3. Scope of Delegation.**

2. Authority: This delegation of authority is established pursuant to 36 CFR 242.10(d)(6) and 50 CFR 100.10(d)(6), which states: “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 emergency special actions as defined by 36 CFR 242.19(d) and 50 CFR 100.19(d). Such an emergency action may not exceed 60 days, and may not be extended. This delegation permits you to open or close Federal subsistence fishing periods or areas provided under codified regulations. It also permits you to specify methods and means; to specify permit requirements; and to set harvest and possession limits for Federal subsistence fisheries. This delegation also permits you to close and re-open Federal waters to non-subsistence fishing, but 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 fish stocks or to continue subsistence uses.

All other proposed changes to codified regulations, such as customary and traditional use determinations, shall be directed to the Federal Subsistence Board.

The Federal waters subject to this delegated authority are those within the Cook Inlet Area (as described in the Subsistence Management Regulations for the Harvest of Fish and Shellfish on Federal Public Lands and Waters in Alaska). The Project Leader will coordinate all local fishery decisions with all affected Federal land managers.

4. Effective Period: This delegation of authority is effective until superseded or rescinded.

5. Criteria for Review of Proposed Special Actions: The Project Leader will use the following considerations to determine the appropriate course of action when reviewing proposed special actions.

1. Does the proposed special action fall within the geographic and regulatory scope of delegation?

2. Does the proposed special 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 annual regulatory cycle?
3. Does the supporting information in the proposed special action substantiate the need for the action?
4. Are the assertions in the proposed special action confirmed by available current biological information and/or by other affected subsistence users?
5. Is the proposed special action supported in the context of available historical information on stock status and harvests by affected users?
6. Is the proposed special action likely to achieve the expected results?
7. Have the perspectives of ADF&G managers and Regional Advisory Council representatives been fully considered in the review of the proposed special action?
8. Have the potential impacts of the proposed special action on all affected subsistence users within the drainage been considered?
9. Can public announcement of the proposed special action be made in a timely manner to accomplish the management objective?
10. After evaluating all information and weighing the merits of the special action against other actions, including no action, is the special action reasonable, rational and responsible?

6. Guidelines for Delegation:

1. The Project Leader will become familiar with the management history of the fisheries in the region, with the current State and Federal regulations and management plans, and be up-to-date on stock and harvest status information.
2. The Project Leader will review special action requests or situations that may require a special action and all supporting information to determine (1) if the request/situation falls within the scope of authority, (2) if significant conservation problems or subsistence harvest concerns are indicated, and (3) what the consequences of taking an action may be on potentially affected subsistence users and non-subsistence users. Requests not within the delegated authority of the Project Leader will be forwarded to the Federal Subsistence Board for consideration. The Project Leader will keep a record of all special action requests and their disposition.

3. The Project Leader will immediately notify the Federal Subsistence Board through Tom Boyd, Assistant Regional Director for Subsistence, U.S. Fish and Wildlife Service, and notify/consult with local ADF&G managers, Regional Advisory Council members, and other affected Federal conservation unit managers concerning special actions being considered.

4. The Project Leader will issue timely decisions. Users, affected State and Federal managers, law enforcement personnel, and Regional Advisory Council representatives should be notified before the effective date/time of decisions. If an action is to supersede a State action not yet in effect, the decision will be communicated to affected users, State and Federal managers, and Regional Advisory Council representatives at least 6 hours before the State action would be effective. If a decision is to take no action, the requestor will be notified immediately.

5. There may be unusual circumstances under which the Project Leader will determine that he/she should not exercise the authority delegated, but instead request that the Federal Subsistence Board should handle the special action request. In a similar vein, the Federal Subsistence Board may determine that a special action request should not be handled by the delegated official but by the Board itself (i.e. rescind the delegated authority for that specific action only). These options should be exercised judiciously and may only be initiated where sufficient time allows. Such decisions should not be considered where immediate management actions are necessary for fisheries conservation purposes.

7. Reporting: The Project Leader must provide to the Federal Subsistence Board 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.

8. Support Services: Administrative support for local fisheries management activities of the Project Leader will be provided by the Office of Subsistence Management, U. S. Fish and Wildlife Service, Department of the Interior.

This delegation of authority will provide subsistence users in the region a local point of contact and will facilitate a local liaison with State managers and other user groups. Timely local management decisions optimize the opportunity for users to harvest fish when and where they are available, without jeopardizing spawning escapement goals for specific stocks.

Should you have any questions about this delegation of authority, please feel free to contact Mr. Thomas H. Boyd, Assistant Regional Director for Subsistence, U. S. Fish and Wildlife Service, Office of Subsistence Management at toll-free 1-800-478-1456 or (907) 786-3888.

Sincerely,



Mitch Demientieff, Chair
Federal Subsistence Board

Attachment: Map of the Cook Inlet Area

cc: Members of the Federal Subsistence Board
Mr. Ralph Lohse, Chair, Southcentral Alaska Subsistence Regional Advisory Council
Ms. Clare Swan, Member, Southcentral Alaska Subsistence Regional Advisory Council
Ms. Deb Liggett, Superintendent, Lake Clark/Katmai National Parks and Preserves
Mr. Steve Martin, Superintendent, Denali National Park and Preserve
Mr. Gary Candelaria, Superintendent, Wrangell-St. Elias National Park and Preserve
Mr. Robin West, Manager, Kenai National Wildlife Refuge
Mr. Greg Siekaniec, Manager, Alaska Maritime National Wildlife Refuge
Mr. Dave Gibbens, Chugach Forest Supervisor
Mr. Michael Kania, Seward District Ranger
Mr. Stanley Pruszenski, Assistant Regional Director - Law Enforcement, U.S. Fish and Wildlife Service
Mr. Frank Rue, Commissioner, Alaska Department of Fish and Game
Mr. Thomas H. Boyd, FWS Office of Subsistence Management

Appendix C – 2004 Reaffirmation of Delegated Authority Letter



United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE
Office of Subsistence Management
3601 C Street, Suite 1030
Anchorage, Alaska 99503

FWS/OSM/delegation

MAY 17 2004

Mr. Gary M. Sonnevil, Project Leader
U.S. Fish and Wildlife Service
Kenai Fishery Resources Office
P.O. Box 1670
Kenai, Alaska 99611

Dear Mr. Sonnevil:

This letter is to reaffirm your in-season fishery management delegation from the Federal Subsistence Board. In the "original" 2002 delegation letter, it was noted that, "This delegation of authority is effective until superseded or rescinded."

For your easy reference, I am attaching another copy of the original delegation letter. The Federal Subsistence Board made the delegation of authority to your position, so in some cases the name on the original delegation letter may differ from the person currently in that position. Please share the delegation information with staff who will be assisting you during the fishing season.

Joint news releases are used when State and Federal in-season managers agree on a course of action. Routine special actions can be handled locally. On the news release format, please list your name as the "Local Contact for Media".

Please notify Rod Campbell (rod_campbell@fws.gov or 786-3696) directly, if it is likely that an in-season special action/news release will generate far-reaching concerns and questions of the Federal Subsistence Board. If you have specific questions during the fishing season, please feel free to contact Rod.

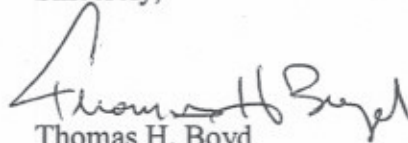
Please provide an electronic copy of all special actions and news releases (Federal and joint State-Federal) to this office c/o Maureen Clark (maureen_clark@fws.gov or 786-3953). Maureen will distribute these documents so that Federal Register requirements are met, news releases are posted on the Subsistence home page, and copies are provided to the Staff Committee, Federal

Mr. Gary M. Sonnevil, Project Leader

2

law enforcement staff, and requesting individuals from the media. Please notify Maureen when contacted by the media concerning subsistence fishery management actions.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas H. Boyd". The signature is written in a cursive style with a large initial "T".

Thomas H. Boyd
Assistant Regional Director

Enclosures

FP17-10 Executive Summary	
General Description	<p>Proposal FP17-10, requests expansion of seasonal dates and numerous other changes to the regulations for the Kenai River community gillnet fishery. As written, this would be a replacement of all current regulatory language for this section. <i>Submitted by: The Ninilchik Traditional Council.</i></p>
Proposed Regulation	<p>§____.27(e)(10)(iv)(J) <i>The Ninilchik Traditional Council (NTC) may operate a community gillnet to provide for the subsistence uses of fish for the residents of Ninilchik from May 1st through November 15th. Residents of Ninilchik may harvest Sockeye, Chinook, Coho, and Pink Salmon with a gillnet in the Federal public waters of the Kenai River. Residents of Ninilchik may retain other species incidentally caught in the Kenai River except for Rainbow Trout and Dolly Varden 18 inches or longer. Rainbow Trout and Dolly Varden 18 inches or greater must be released.</i></p> <p><i>(1) The Ninilchik Traditional Council shall provide notice to the Office of Subsistence Management no later than February 1st of its intent to operate a gillnet fishery. No later than April 1st, a subsistence gillnet permit will be issued by the Office of Subsistence Management in consultation with the Federal in-season fishery manager, the Kenai National Wildlife Refuge Manager, and the Ninilchik Traditional Council.</i></p> <p><i>(2) The permit conditions shall include:</i></p> <p><i>(i) Provisions that the gillnet may be not be over 10 fathoms in length, shall be constructed such that it is directed at harvesting Sockeye, Chinook, Coho, and Pink Salmon, may not obstruct more than half of the river width with stationary fishing gear, and may not be set within 200 feet of other subsistence stationary gear.</i></p> <p><i>(ii) Identification of the person or persons who will be responsible for the overall operation of the gillnet as well as a means for identifying persons authorized by the Tribe to supervise members of the community engaged in fishing the net.</i></p> <p><i>(iii) Provisions for recording daily catches, ensuring that removal of the dorsal fins of harvested fish, and identifying</i></p>

	<p><i>the Ninilchik households to whom the catch was distributed.</i></p> <p><i>(iv) Provisions for NTC’s reporting of all harvested fish within 72 hours of leaving the gillnet location.</i></p> <p><i>(v) Identification of a collaborative process for making determinations about potential closures or other actions affecting the gillnet fishery through which NTC and the SCRAC are fully informed and consulted prior to the implementation of any such action.</i></p> <p><i>(3) Salmon taken in the gillnet fishery will be included as part of dip net/rod and reel fishery annual total harvest limits for the Kenai River.</i></p>
<p>OSM Preliminary Conclusion</p>	<p>Option 1 (see page 32): Defer Proposal FP17-10</p> <p>Option 2 (see page 32 – 37):</p> <p>Issue 1: Oppose</p> <p>Issue 2: Oppose</p> <p>Issue 3: Oppose</p> <p>Issue 4: Oppose</p> <p>Issue 5: Oppose</p> <p>Issue 6: Support</p> <p>Issue 7: Oppose</p>
<p>Southcentral Regional Advisory Council Recommendation</p>	
<p>Interagency Staff Committee Comments</p>	
<p>ADF&G Comments</p>	
<p>Written Public Comments</p>	<p>8 Oppose</p>

DRAFT STAFF ANALYSIS
FP17-10

ISSUES

Proposal FP17-10, submitted by the Ninilchik Traditional Council (NTC), requests that the Federal Subsistence Board (Board): 1) expand the season dates of the Kenai River community gillnet fishery; 2) make the Office of Subsistence Management (OSM) the issuer of the registration permit (rather than the Federal in-season fishery manager); 3) replace the operational plan requirement of the permit with specific permit conditions; 4) designate NTC in regulation as the coordinator of the community gillnet fishery; 5) remove the post-season reporting requirement; 6) add NTC reporting all fish harvested within 72 hours of leaving the gillnet location as a permit condition; and 7) establish a collaborative process through which NTC and the Southcentral Alaska Subsistence Regional Advisory Council (Council) are informed and consulted prior to any potential closures or other actions by the Federal in-season fishery manager. This would be a replacement of all current regulatory language for § __.27(e)(10)(J).

DISCUSSION

The proponent states that this “gillnet fishery is essential to provide for meaningful subsistence fishing opportunity” for the Federally qualified users residing in the community of Ninilchik. The proponent is also requesting specific permit conditions instead of requiring an operational plan. The proponent states that current reporting requirements are “undue and excessively burdensome,” the operational plan and process is “vulnerable to abuse,” there are currently “unreasonable sanctions against subsistence users,” and the current practice of Federal and State managers “has given preference to sport and commercial users before subsistence users.” They also note that NTC represents the entire community of Ninilchik, and has put forth all of the effort to date to establish and run this fishery, and therefore should be designated in Federal regulation as the entity that coordinates the community gillnet fishery.

The proponent states that these changes would provide “more security that the residents of Ninilchik will actually have the opportunity for a gillnet fishery.” The proponent asserts that it seeks to remove repeated language in the regulations, to provide reasonable choices to subsistence users, and provide for the retention of all fish harvested in the community gillnet, as retention is consistent with customary and traditional values and practices.

Currently, Federally qualified subsistence users of Cooper Landing, Hope, and Ninilchik may harvest salmon with dip nets and rod and reel in the Federal public waters in three areas of the Kenai River drainage: the Russian River just below the Russian River Falls; the Kenai River two miles below the outlet to Skilak Lake, from approximately River Mile (RM) 45.5 to RM 48; and the Kenai River in the Moose Range Meadows area, from approximately RM 26.5 to RM 29. Residents of the three communities may also harvest salmon with a rod and reel in all Federal public waters of the Kenai River watershed; with most seasons, areas, harvest and possession limits, and means and methods for taking the same as under Alaska sport fishing regulations. Federally qualified subsistence users from Ninilchik may also harvest salmon species in the Kenai River with a community gillnet that is no more than 10 fathoms in length, under a

registration permit issued by the Federal in-season fisheries manager. Issuance of the permit is contingent upon the Federal in-season manager's approval of an operational plan by a Federally qualified subsistence user from Ninilchik or an organization representing the residents of Ninilchik. The Federal in-season manager has not approved an operational plan to date for the Kenai River community gillnet fishery. However, fishing commenced during the 2016 season on an experimental basis following the Federal Subsistence Board (Board) approval with modification of Emergency Special Action FSA16-02.

The community gillnet fishery for the Kenai River, unlike the community gillnet fishery on the Kasilof River, was not designated as an "experimental fishery" when these fisheries were adopted by the Board in 2015. Proposal FP17-10 is related to Proposals FP17-06, FP17-07, and FP17-08, as all will affect the Kenai River community gillnet fishery. The Board's decision on FP17-06, -07, and -08 will have a bearing on FP17-10.

Existing Federal Regulation

Kenai River community gillnet regulations

§____.27(e)(10) Cook Inlet Area.

(iv) You may take only salmon, trout, Dolly Varden, and other char under the authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56 and 5 AAC 57) unless modified herein. Additionally, for Federally managed waters of the Kasilof and Kenai River drainages:

(J) Residents of Ninilchik may harvest Sockeye, Chinook, Coho, and Pink salmon with a gillnet in the Federal public waters of the Kenai River. Residents of Ninilchik may retain other species incidentally caught in the Kenai River except for Rainbow Trout and Dolly Varden 18 inches or longer. Rainbow Trout and Dolly Varden 18 inches or greater must be released.

(1) Only one community gillnet can be operated on the Kenai River. The gillnet cannot be over 10 fathoms in length to take salmon, and may not obstruct more than half of the river width with stationary fishing gear. Subsistence stationary gillnet gear may not be set within 200 feet of other subsistence stationary gear.

(2) One registration permit will be available and will be awarded by the Federal in-season fishery manager, in consultation with the Kenai National Wildlife Refuge manager, based on the merits of the operational plan. The registration permit will be issued to an organization that, as the community gillnet owner, will be responsible for its use and removal in consultation with the Federal fishery manager. As part of the permit, the organization must:

(i) Prior to the season, provide a written operational plan to the Federal fishery manager including a description of how fishing time and fish will be offered and

distributed among households and residents of Ninilchik;

(ii) After the season, provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, persons or households operating the gear, hours of operation, and number of each species caught and retained or released.

(3) The gillnet owner (organization) may operate the net for subsistence purposes on behalf of residents of Ninilchik by requesting a subsistence fishing permit that:

(i) Identifies a person who will be responsible for fishing the gillnet;

(ii) Includes provisions for recording daily catches, the household to whom the catch was given, and other information determined to be necessary for effective resource management by the Federal fishery manager.

(4) Fishing will be allowed from June 15 through August 15 on the Kenai River unless closed or otherwise restricted by Federal special action.

(5) Salmon taken in the gillnet fishery will be included as part of the dip net/rod and reel fishery annual total harvest limits for the Kenai River and as part of dip net/rod and reel household annual limits of participating households.

(6) Fishing for each salmon species will end and the fishery will be closed by Federal special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.

Kenai River dip net and rod and reel fishery regulations (pertaining to harvest limits by species)

§ __.27(e)(10)(iv) Cook Inlet Area.

(iv) You may take only salmon, trout, Dolly Varden, and other char under the authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56 and 5 AAC 57) unless modified herein. Additionally, for Federally managed waters of the Kasilof and Kenai River drainages:

(D) Residents of Hope, Cooper Landing, and Ninilchik may take only sockeye salmon through a dip net and a rod and reel fishery at one specified site on the Russian River, and Sockeye, late-run Chinook, Coho, and Pink salmon through a dip net/rod and reel fishery at two specified sites on the Kenai River below Skilak Lake and as provided in this section. For Ninilchik residents, salmon taken in the Kasilof River Federal subsistence fish wheel, and dip net/rod and reel fishery will be included as part of each household's annual limit for the Kenai and Russian Rivers' dip net and rod and reel fishery. For both Kenai River fishing sites below Skilak Lake, incidentally

caught fish may be retained for subsistence uses, except for early-run Chinook Salmon (unless otherwise provided for), Rainbow Trout 18 inches or longer, and Dolly Varden 18 inches or longer, which must be released. For the Russian River fishing site, incidentally caught fish may be retained for subsistence uses, except for early- and late-run Chinook Salmon, Coho Salmon, Rainbow Trout, and Dolly Varden, which must be released. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing site, and permits must be returned to the manager by the due date listed on the permit. Chum Salmon that are retained are to be included within the annual limit for Sockeye Salmon. Only residents of Cooper Landing, Hope, and Ninilchik may retain incidentally caught resident species.

(3) Each household may harvest their annual Sockeye, late-run Chinook, Coho, or Pink salmon limits in one or more days, and each household member may fish with a dip net or rod and reel during this time. Salmon taken in the Kenai River system dip net and rod and reel fishery by Ninilchik households will be included as part of those household's annual limits for the Kasilof River.

(i) For Sockeye Salmon—annual total harvest limit of 4,000 (including any retained Chum Salmon); annual household limits of 25 for each permit holder and 5 additional for each household member;

(ii) For late-run Chinook Salmon—annual total harvest limit of 1,000; annual household limits of 10 for each permit holder and 2 additional for each household member;

(iii) For Coho Salmon—annual total harvest limit of 3,000; annual household limits of 20 for each permit holder and 5 additional for each household member; and

(iv) For Pink Salmon—annual total harvest limit of 2,000; annual household limits of 15 for each permit holder and 5 additional for each household member.

Moose Range Meadows riverbank closures in Federal Subsistence regulations

§____.27(e)(10)(iv)(D)

(1) The household dip net and rod and reel gear fishery is limited to three sites:

(i) At the Kenai River Moose Range Meadows site, dip netting is allowed only from a boat from a Federal regulatory marker on the Kenai River at about river mile 29 downstream approximately 2.5 miles to another marker on the Kenai River at about river mile 26.5. Residents using rod and reel gear at this fishery site may

fish from boats or from shore with up to two baited single or treble hooks June 15-August 31. Seasonal riverbank closures and motor boat restrictions are the same as those listed in State of Alaska fishing regulations (5 AAC 56 and 5 AAC 57 and 5 AAC 77.540).

Moose Range Meadows riverbank closures in Kenai National Wildlife Refuge regulations

§36.39(i) Kenai National Wildlife Refuge

(7) Fishing. We allow fishing on the refuge in accordance with State and Federal laws, and consistent with the following provisions:

(ii) Designated areas along the Kenai River at the two Moose Range Meadows public fishing facilities along Keystone Drive are closed to public access and use. At these facilities, we allow fishing only from the fishing platforms and by wading in the Kenai River. To access the river, you must enter and exit from the stairways attached to the fishing platforms. We prohibit fishing from, walking or placing belongings on, or otherwise occupying designated areas along the river in these areas.

(12) Area-specific regulations for the Moose Range Meadows Subdivision non-development and public use easements.

(i) Where the refuge administers two variable width, non-development easements held by the United States and overlaying private lands within the Moose Range Meadows Subdivision on either shore of the Kenai River between river miles 25.1 and 28.1, you may not erect any building or structure of any kind; remove or disturb gravel, topsoil, peat, or organic material; remove or disturb any tree, shrub, or plant material of any kind; start a fire; or use a motorized vehicle of any kind (except a wheelchair occupied by a person with a disability), unless such use is authorized under the terms and conditions of a special use permit (FWS Form 3-1383-G) issued by the Refuge Manager.

(ii) Where the refuge administers two 25-foot-wide public use easements held by the United States and overlaying private lands within the Moose Range Meadows Subdivision on either shore of the Kenai River between river miles 25.1 and 28.1, we allow public entry subject to applicable Federal regulations and the following provisions:

(A) You may walk upon or along, fish from, or launch or beach a boat upon an area 25 feet upland of ordinary high water, provided that no vehicles (except wheelchairs) are used. We prohibit non-emergency camping, structure construction, and brush or tree cutting within the

easements.

(B) From July 1 to August 15, you may not use or access any portion of the 25-foot-wide public easements or the three designated public easement trails located parallel to the Homer Electric Association Right-of-Way from Funny River Road and Keystone Drive to the downstream limits of the public use easements. Maps depicting the seasonal closure are available from Refuge Headquarters.

Proposed Federal Regulation

§____.27(e)(10) Cook Inlet Area.

(iv) You may take only salmon, trout, Dolly Varden, and other char under the authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56 and 5 AAC 57) unless modified herein. Additionally, for Federally managed waters of the Kasilof and Kenai River drainages:

~~(J) Residents of Ninilchik may harvest Sockeye, Chinook, Coho, and Pink salmon with a gillnet in the Federal public waters of the Kenai River. Residents of Ninilchik may retain other species incidentally caught in the Kenai River except for Rainbow Trout and Dolly Varden 18 inches or longer. Rainbow Trout and Dolly Varden 18 inches or greater must be released.~~

~~(1) Only one community gillnet can be operated on the Kenai River. The gillnet cannot be over 10 fathoms in length to take salmon, and may not obstruct more than half of the river width with stationary fishing gear. Subsistence stationary gillnet gear may not be set within 200 feet of other subsistence stationary gear.~~

~~(2) One registration permit will be available and will be awarded by the Federal in season fishery manager, in consultation with the Kenai National Wildlife Refuge manager, based on the merits of the operational plan. The registration permit will be issued to an organization that, as the community gillnet owner, will be responsible for its use and removal in consultation with the Federal fishery manager. As part of the permit, the organization must:~~

~~(i) Prior to the season, provide a written operational plan to the Federal fishery manager including a description of how fishing time and fish will be offered and distributed among households and residents of Ninilchik;~~

~~(ii) After the season, provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, persons or households operating the gear, hours of operation, and number of each species-~~

~~caught and retained or released.~~

~~(3) The gillnet owner (organization) may operate the net for subsistence purposes on behalf of residents of Ninilchik by requesting a subsistence fishing permit that:~~

~~(i) Identifies a person who will be responsible for fishing the gillnet;~~

~~(ii) Includes provisions for recording daily catches, the household to whom the catch was given, and other information determined to be necessary for effective resource management by the Federal fishery manager.~~

~~(4) Fishing will be allowed from June 15 through August 15 on the Kenai River unless closed or otherwise restricted by Federal special action.~~

~~(5) Salmon taken in the gillnet fishery will be included as part of the dip net/rod and reel fishery annual total harvest limits for the Kenai River and as part of dip net/rod and reel household annual limits of participating households.~~

~~(6) Fishing for each salmon species will end and the fishery will be closed by Federal special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.~~

(J) The Ninilchik Traditional Council (NTC) may operate a community gillnet to provide for the subsistence uses of fish for the residents of Ninilchik from May 1st through November 15th. Residents of Ninilchik may harvest Sockeye, Chinook, Coho, and Pink Salmon with a gillnet in the Federal public waters of the Kenai River. Residents of Ninilchik may retain other species incidentally caught in the Kenai River except for Rainbow Trout and Dolly Varden 18 inches or longer. Rainbow Trout and Dolly Varden 18 inches or greater must be released.

(1) The Ninilchik Traditional Council shall provide notice to the Office of Subsistence Management no later than February 1st of its intent to operate a gillnet fishery. No later than April 1st, a subsistence gillnet permit will be issued by the Office of Subsistence Management in consultation with the Federal in-season fishery manager, the Kenai National Wildlife Refuge Manager, and the Ninilchik Traditional Council.

(2) The permit conditions shall include:

(i) Provisions that the gillnet may be not be over 10 fathoms in length, shall be constructed such that it is directed at harvesting Sockeye, Chinook, Coho, and Pink Salmon, may not obstruct more than half of the river width with stationary fishing gear, and may not be set within 200 feet of other subsistence stationary

gear.

(ii) Identification of the person or persons who will be responsible for the overall operation of the gillnet as well as a means for identifying persons authorized by the Tribe to supervise members of the community engaged in fishing the net.

(iii) Provisions for recording daily catches, ensuring that removal of the dorsal fins of harvested fish, and identifying the Ninilchik households to whom the catch was distributed.

(iv) Provisions for NTC's reporting of all harvested fish within 72 hours of leaving the gillnet location.

(v) Identification of a collaborative process for making determinations about potential closures or other actions affecting the gillnet fishery through which NTC and the SCRAC are fully informed and consulted prior to the implementation of any such action.

(3) Salmon taken in the gillnet fishery will be included as part of dip net/rod and reel fishery annual total harvest limits for the Kenai River.

Existing State Regulations

The Kenai Peninsula is a designated nonsubsistence use area by the State. As such, the State's subsistence priority does not apply on the Kenai Peninsula and the Alaska Board of Fisheries may not authorize subsistence fisheries in nonsubsistence areas. Under State regulations, personal use fisheries and educational fishery permits provide opportunities for harvesting fish with gear other than rod and reel in nonsubsistence areas. The management of Kenai River fisheries is conducted through several fisheries management plans, as outlined in the State Regulatory History section below.

In addition, the following State regulations have been implemented for the protection of riparian habitat along areas of the Kenai River by prohibiting or restricting access to fishing locations at certain times of year:

5 AAC 56.065. Riparian Habitat Fishery Management Plan

(d) From July 1 through August 15, the following Kenai River riparian habitats are closed to all fishing, except fishing from a boat that is located more than 10 feet from shore and not connected to the shore or any riparian habitat:

(15) on the south bank of the Kenai River, between ADF&G regulatory markers located at river mile 26.4 and river mile 30.0;

(16) on the north bank of the Kenai River from an ADF&G regulatory marker located at

the upstream edge of the boat ramp at the end of Keystone Drive at approximately river mile 27.3, upstream to ADF&G regulatory markers located at the Kenai National Wildlife Refuge boundary delineated by the power line at river mile 28.0;

(17) in the Caymas Subdivision, on the north bank of the Kenai River, between ADF&G regulatory markers located at river mile 31.5 and 32.5;

(e) For purposes of this section, “riparian habitat” means all areas within 10 feet in either direction from the Kenai River waterline.

Extent of Federal Public Water

Federal public waters are defined and described under 36 CFR 242.3 and 50 CFR100.3. For the Kenai River, Federal public waters under consideration include all waters of the Kenai River within and adjacent to the exterior boundaries of the Kenai National Wildlife Refuge and the Chugach National Forest (**Map 1**). These include Kenai Lake and its tributaries and all water downstream to the confluence of the upper branch of the Killey River (approximately RM 45.5; **Map 2**), the mainstem Kenai River between RM 26.5 and RM 29 (**Map 3**), which is known locally as Moose Range Meadows, and most of the upper reaches of tributaries below Skilak Lake including the Moose, Killey, and Funny rivers.

Customary and Traditional Use Determinations

Residents of the communities of Cooper Landing, Hope, and Ninilchik have a customary and traditional use determination for all fish in the Kenai Peninsula District, waters north of and including the Kenai River drainage within the Kenai Nation Wildlife Refuge and the Chugach National Forest.

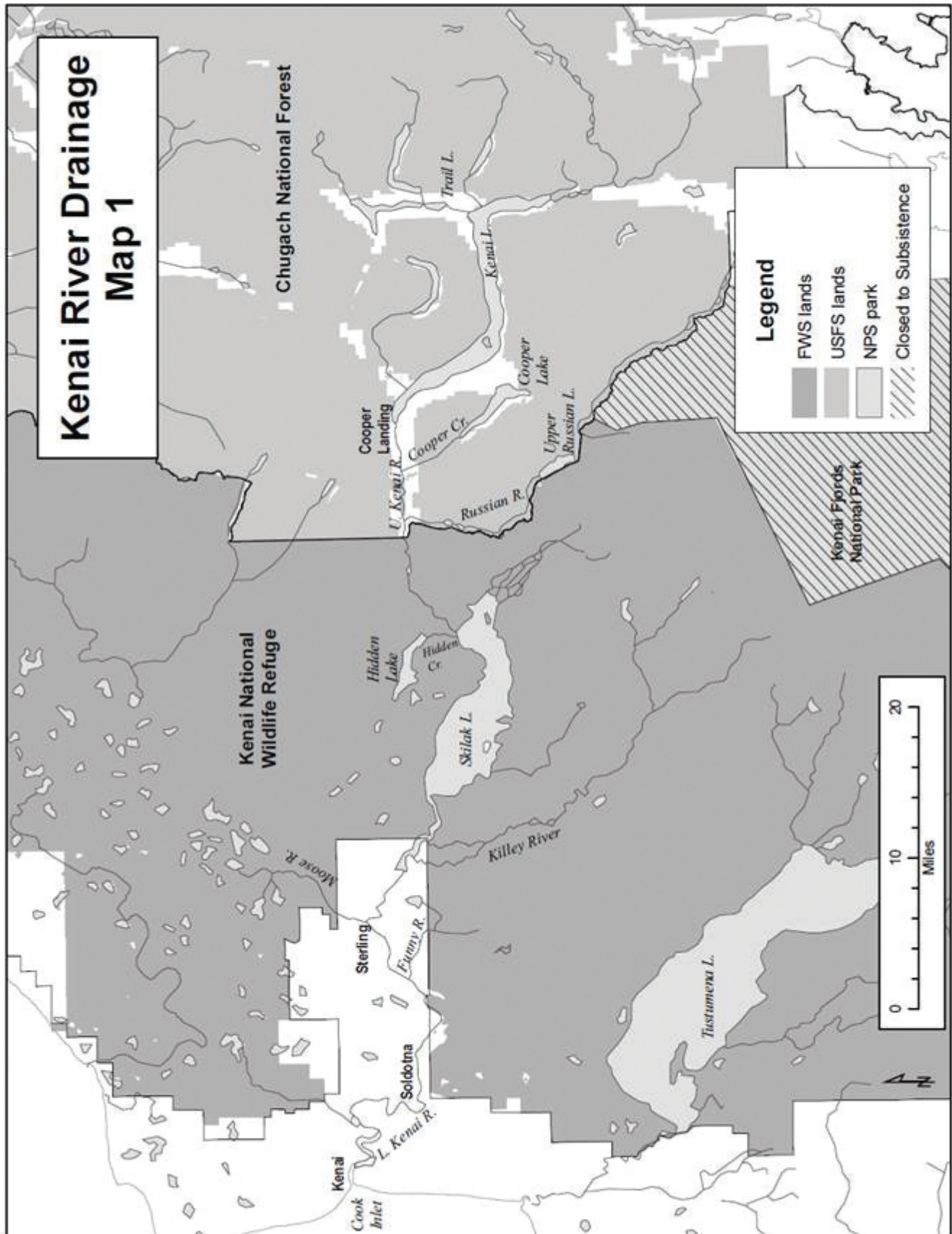
Regulatory History

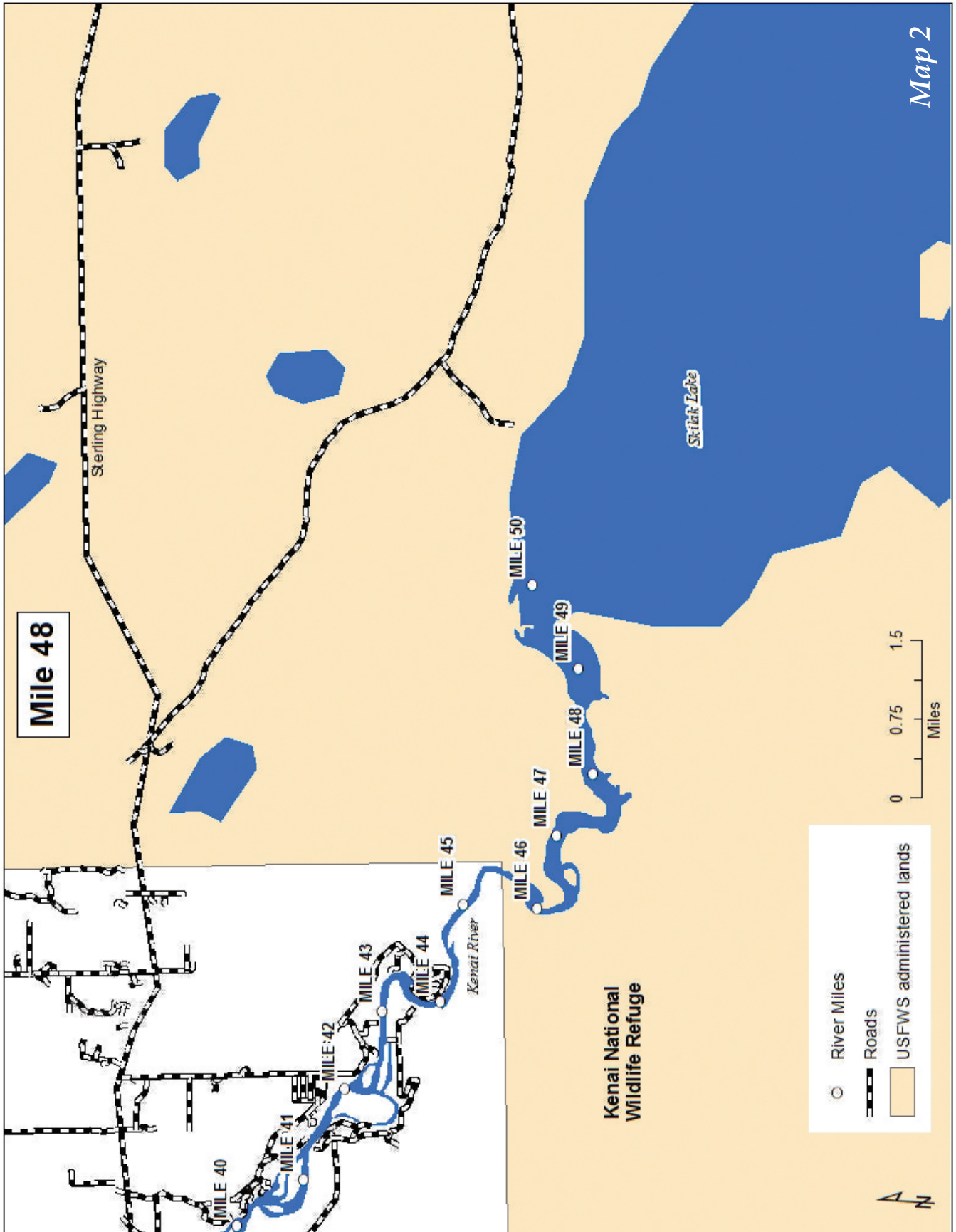
Pre- and Early Statehood Fisheries

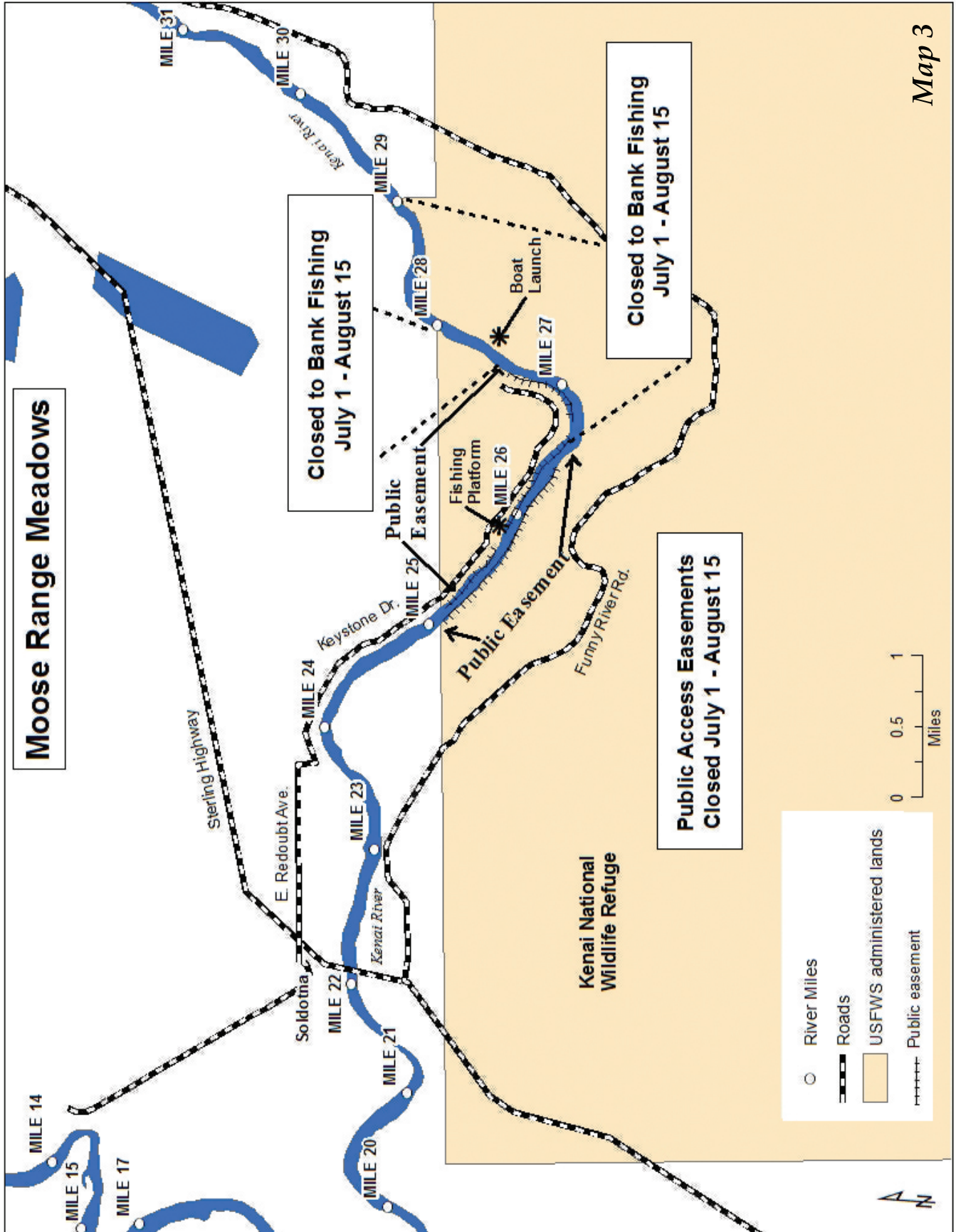
Prior to 1952, freshwater streams in the Kenai Peninsula were open to subsistence fishing, but poorly managed commercial fisheries, a growing local and territory-wide resident population, and increased user pressure decimated salmon runs. In 1952, as part of efforts to rebuild salmon runs, all streams and lakes of the Kenai Peninsula were closed to subsistence fishing under Territory of Alaska regulations. Only rod and reel fishing was allowed for “personal use” (Fall et al. 2004).

Contemporary State Fisheries

Overall, the State of Alaska manages commercial and sport salmon fisheries statewide based on the principles and criteria listed in the State’s Policy for the management of sustainable salmon fisheries, 5AAC 39.222 (**Appendix A**). A State regulatory management plan for Upper Cook Inlet salmon (5 AAC 21.363) provides the Alaska Board of Fisheries guiding principles and provisions for adopting management plans for specific stocks. In 1992, the State classified most of the Cook Inlet Area, including the Kenai and Kasilof River drainages, as a nonsubsistence area (5AAC 99.015(3)). The only State subsistence fisheries in Cook Inlet occur in areas that are not accessible from the road system, including the Tyonek, Windy Bay,







Port Chatham, and Port Graham subdistricts, as well as portions of Seldovia Bay and the Yentna River drainage.

The Kenai River fisheries are complex and intensively managed by the State of Alaska. There are five management plans that apply to Kenai River salmon stocks:

- Upper Cook Inlet Salmon Management Plan (5 AAC 21.363)
- Kenai River and Kasilof River Early-Run King Salmon Conservation Management Plan (5 AAC 56.070)
- Kenai River Late-Run King Salmon Management Plan (5 AAC 21.359)
- Kenai River Late-Run Sockeye Salmon Management Plan (5 AAC 21.360)
- Kenai River Coho Salmon Management Plan (5 AAC 56.080)

These plans provide goals for sustained yield, guidance for mixed-species and mixed-stock fisheries, and instructions for allocation between competing fisheries. Most of the initial Federal subsistence fishing regulations for the Kenai River that were put in place during the period of 2006 – 2008, were based on these plans to mirror State of Alaska regulations, conservation efforts, and management.

The State also has a regulatory management plan for Upper Cook Inlet personal use salmon fisheries (5 AAC 77.540). This plan established four personal use fisheries in Cook Inlet: Kasilof River dip net, Kasilof River set gillnet, Kenai River dip net, and Fish Creek dip net. Unlike subsistence fisheries, personal use fisheries do not have a priority over other existing uses. Personal use fisheries are open to all residents of Alaska, require a household permit and sport fishing license, occur in marine and intertidal waters, and are well downstream of Federal public waters in the Kenai River drainage. These fisheries target Sockeye Salmon, the species of greatest abundance and for which the best stock assessment information is available. Annual harvest limits are 25 salmon for the head of each household and 10 salmon for each additional household member. The limit is combined for all four fisheries. Incidentally caught Coho, Pink, and Chum Salmon may be retained as part of the annual limit. Each household is limited to one Chinook Salmon in the Kenai River dip net fishery.

Finally, the State administers up to twelve educational fisheries each year in the Cook Inlet area under the provisions of 5 AAC 93.200 – 93.235 (Nelson et al. 1999, Fall et al. 2004). Around half of these educational fisheries occur in marine waters near the mouths of Kenai Peninsula Rivers. The purpose of educational fisheries is to allow groups to practice traditional, contemporary, or experimental methods for locating, harvesting, or processing fishery resources. Educational fisheries like person use fisheries, but unlike subsistence fisheries, do not have statutory priority over other fisheries. Therefore, during times of resource shortages, educational fisheries could be restricted before or at the same time as commercial, sport and personal use fisheries are restricted.

Educational fishery permits have been issued to five local groups in the Kasilof/Kenai/Ninilchik area: the Kasilof Regional Historical Association, the Kenaitze Indian Tribe, Ninilchik Emergency Services, Ninilchik Native Decedents, and Ninilchik Traditional Council (Nelson et al. 1999, Begich et al. 2013; Kerkvliet et al. 2013; Shields and Dupuis 2016). The Kenaitze Indian Tribe has participated in an educational fishery since 1989, and has established educational fisheries in the marine environment adjacent

to the Kasilof, Kenai, and Swanson rivers, as well as limited fishing within the freshwaters of the Kenai and Swanson rivers. The Ninilchik Traditional Council has participated in an educational fishery since 1993 for the Ninilchik area fisheries and since 2007 for the Kasilof area fisheries. They are permitted to use two set gillnets in the marine waters near the mouth of the Ninilchik River (only 1 prior to June 22), one set gillnet in the marine waters near the mouth of the Kasilof River, and other traditional means in freshwaters of the Ninilchik River below the Sterling Highway bridge. In 1998, a group of NTC members formed a new organization called Ninilchik Native Decedents and the allocation was divided evenly between the two groups. They are permitted to use one set gillnet in the marine waters near the mouth of the Ninilchik River and other traditional means in freshwaters of the Ninilchik River below the Sterling Highway bridge. Ninilchik Emergency Services has participated in an educational fishery since 2003 in the Ninilchik area. They are permitted to use one set gillnet in the marine waters near the mouth of the Ninilchik River. The Kasilof Regional Historical Association has participated in an educational fishery since 2008, and is permitted a single set gillnet in the marine waters near the mouth of the Kasilof River. Permits for each group dictate total harvest, as well as specific limits for Chinook and Coho Salmon (**Table 1**).

Table 1. Harvest quota for each group, by species, and by location for Kasilof and Ninilchik River educational fisheries. Total quota is the number of all salmon species allowed for harvest, while Chinook and Coho Salmon quotas are specific limits for those species (Begich 2016a, pers. comm.; Kerkvliet 2016, pers. comm.).

Group	Total quota	Location(s)	Chinook quota	Coho quota
<i>Ninilchik Traditional Council</i>				
	2,800	Marine waters adjacent to the Kasilof River	100	300
		Marine waters near the Ninilchik River and freshwaters of the Ninilchik River below the Sterling Highway Bridge	100	200
<i>Ninilchik Native Descendants</i>				
	2,800	Marine waters adjacent to the Ninilchik River	50	150
<i>Ninilchik Emergency Services</i>				
	250	Marine waters adjacent to the Ninilchik River	25	50
<i>Kenaitze Indian Tribe</i>				
	10,000	Marine waters adjacent to the Kasilof River	-	500
		Marine waters adjacent to the Swanson River mouth and freshwaters of the Swanson River adjacent to the boat landing	25	200
		Marine waters adjacent to the Kenai River mouth and freshwaters of the Kenai River from one-quarter mile upstream of the Warren Ames Bridge downstream to the mouth	50	1,000
<i>Kasilof Regional Historical Assn.</i>				
	300	Marine waters adjacent to the Kasilof River	10	50

From 2010 to 2016, numerous State emergency orders were put in place to protect Chinook salmon in the Kenai River due to conservation concerns (**Table 2**)

Table 2. Emergency Orders issued by the Alaska Department of Fish and Game for Chinook Salmon in the Kenai River drainage between 2010 and 2016

Year	Number	Start Date	End Date	Action
2010	2-KS-1-12-10	6/5/2010	7/14/2010	Partial season closure for sport fishery
2010	2-KS-1-16-10	6/12/2010	7/14/2010	Restricted reopening for sport fishery
2010	2-KS-1-19-10	6/15/2010	7/31/2010	Reopen back to standard sport fishing regulations
2011	2-KS-1-17-11	6/29/2011	7/14/2011	Restrict sport fishery
2011	2-KS-1-20-11	7/15/2011	7/31/2011	Continue duration of restricted sport fishery
2012	2-KS-1-11-12	6/15/2012	7/14/2012	Restrict sport fishery
2013	2-KS-1-11-13	5/16/2013	7/14/2013	Restrict sport fishery
2013	2-KS-1-22-13	6/20/2013	7/14/2013	Close sport fishery in some areas, restrict in others
2013	2-KS-1-24-13	7/1/2013	7/31/2013	Restrict sport fishery
2013	2-KS-1-34-13	7/10/2013	7/31/2013	Prohibit retention of Chinook Salmon in personal use fishery
2013	2-KS-1-36-13	7/15/2013	7/31/2013	Close sport fishery
2013	2-KS-1-43-13	7/25/2013	7/31/2013	Allow harvest of fish less than 20 inches or greater than 55 inches
2013	2-KS-1-45-13	7/28/2013	7/31/2013	Close sport fishery
2013	2-KS-1-46-13	8/1/2013	8/15/2013	Prohibit use of bait and limit gear in the sport fishery
2014	2-KS-1-04-14	5/1/2014	7/31/2014	Close sport fishery for early-run
2014	2-KS-1-26-14	7/1/2014	7/31/2014	Prohibit use of bait in the sport fishery
2014	2-KS-1-27-14	7/10/2014	7/31/2014	Prohibit retention of Chinook Salmon in personal use fishery
2014	2-KS-1-40-14	7/19/2014	7/31/2014	Restrict sport fishery to unbaited single barbless hook, no retention
2014	2-KS-1-42-14	7/26/2014	7/31/2014	Close sport fishery
2015	2-KS-1-05-15	5/1/2015	7/31/2015	Close sport fishery for early-run
2015	2-KS-1-35-15	7/1/2015	7/31/2015	Prohibit use of bait in the sport fishery
2015	2-KS-1-46-15	7/25/2015	7/31/2015	Restore use of bait in sport fishery, no Chinook retention
2016	2-KS-1-03-16	5/1/2016	7/31/2016	Close sport fishery for early-run
2016	2-KS-1-19-16	6/18/2016	6/30/2016	Allow harvest in sport fishery from mouth of river to Slikok Creek
2016	2-KS-1-24-16	7/1/2016	7/31/2016	Prohibit use of bait in the sport fishery
2016	2-KS-1-28-16	7/1/2016	7/31/2016	Maintain bait prohibition in the sport fishery
2016	2-KS-1-33-16	7/9/2016	7/31/2016	Restore use of bait in the sport fishery

Federal Subsistence Fisheries Regulations in the Cook Inlet Area

In 2002, Federal subsistence regulations for harvest in the Cook Inlet Area were established for salmon, trout, and Dolly Varden. A Federal subsistence permit was required and seasons, harvest and possession limits, and methods and means for take were the same as those in Alaska sport fishing regulations. This fishery was established as an interim measure to provide some subsistence opportunity in the Cook Inlet Area for Federally qualified rural residents. Initially, there were no customary and traditional use determinations for salmon, trout and Dolly Varden in Cook Inlet; so all rural residents of Alaska could harvest under Federal regulations.

In January 2006, the Federal Subsistence Board made customary and traditional use determinations for Hope and Cooper Landing residents for all fish in the Kenai River Area, and for Ninilchik residents for all fish within the Kasilof River drainage within the Kenai National Wildlife Refuge. In November 2010, the Board made a customary and traditional use determination for Ninilchik residents for all fish in the Kenai River Area within the Kenai National Wildlife Refuge and the Chugach National Forest.

For the 2007 regulatory cycle, two additional steps were included in the usual analysis and review process for regulatory proposals; 1) the formation of a stakeholder subcommittee of the Southcentral Council, which met twice in Soldotna in February 2007, to review the analyses and suggest changes, and 2) a review by the NTC, the proponent of some of the proposals, to assess, and provide feedback on, the changes suggested by the subcommittee, and to suggest other changes. Both of these steps took place prior to the Southcentral Council's March 2007 meeting. Several suggested changes which resulted from these extra steps, were incorporated into the analyses as modifications to the proposed regulations and presented to the Council and, ultimately, the Board (OSM 2007).

At the time, the Board typically held public meetings twice a year to make decisions on proposals to change Federal subsistence regulations throughout the State; once in the Spring (April or May) for wildlife regulations and once in the Winter (December or January) for fisheries proposals. In May 2007, the Board held a third public meeting solely to hear public testimony on, deliberate and make decisions for the Kenai Peninsula fisheries proposals of the 2007 regulatory cycle. The meeting lasted three days (FSB 2007a).

During its May 2007 meeting, the Board adopted proposals that established dip net/rod and reel salmon fisheries on the Kasilof and Kenai Rivers; increased previously established harvest, possession, and annual limits for salmon and selected resident species for existing rod and reel fisheries on the Kasilof and Kenai River drainages; and allowed use of up to two single or treble hooks and bait for rod and reel fishing during specified dates for both systems. Sockeye Salmon annual harvest limits were set at 4,000 fish, with an annual household limit of 25 for each permit holder, and an additional 5 for each household member; late-run Chinook Salmon annual harvest limits were set at 1,000 fish, with an annual household limit of 10 for each permit holder, and an additional 2 fish per each household member; Coho Salmon annual harvest limits were set at 3,000 fish, with an additional household limit of 20 for each permit holder, with an additional 5 fish for each household member; and Pink Salmon annual harvest limits were set at 2,000 fish, with an annual household limit of 15 for each permit holder, and an additional 5 per each household member. Any Rainbow Trout or Dolly Varden 18 inches or greater in length were required to be released alive.

Additionally, during the 2007 regulatory cycle, there were several proposals that included requests for the use of gillnets in the Kenai River drainage. These included Proposals FP07-27B and C (by NTC) and FP07-29 (by Mr. Robert Gibson of Cooper Landing). FP07-27B and C requested a community set gillnet fishery for Chinook, Sockeye, and Pink Salmon in the Kasilof and Kenai Rivers and a community set gillnet fishery for Coho Salmon in the Kenai River. FP07-29 requested that gillnets with different mesh sizes be used to harvest Sockeye Salmon, Coho Salmon, Pink Salmon, Rainbow Trout, Dolly Varden, Lake Trout, and whitefish species in several lakes in the Kenai River drainage. The recommendation of the Southcentral Council was to move forward with only the dip net and rod and reel salmon fisheries described

above. Justification for this recommendation was that a dip net fishery at Moose Range Meadows provides additional subsistence opportunity and that limiting this fishery to dip nets from boats addresses habitat and private property concerns in this area. The Southcentral Council also stated that allowing incidental harvest of Rainbow Trout and Dolly Varden/Arctic Char less than 18 inches in dip net fisheries below Skilak Lake is consistent with conservation practices and provides a reasonable alternative to expanded harvest opportunity in the rod and reel fishery. Lastly, the Southcentral Council stated that providing up to two baited hooks in the rod and reel fishery below Skilak Lake from January 1 to August 31 provides an additional opportunity for Chinook and Coho Salmon, and is consistent with conservation practices for these species.

During the 2008 regulatory cycle, the NTC submitted Proposal FP08-08 to allow the salmon dip net fishery to occur from the shore (river bank), as well as from boats, within the Federal public waters of the Kenai River in the Moose Range Meadows area. The Southcentral Council voted 5-4 to support the proposal, after a lengthy discussion during its fall 2007 meeting. The Southcentral Council decided that allowing subsistence dip net fishing from shore as well as from a boat would provide more of a subsistence preference in this area of the Kenai River. The Southcentral Council also stated that limiting the dip net fishery at Moose Range Meadows to boats would limit participation by Federally qualified subsistence users without access to a boat and that while there are habitat and private property concerns in the area, it should be possible to allow some subsistence fishing from shore on Federal public lands that can be accessed without the use of a boat. During the Board's December 2007 meeting, some Board members expressed concerns about allowing dip netting from the shore because this area is prime Chinook Salmon rearing habitat with bank closures in place for habitat protection, that the area was not a safe place to use dip nets, and that opening the area to fishing from the shore would not be consistent with recognized principles of fish and wildlife management. Other Board members pointed out that adoption of the proposal would provide a "meaningful subsistence preference". A motion was put forth to support Proposal FP08-08. The motion failed on a three/three tie vote (FSB 2007b).

Also during the 2008 cycle, the Southcentral Council submitted Proposal FP08-09 to establish a temporary community fish wheel on both the Kenai and Kasilof Rivers for residents of Ninilchik, Hope, and Cooper Landing. The Council contended that the fish wheels would provide a more effective means for Federally qualified subsistence users to harvest salmon. The Council requested the establishment of fish wheels as a gear type be temporary to evaluate the feasibility of operating this type of gear. The Board, at its December 2007 meeting, adopted the proposal, with modification, to allow fish wheels to be classified as a gear type, but only in the Kasilof River. The Board felt that there were too many logistical issues to be dealt with on the Kenai River, especially with three communities having the possibility of running a single fish wheel. The Board specified that only one fish wheel with a live box would be allowed in the upper mainstem of the Kasilof River. A permit would be required to use the fish wheel and that an operational plan must be submitted to and approved by the Federal in-season manager, before the permit would be awarded. Individuals operating the fish wheel would need to have a Federal subsistence fishing permit and all harvest limits on the permit would apply to the fish wheel. Salmon harvested by the fish wheel were included as part of each household's annual limit and all fish harvested were to be reported to the in-season manager with 72 hours of leaving the fishing location. The Board, at its January 2013 meeting, supported FP13-15 to remove the expiration date for the community fish wheel salmon fishery on the Kasilof River

allowing continued operation of the fish wheel (FSB 2013).

For the 2009 regulatory cycle, the NTC submitted Proposal FP09-08, again requesting the Board to allow the salmon dip net fishery to occur from the shore (river bank), as well as from boats, within the Federal public waters of the Kenai River in the Moose Range Meadows area. Proposal FP09-08 was put on the Board’s consensus agenda due to opposition of the proposal by both the Southcentral Council and the Alaska Department of Fish and Game (ADF&G). The Council’s stated reason for opposing FP09-08 was that “no Federal lands are available to allow fishing from the shore without serious damage to the river bank.” The Board adopted the consensus agenda without discussion. As a result, Proposal FP09-08 failed (FSB 2009).

For the 2015 regulatory cycle, Proposal FP15-10 was submitted by NTC to establish a community gillnet fishery in the Kenai River in order to provide additional subsistence harvest opportunities for residents of Ninilchik. The proponent requested the use of a single community gillnet that was 10 fathoms or less in length for the harvest of salmon. Similar to the fish wheel regulations, an operational plan would be required to be developed by a local organization on behalf of Ninilchik residents, and approved by the Federal in-season manager before a fishing permit would be authorized. The operational plan would include deployment locations, fishing times, and a methodology for distributing the harvest. All salmon taken in the Kenai River community gillnet fishery would be included as part of the existing annual households’ limit for Ninilchik residents, and fishing for salmon would be closed by Federal special action prior to regulatory end dates if the annual total harvest limit for that species was reached or for other reasons as required. Proposal FP15-10 was adopted at the Board’s January 2015 public meeting (FSB 2015).

From 2010 to 2015, numerous Federal special actions were put in place to protect Chinook salmon in the Kenai River due to conservation concerns (**Table 3**)

Table 3. Federal special actions for Chinook Salmon in Federal public waters of the Kenai River drainage between 2010 and 2015

Year	Number	Start Date	End Date	Action
2010	10-KS-01-10	6/4/2010	7/14/2010	Close to subsistence fishing for early-run
2010	10-KS-02-10	6/15/2010	7/14/2010	Reopen under restricted subsistence harvest guidelines for early-run
2010	10-KS-03-10	6/15/2010	8/31/2010	Open to subsistence fishing under normal regulations
2011	10-KS-02-11	7/15/2011	7/31/2011	Restrict harvest of early-run
2012	10-KS-01-12	6/15/2012	7/14/2012	Restrict harvest of early-run
2012	10-KS-02-12	6/22/2012	7/14/2012	Close to subsistence fishing for early-run
2012	10-KS-03-12	7/16/2012	7/31/2012	Close to subsistence fishing for late-run
2013	10-KS-02-13	6/20/2013	7/14/2013	Close to subsistence fishing for Chinook Salmon
2013	10-KS-03-13	7/15/2013	8/15/2013	Extend closure of subsistence fishing for Chinook Salmon
2014	10-KS-01-14	6/19/2014	7/14/2014	Close to subsistence fishing for Chinook Salmon
2014	10-KS-02-14	7/15/2014	8/17/2014	Extend closure of subsistence fishing for Chinook Salmon
2015	10-KS-01-15	6/18/2015	8/15/2015	Close to subsistence fishing for early-run

Current Events

There is been a substantial amount of activity related to subsistence fisheries on the Kenai River since

January 2015. This includes submission of over 700 Requests for Reconsiderations (RFR) to the Board, proposals to rescind the community gillnet regulations (FP17-06 & 07), a proposal to alter the community gillnet regulations (FP17-10), litigation related to USFWS rejection of NTC submitted operational plans for the fishery, Emergency Special Action FSA16-02 that temporarily removed regulatory conflicts that had previously prevented the community gillnet fishery from operating in 2016, and this proposal.

The more than 700 RFRs submitted request that the Board reverse its decision and rescind regulations generated as a result of adopting FP15-10. This is the largest number of RFRs received by the Federal Subsistence Management Program to date in response to any regulatory proposal adopted by the Board. Two of the groups that filed RFRs also submitted proposals for the 2017 -2019 Fisheries Regulations requesting that the Board rescind the regulations generated by FP15-10. The proponents of regulatory proposal FP17-06 are Federally qualified subsistence users from two of the three communities that have a Customary and Traditional Use Determination for fish in the Kenai River (Hope and Cooper Landing). Proposal FP17-07 was jointly submitted by the Assistant Regional Director for Fisheries and Ecological Services, and the Regional Chief of Refuges, U.S. Fish and Wildlife Service, Region 7, Alaska. To date, no decision has been made on the RFRs.

In October 2015, NTC filed a lawsuit against the Federal Subsistence Board for its failure to override the USFWS decision to not approve an operational plan for the community gillnet on the Kenai River in 2015. The regulation adopted by the Board at its January 2015 meeting required NTC to submit an operational plan (to be approved by the Federal in-season manager) to address conservation concerns raised by biologists in their opposition to Proposal FP15-10. NTC's plan in 2015 was not considered because river closures were in place. Immediately before the Board's July 2015 work session, NTC submitted an emergency special action request asking the Board to override the Federal in-season manager's decision. The Board elected to not grant the request. Following this decision, NTC filed suit. *Ninilchik Traditional Council v. Towarak et al.*, Case No. 3:15-cv-0205 JWS (D. Alaska).

On June 28, 2016, the NTC submitted a Special Action Request (FSA 16-02) to the Board to implement the subsistence gillnet fishery for the Kenai River. On July 14, 2016, NTC amended FSA 16-02 to reflect that portions of the initial request were no longer valid due to the passage of time.

On July 27, 2016, the Board approved Emergency Special Action Request FSA16-02 with modification, providing for the implementation of an experimental Kenai River community gillnet fishery for residents of Ninilchik. The Board designated this fishery as experimental to see if a set gillnet could be used in certain locations on the Kenai River with minimal impact to Chinook Salmon, Rainbow Trout and Dolly Varden. The Board stipulated that the fishery may be conducted in the Moose Range Meadows area of the Kenai National Wildlife Refuge, with a gillnet up to 10 fathom (60') in length with 5 1/4" mesh, anchored to the bank. The fishery allows for the retention of up to 50 Chinook Salmon, all other salmon within current Federal regulation limits, and any incidentally caught Rainbow Trout and Dolly Varden. Genetic samples will be collected from all Chinook Salmon. The State bank closures, as adopted into Federal subsistence regulations, were temporarily removed to allow for the Kenai River community gillnet fishery; however, Kenai National Wildlife Refuge regulations at 50 CFR 36.39(i) remain in effect and prohibit access within an area 25 feet upland of ordinary high water on either shore of the Kenai River between RM 25.1 and RM

28.1.

At the conclusion of the 2016 Kenai River experimental community gillnet fishery on August 15, the Ninilchik community has caught 755 Sockeye Salmon, 7 Pink Salmon, 1 Chinook Salmon, 12 Coho Salmon and 2 Dolly Varden, while harvesting 723 Sockeye Salmon, 6 Pink Salmon, 1 Chinook Salmon, and 12 Coho Salmon. They also have released 29 Sockeye Salmon, 1 Pink Salmon, and 2 Dolly Varden. No Rainbow Trout or Steelhead were caught, harvested, or released during the experimental community gillnet fishery.

Biological Background and Harvest History

All Pacific salmon species spawn within the Kenai River drainage, and the runs are harvested in State commercial, sport, personal use, and educational fisheries, as well as Federal subsistence fisheries. Federal subsistence harvest history will be discussed after the description of State harvest under these various State run fisheries. The State's Upper Cook Inlet Salmon Management Plan (5 AAC 21.363) establishes long-term direction for the management of Upper Cook Inlet salmon stocks. It provides mandatory criteria that the Alaska Board of Fisheries must consider when adopting management plans for specific fish stocks, and establishes a set of guiding principles for the adoption of regulations governing salmon fisheries. The plan focuses the commercial fisheries take on late-run Sockeye Salmon, while early-run Sockeye, early- and late-run Chinook, and Coho Salmon runs are primarily managed for sport fisheries. Considerable information has been compiled on abundance and distribution of Sockeye, Chinook, and Coho Salmon runs, but little information is available on either Pink or Chum Salmon runs. Spawning escapement goals have been set for Sockeye and Chinook Salmon runs, and sustainable harvest levels have been estimated for Sockeye, Chinook, and Coho Salmon.

Early-Run Sockeye Salmon

Most early-run Sockeye Salmon spawn within the Russian River. The State's Russian River Sockeye Salmon Management Plan (5 AAC 57.150) establishes escapement objectives and provides guidelines for the State management of State fisheries harvesting this run. The primary harvest of this run occurs within the sport fishery, and the State manages other fisheries to minimize the harvest of early run sockeye. The biological escapement goal range set by this plan is 22,000 to 42,000 early-run Sockeye Salmon.

Sport fishing for early-run Sockeye Salmon primarily occurs within the Russian River area. This fishery includes the lower Russian River up to a marker 600 yards below Russian River Falls, and the mainstem Kenai River from the confluence down to the power line crossing. The allowable gear in this fishery is restricted to fly fishing only, and the fishery opens June 11 at the conclusion of the spawning season closure for Rainbow Trout. Bag and possession limits for Sockeye Salmon throughout the Kenai River drainage are 3 per day and 6 in possession. Sport fishery harvests of early-run Russian River Sockeye Salmon during 2003–2012, the most recent 10-year period for which data are available, have ranged from 15,231 to 59,097 fish with an average harvest of 34,375 fish (Begich et. al. 2013). On average, the sport fishery harvested about 46% of the early-run that enters the Russian River area during this period.

The Kenaitze Indian Tribe educational fishery currently consists of one set gillnet that is fished May 1 – June

30 in marine waters just south of the Kenai River mouth, and two set gillnets that are fished July 1–November 30 in marine waters just south of Kenai River mouth. The net can be fished from 1 May through 30 November, and there is an annual harvest limit of 10,000 salmon, as well as species and stock restrictions. Annual harvests of early-run Russian River Sockeye Salmon during 2004–2013, the most recent 10-year period, have ranged from 275 to 2,374 Sockeye Salmon, with an average of 1,405 (Begich et. al. 2013).

Escapement into the Russian River system is estimated using a weir below the outlet of Upper Russian Lake. Early-run Sockeye Salmon enter the Kenai River from about mid-May through mid-July. During 2004–2013, spawning escapements have ranged from 24,115 to 80,524 Sockeye Salmon, with an average escapement of 41,656 (Begich et. al. 2013).

Late-Run Sockeye Salmon

Late-run Sockeye Salmon is the most intensively managed and utilized Kenai River salmon resource. The State's Kenai River Late-run Sockeye Salmon Management Plan (5 AAC 21.360) and Russian River Sockeye Salmon Management Plan (5 AAC 57.150) establish escapement objectives and provides guidelines for the management of all fisheries harvesting the late run. The optimum escapement goal range for the total drainage, including the Russian River system, is set at 700,000 to 1,400,000 late-run Sockeye Salmon, which is estimated with sonar equipment installed in the lower Kenai River. The sustainable escapement goal range for the Russian River is set at 30,000–110,000 late-run Sockeye Salmon, which is monitored with a weir. While primary harvest of the late-run occurs within the commercial fishery, the State manages the commercial fishery to provide for harvests within other fisheries as well as to achieve spawning goals.

The harvest of late-run Sockeye Salmon is monitored in all existing commercial, personal use, sport, and educational fisheries (Begich et. al. 2013). Commercial fisheries are conducted in the marine waters of Cook Inlet using both drift and set gillnets. During 2003–2012, the commercial harvest of Kenai River bound Sockeye Salmon has ranged from 204,579 to 5,277,995 late-run Sockeye Salmon, with an average of 3,445,684. About half of the commercial harvest is generally taken within a few days centered on July 20.

A personal use dip net fishery occurs at the mouth of the Kenai River and extends upstream as far as the Warren Ames Bridge. Dip nets can be fished from boats in the section of river from the City Dock upstream to the Warren Ames Bridge. To target effort on late-run Sockeye Salmon, and reduce harvests of late-run Chinook Salmon and Coho Salmon, this dip net fishery is only open July 10–31. All Alaska residents may participate, permits are required, and the annual household limit is 25 salmon for the permit holder and 10 additional salmon for each household member. From 2009 to 2013, about 25,000 to 30,000 household days of effort are for all fisheries each year. Annual late-run Sockeye Salmon harvests have ranged from 127,630 to 537,765 fish during 2004–2012, with an annual average of 333,960. The three communities of Cooper Landing, Hope, and Ninilchik all participate in the State personal use fisheries. From 2010 to 2013, the average number of households with a personal use fishery permit was 22 for Cooper Landing, 16 for Hope, and 166 for Ninilchik. The average number of Sockeye harvested in each community during this time was 272 fish for Cooper Landing, 285 fish for Hope, and 2,876 fish for Ninilchik (**Tables 4 and 5**).

The Kenaitze Indian Tribe educational fishery annual harvests have ranged from 2,246 to 5,278 late-run

Sockeye Salmon during 2004– 2013, with an annual average of 3,505 fish. Sport fishery bag and possession limits for late-run Sockeye Salmon are initially 3 per day and 6 in possession, but are liberalized per the allocative management plans based on return abundance. Total sport fish harvests have ranged from 203,602 to 470,547 late-run Sockeye Salmon during 2003–2012, with an annual average of 320,122 fish. For the Russian River component, sport harvests have ranged from 9,331 to 33,935 late-run Sockeye Salmon during this time period, with an average of 21,200 fish.

The late-run Sockeye Salmon enter the Kenai River from about early July through mid-August. The total drainage spawning escapement has ranged from 703,979 to 1,876,180 late-run Sockeye Salmon during 2003–2012, with an average of 1,258,861 fish (Begich et. al. 2013). The late-run Sockeye Salmon spawn throughout the drainage, with 35-42 percent spawning within the mainstem Kenai River above Skilak Lake, 10-20 percent spawning within the mainstem Kenai River at the outlet of Skilak Lake, 11-21 percent spawning in the upper tributaries of the watershed, and 7-11 percent spawning in Skilak Lake and its tributaries (Willette et al. 2012).The Russian River spawning escapement has ranged from 31,364 to 110,244 late-run Sockeye Salmon during 2004–2013, with an average of 60,520 fish.

Table 4. Personal Use Fisheries Harvest for Kasilof River set net fishery, Kasilof River dip net fishery, Kenai River dip net fishery, Fish Creek (Knik Arm) dip net fishery from 2010 to 2013 for residents of Cooper Landing, Hope, and Ninilchik (Fall et al. 2013a&b)

Year	Cooper Landing (Pop. 289) (161 households)			Hope (Pop. 210) (107 households)			Ninilchik (Pop. 1,476) (682 households)		
	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook
2010	235	1	2	245	1	0	3,000	10	10
2011	361	2	2	306	1	0	3,316	8	10
2012	283	0	0	277	1	0	2,968	7	0
2013	206	1	0	312	1	0	2,222	13	0
TOTAL	1,087	4	4	1,140	4	0	11,506	38	20
AVG	272	1	1	285	1	0	2,876	9.5	5
Per household Average	1.6			2.7			4.2		

Table 5. Personal Use Fisheries Sockeye Salmon Harvest, Number of Permits, Sockeye per Permit, Households, and Population Numbers for Kasilof River set net fishery, Kasilof River dip net fishery, Kenai River dip net fishery, Fish Creek (Knik Arm) dip net fishery from 2010 to 2013 for residents of Cooper Landing, Hope, and Ninilchik (Fall et al. 2013a&b).

Year	Cooper Landing (Pop. 289) (161 households)			Hope (Pop. 210) (107 households)			Ninilchik (Pop. 1,476) (682 households)		
	Permits	Sockeye	Sockeye per Permit	Permits	Sockeye	Sockeye per Permit	Permits	Sockeye	Sockeye per Permit
2010	26	235	9	14	245	17	168	3,000	18
2011	19	361	19	17	306	18	183	3,316	18
2012	30	283	9	13	277	21	163	2,968	18
2013	14	206	15	19	312	16	151	2,222	15
TOTAL	89	1,087	52	63	1,140	72	665	11,506	69
AVG	22	272	13	16	285	18	166	2,876	17

Chinook Salmon

A series of radio-telemetry studies and in-river abundance estimation techniques have identified differential run times and spawning distributions for Chinook Salmon returning to the Kenai River. Indices of run strength for Chinook Salmon entry times into the Kenai River indicate a bimodal distribution with the early component of the run peaking between 8 and 20 June and a later component peaking between 17 and 25 July (Hammarstrom and Larson 1986; Conrad and Larson 1987; Conrad 1988; Carlon and Alexandersdottir 1989; Alexandersdottir and Marsh 1990; Miller et al. 2011; Reimer 2013). Chinook Salmon entering the Kenai River during July and August are considered “late-run” fish and almost exclusively spawn during August and early September in the main-stem Kenai River (Burger et al. 1985; Bendock and Alexandersdottir 1991, 1992; Reimer 2013). Each run, early and late, are managed independently primarily because of differences in run size, run timing, and spatial distribution of spawning fish.

Chinook Salmon abundance in the Kenai River and throughout Alaska has been decreasing since around 2007 (ADF&G Chinook Salmon Research Team 2013). Some stocks are also exhibiting declining trends in size and age, including Kenai River Chinook Salmon that spawn on the Kenai National Wildlife Refuge, either in tributary streams (Boersma and Gates 2016) or the main-stem Kenai River (Lewis et al. 2015). Several potential, but as yet unproven, causal factors for this downward trend in abundance, include: size-selective harvest, competitive interactions, and changing environmental conditions (Lewis et al. 2015). Mainstem spawning areas were identified between RM 13 and RM 80, with higher spawning densities document between RMs 14 – 15, 17 – 21, and 46 – 47, and with the section between RM 46 and 47 shown to support the highest number of spawners (Reimer 2013). Of the 50 river miles in the drainage available for sport fishing for Chinook Salmon (all below Skilak Lake), only about 5 miles are within Federal public waters (RM 48 – 45.5 and RM 29 – 26.5).

Early-Run Chinook Salmon

Early-run Chinook Salmon enter the Kenai River from about mid-May through late-June. Most early-run Chinook Salmon spawn in Kenai River tributaries below the outlet of Skilak Lake, and most of these spawners are bound for the Killey and Funny Rivers. In general, about 80% of the early-run Chinook Salmon spawn in either the Funny or the Killey Rivers, while only about 7% of all early-run Chinook Salmon spawn in tributaries above Skilak Lake (Bendock and Alexandersdottir 1992, Burger et al. 1983). In the mainstem Kenai River, staging behavior (preparing for spawning) generally runs from early- to mid-July with most spawning occurring from mid-July through August. During this time, a small segment (7% – 20%) of early run Chinook Salmon also utilize the main stem Kenai River to spawn (Bendock and Alexandersdottir 1992, Burger et al. 1983). For Chinook Salmon, the stretch of river encompassing river miles 46 and 47 on the Kenai National Wildlife Refuge represents some of the highest densities of spawners in the entire watershed (Reimer 2013).

The State's optimal escapement goal (OEG)¹ range for early-run Chinook Salmon is 5,300 to 9,000 fish for the Kenai River system. Escapement is monitored by sonar at RM 14 between mid-May and mid-August. Additionally, a gillnet at RM 9 is used to provide the relative proportion of large Chinook Salmon, small Chinook Salmon, and Sockeye Salmon for apportionment of sonar counts (ADF&G 2016a). The spawning escapement for the years 2006 – 2015 averaged 7,473 fish, with a range of 4,460 fish in 2013 to 13,282 in 2006. The spawning escapement in 2014 was 5,776 fish and in 2015 was 6,190 fish (ADF&G 2016b).

The State's Kenai River and Kasilof River Early-Run King Salmon Conservation Management Plan (5 AAC 57.160) establishes escapement objectives and guidelines for the management of all existing fisheries harvesting this run. This plan also tries to ensure that the age and size composition of the harvest closely approximates that of the run. The primary harvest of this run occurs within the sport fishery. Most of the sport harvest is taken within the Kenai River, although the Deep Creek marine sport fishery takes an undetermined, but likely small number, of Kenai River early-run Chinook salmon based on tag recoveries (King and Breakfield, 2002). The State manages other fisheries to minimize the harvest of this run. The commercial and personal use fisheries open after most early-run Chinook Salmon have entered the Kenai River, and the personal use fishery has a seasonal limit of 1 Chinook Salmon per household. The Kenaitze Indian Tribe's educational fishery has historically had a seasonal limit of 300 Chinook salmon, but in 2014 the limit was decreased to 50 Chinook salmon to conserve returning fish.

The early-run Chinook Salmon OEG range mentioned above is set by this plan. To determine whether or not the escapement goal will or will not be achieved, daily sonar estimates of Chinook Salmon passing the sonar site (at RM 14) and estimates of the sport harvest from creel surveys are utilized in a run timing model to project total in-river return, total harvest and final spawning escapement. If escapement is projected to fall below the lower end of the OEG range, the fishery is incrementally restricted to catch-and-release only and ultimately to closure, if necessary. Bait cannot be used until escapement is projected to fall within the OEG

¹ An optimum escapement goal, which may be expressed as a range, allows for sustainable runs based on biological needs of the stock and ensures healthy returns for commercial, sport, subsistence, cost-recovery, and personal use harvests. Optimum escapement goals are set by the State of Alaska Board of Fisheries (ADF&G. 2016a).

range. To help prevent the harvest of 5-ocean fish², there is a slot limit that specifies the size of Chinook Salmon that may be retained (less than 42 inches in length or greater than 55 inches in length). The slot limit is in effect from 1 January to 30 June from the Kenai River mouth upstream to the outlet of Skilak Lake, and from 1 to 14 July from the Slikok Creek upstream to the outlet of Skilak Lake.

All sport fishing for early-run Chinook Salmon in the Kenai River occurs below Skilak Lake. The bag and possession limit is 1 Chinook Salmon per day and 1 in possession. Additionally, there is an annual limit of 2 Chinook Salmon from the Kenai River. Only Chinook Salmon less than 42 inches or greater than 55 inches can be retained in the sport fishery. Sport fishery harvests of early-run Kenai River Chinook Salmon during 2004-2013 have ranged from 0 to 4,693, with an average of 2,334 (Begich et al. 2013). The Kenaitze Indian Tribe's educational fishery harvest has ranged from 11 to 76 early-run Chinook Salmon during 2004–2013, with an average of 42 fish (Begich et al. 2013). No estimates of the number of early-run Kenai River Chinook salmon harvested in commercial or personal use fisheries are available, but due to the timing of these fisheries these harvests are assumed to be negligible.

Late-Run Chinook Salmon

Late-run Chinook Salmon enter the Kenai River from about late-June through late-July. Most late-run Chinook Salmon spawn in the mainstem Kenai River. An estimated 20% – 40% spawn between RM 10 and the Soldotna Bridge at RM 21 (ADF&G 2016c), more than half between the Soldotna Bridge and the outlet of Skilak Lake, and about 9% of the total late run spawns within or above Skilak Lake (Burger et al. 1983, Hammarstrom et al. 1985, Bendock and Alexandersdottir 1992). In the mainstem Kenai River, staging behavior generally runs from late-July to mid-August, with most spawning occurring from mid-August to mid-September.

The sustainable escapement goal (SEG)³ range for late-run Chinook Salmon is 17,800 to 37,500 fish. As with the early run, escapement is monitored by sonar at RM 14 between mid-May and mid-August. Additionally, a gillnet at RM 9 is used to provide the relative proportion of large Chinook Salmon, small Chinook Salmon, and Sockeye Salmon for apportionment of sonar counts (ADF&G 2016a). The spawning escapement for the years 2006 – 2015 averaged 26,613 fish with a range of 16,527 fish in 2010 to 48,950 in 2006. The spawning escapement in 2014 was 17,446 fish and in 2015 was 22,654 fish (ADF&G 2016b).

The State's Kenai River Late-Run King Salmon Management Plan (5 AAC 21.359) establishes escapement objectives and guidelines for the management of all existing fisheries harvesting this run. While this run is primarily managed for use by the sport fishery, the incidental harvest in commercial fisheries is substantial.

² 5-ocean fish have spent five years in the ocean before returning to their natal streams to spawn.

³ A sustainable escapement goal is a level of escapement, indicated by an index or an escapement estimate, that is known to provide for sustained yield over a 5 to 10 year period, used in situations where a biological escapement goal cannot be estimated due to the absence of a stock specific catch estimate; the SEG is the primary management objective for the escapement, unless an optimal escapement goal or inriver run goal has been adopted by the State of Alaska Board of Fisheries, and will be developed from the best biological information; the SEG will be determined by the Alaska Department of Fish and Game and will be stated as a range that takes into account data uncertainty; the Department will seek to maintain escapements within the bounds of the SEG (from 5 AAC 39.222(f)) (ADF&G 2016a).

Most of the sport harvest is taken below the Soldotna Bridge within the Kenai River, although some are taken in marine waters in the Deep Creek sport fishery. The bag and possession limit is 1 Chinook Salmon per day and 1 in possession. Additionally, there is an annual limit of 2 Chinook Salmon from the Kenai River. Most of the commercial harvest is taken in the East Side set gillnet fishery. The personal use fishery has a seasonal limit of 1 Chinook Salmon per household, and the Kenaitze Tribe's educational fishery had a seasonal limit of 50 Chinook Salmon in 2014. To determine whether or not the escapement goal will or will not be achieved, daily sonar estimates of Chinook Salmon passing the sonar site and estimates of the sport harvest from creel surveys are utilized in a run timing model to project total inriver return, total harvest and final spawning escapement. If escapement is projected to fall below the lower end of the SEG range, the fishery is restricted by several steps, including prohibiting use of bait, to catch-and-release only with barbless hooks, and ultimately to closure, if necessary.

The harvest of late-run Chinook Salmon is monitored in the commercial, personal use, sport, and educational fisheries (Begich et al. 2013). Commercial fishery harvests during 2004–2013 have ranged from 640 to 16,925 Kenai River late-run Chinook Salmon, with an average of 7,380 fish. Harvests in the Deep Creek marine sport fishery have ranged from 30 to 996 Kenai River late-run Chinook Salmon during 2003–2012, with an average of 446 fish. Sport fishery harvests in the Kenai River have ranged from 103 to 18,214 late-run Chinook Salmon during 2003-2012, with an average of 9,926. Personal use dip net fishery harvests have ranged from 11 to 1,509 late-run Chinook Salmon during 2004–2013, with an average of 904 fish. Kenaitze Tribe's educational fishery harvests have ranged from 0 to 21 late-run Chinook salmon during 2004–2013, with an average of 9 fish.

Coho Salmon

Coho Salmon are the last of the salmon species to enter the Kenai River each year. The majority of the run enters the Kenai River from late-July through mid-September, but continues at lower rates into November (Begich et al. 2013). Burger et al. (1983) found that Coho Salmon spawned in the mainstem Kenai River, as well as tributaries, with mainstem spawning observed as late as January. Spawning was documented from RM40 upstream to RM74.5, and large numbers of spawning Coho Salmon were observed below Skilak Lake (RM 40 – RM50).

The State manages Kenai River Coho Salmon primarily for take in sport fisheries, and the Kenai River Coho Salmon Management Plan (5 AAC 57.170) establishes management actions and guidelines for sport harvest. There are no escapement goals for Kenai River Coho Salmon. Although genetic studies have shown differences between and within early and late returning spawning components (Olsen et al. 2003, Crane et al. 2007), the entire run is currently managed as a single stock by the State.

The harvest of Coho Salmon is monitored in all existing commercial, personal use, sport, and educational fisheries, but stock specific information for commercial fisheries, based on coded-wire tag returns, is only available through 2003 (Lafferty et al. 2005). While total harvests of Coho Salmon in Upper Cook Inlet commercial fisheries are generally several hundreds of thousands each year, harvest of Kenai River Coho Salmon are only a small component of the total. Commercial fishery harvest has ranged from 95,215 to 311,058 Coho Salmon during 2004-2013, with an average of 172,716 fish. Total sport fishery harvests

have ranged from 36,407 to 65,952 Coho Salmon during 2003-2012, with an average of 47,371 fish. There is no estimate of catch-and-release mortality for this sport fishery.

Rainbow Trout

The Kenai River also supports one of the largest Rainbow Trout sport fisheries in the United States, with annual catches that have been trending upward since the 1980's (Begich et al. 2013). Increasingly restrictive regulations were adopted for this fishery since the 1950's due to public concern and an initial lack of biological data. ADF&G began population estimation projects in 1986 using mark-recapture methods, and have repeated estimation projects multiple times since then. Estimations between 1986 and 2009 have shown increases in the size of the Rainbow Trout population as further restrictions have been enacted on the fishery. The State sport fishery is closed from May 1 through June 11 to protect Rainbow Trout during their spawning period. Radio telemetry projects have found the majority of Rainbow Trout from the area of the Kenai River drainage downstream of Skilak Lake spawn between RM 45.8 and RM 48 during that time period (Palmer 1998; Eskelin 2016, pers. comm.). Measurements of spawning Rainbow Trout in the Kenai River demonstrated that 95% of females 20 inches in length or larger are spawners, and that the minimum length at spawning is approximately 16 inches (OSM 2007).

Rainbow Trout abundance estimates have been generated several times for index sections of the Kenai River since the mid 1980's. Abundance estimates of fish over 200mm (~7.8 inches) in the upper Kenai River index area have taken place in 1986 (3,640 fish, SE 456), 1987 (4,950 fish, SE 376), 2001 (8,553 fish, SE 806), and 2009 (5,916 fish, SE 481; Begich et al. 2013). The upper Kenai River index area is the most heavily fished section of the upper Kenai River (King and Breakfield 2007), and is situated above Skilak Lake and below the Russian River between RM 69.7 and RM 73.2. Abundance estimates for fish of the same size in the middle Kenai River index area have taken place in 1987 (1,750 fish) and 1999 (7,883 fish). The middle Kenai River index area is the most heavily fished section of the river where regulations allow retention of Rainbow Trout (Larson and Hanson 2000), and is located above Naptowne Rapids and below Skilak Lake between approximately RM 38 and RM 50. There have been no drainage-wide estimates generated to date.

The catch and harvest of Rainbow Trout in the Kenai River are monitored through the Statewide Harvest Survey. Catches of Rainbow Trout in the Kenai River since 1984 have ranged between 8,720 and 202,875, with an average during 2008–2012 (most recent data published) of 189,400 fish (Begich et al. 2013). Harvests of Rainbow Trout, however, are substantially smaller and have ranged (since 1984) between 1,560 and 3,940, with an average during 2008–2012 of 2,470.

Dolly Varden

There are assumed to be both resident and anadromous forms of Dolly Varden in the Kenai River. Anadromous fish are believed to enter the Kenai River in July (Begich et al. 2013). Both forms move within the Kenai River drainage from summer feeding sites to spawning location by mid-to late September. Spawning occurs between mid-September and late October, after which these fish moved to overwintering locations (Palmer and King 2005). Outmigration from the drainage by anadromous fish occurs in April and May. Minimum length at spawning for this population is approximately 12 inches in length, and the

majority of females 18 inches or longer in length are spawners (OSM 2007). There are no Dolly Varden population estimates for the Kenai River.

The catch and harvest of Dolly Varden in the Kenai River are monitored through the Statewide Harvest Survey. Catches of Dolly Varden in the Kenai River since 1990 have ranged between 34,577 and 166,618, with an average during 2008–2012 (most recent data published) of 127,280 fish. Harvests of Dolly Varden are substantially smaller, and have ranged (since 1990) between 1,789 and 14,517, with an average during 2008–2012 of 2,680. Similar to the Rainbow Trout Fishery, the Dolly Varden sport fishery has experienced increasingly restrictive regulations over time (Begich et al. 2013).

Research Related to Gillnets on the Kenai River

Research related to the effects of gillnet in the Kenai River in a subsistence fishery setting is limited to the results of experimental community gillnet by Ninilchik residents in 2016, but other gillnets have been placed in the river during past research.

As stated in a previous section ADF&G has monitoring escapement projects on the Kenai River (via sonar) at RM 14 between mid-May and mid-August. A gillnet is used at RM 9 to provide the relative proportion of large Chinook Salmon, small Chinook Salmon, and Sockeye Salmon for apportionment of sonar counts (ADF&G 2016a).

From 1999 to 2003, ADF&G used a combination of fishing methods to recapture Coho Salmon in the Kenai River as a part of a mark-recapture study to estimate the abundance of adult Coho Salmon in the Kenai River (Carlson and Evans 2007). The recapture event primarily used a drift gillnet (4.75” mesh, 29 meshes deep, 5 fathoms in length), but, to a limited extent, supplemented the recapture catch with other methods including a set gillnets, fish wheels, hook-and-line, and seining. The drift gillnet specifications were intended to capture fish by entanglement rather than by wedging fish into a single mesh space permitting fish to be more easily removed upon capture and decreasing injury.

The recapture event of this study was conducted in two reaches on the Kenai River:

- 1.) In 1999 along the banks between Soldotna Bridge and the Funny River tributary confluence (RM 21.1 – RM 30.4). This reach encompasses Moose Range Meadows (RM 26.5 – RM 29)
- 2.) From 2000-2003, along the banks at the confluence of the Moose River tributary (RM 30.4 – RM 36.3)

In the 1999 recapture event, capture effort occurred daily between August 9 and October 8. During the 2000 to 2003 recapture events, capture efforts occurred daily during the following periods: August 1 through October 13, 2000; August 1 through October 5, 2001; August 2 through October 4, 2002; and August 1 through October 5, 2003.

The catch and effort results from the recapture event of this study is summarized below are summarized in **Table 6** and **Table 7** below.

It is important to note that this study did not follow mortality for species other than Coho Salmon. The study did occur in the area of Moose Range Meadows for one year (1999) and in the area above Moose Range Meadows from 2000-2003. The time period of sampling also did include times in which the experimental gillnet fishery was performed (early-mid August), but most of it occurred through late-August till early to mid-October. Methods did include the use of a drift and set gillnet with similar specifications to those used in the experimental gillnet fishery.

Table 6. Catches of species during the recapture events, 1999-2003 (Carlton and Evans 2007)

Species	1999	2000	2001	2002	2003
Coho	2,098	3,161	4,669	5,145	3,493
Sockeye	1,126	1,235	1,162	1,712	1,861
Chinook	263	318	395	393	828
Pink	27	9,299	8	14,354	4
Chum	0	0	0	1	0
Dolly Varden	179	206	241	442	248
Rainbow Trout	208	343	745	397	1,304
Steelhead	3	3	8	3	24
Whitefish	5	1	1	3	1
Longnose Sucker	2	0	0	1	1

Table 7. Summary of effort in net hours by gear type during the recapture events, 1999-2003 (Carlton and Evans 2007)

Gear Type	1999	2000	2001	2002	2003
Drift Gillnet	255.0	253.8	305.1	206.0	322.5
Set Gillnet	0.0	69.5	43.9	0.2	0.5
Hook-and-Line	0	34	9	238	6
Fish Wheel	916	0	0	0	0
Beach Seine	0	0	0	82	0

Catch and Release Mortality

A number of studies have been conducted to examine unintended mortality in catch and release fisheries. Rates of unintended mortality from catch and release fishing vary across studies due to factors such as species, life stage, water temperature, and gear type. A literature review of 18 studies by Taylor and White (1992) found a 3.8 percent mortality rate associated with fly-fishing, a 4.9% rate associated with lures, and a 31.4% rate associated with bait. Another review of 7 studies by Schill and Scarpella (1997) found a 4.5% mean mortality rate for barbed hooks compared to 4.2% for barbless. Lindsay et al. 2004 found a 12.2% rate of mortality in Chinook Salmon in the lower Willamette River of Oregon, while Bendock and Alexandersdottir (1990) found rates of 13% for male and 7% for female Chinook Salmon in the Kenai River. DeCicco (1994) found rates below 2% for Dolly Varden from the Nome and Snake rivers of Northwest Alaska. Estimated catch and release mortality ranges for the early-run Chinook Salmon sports fishery in the Kenai River range from 0 to 257 fish (Begich et al 2013). Estimated catch and release

mortality ranges for the late-run Chinook Salmon sports fishery in the Kenai River range from 79 to 1,267 fish, which equates to an average estimated mortality rate of around 1% of the in-river run total before sport fish harvest has been removed (Begich et al 2013). Although no estimates of catch and release mortality exist for Rainbow Trout, a recent stock assessment performed in the Kenai River drainage (Eskelin and Evans 2013) reported that over 92% of the Rainbow Trout were observed to have hooking injuries. The authors suggested that it was likely that the trout in some sections of the river are caught and released multiple times. No estimates of catch and release mortality exist for Dolly Varden.

Overall, some amount of mortality is a recognized consequence of catch and release fisheries, including those currently authorized in the Kenai River.

Gillnet Release Mortality

Research has also been conducted to examine the rates of mortality for a variety of fish caught and released from gill and tangle nets (WDFW 2014). The studies summarized in this literature review come from 13 papers based in a variety of locations ranging from Bristol Bay to Finland. The study sites were mainly concentrated in Washington or British Columbia, with only two sites in Alaska (Bristol Bay and Kodiak). The study years for these projects ranged from 1955 to 2007 (median ~ 2000) and a majority of them focus on salmonid species being captured and immediately released in estuarine locations. Variables considered in these studies included mesh size, fish size, soak time, water temperature, location type, maturity state, and migration duration. Those studies that focus on fish released from gillnets demonstrated a wide range of mortality. Immediate mortality rates ranged between 0.5% and 98% depending on the variables considered and within the context of the studies considered in the literature review. For example, the lowest mortality rate was for Chinook Salmon in the spring (cooler water) in a freshwater environment with a 5.5 inch mesh gillnet whereas the 98% mortality was in July (warmer water) in an estuary environment with an 8 inch mesh gillnet. Long-term mortality rates ranged between 2.3% and 60.6%, again depending on the variable and within the context of the studies considered in the literature review.

Overall, unintended mortality is a recognized consequence of releasing fish captured in gillnets.

Federal Subsistence Harvest

Rural residents of Cooper Landing, Hope and Ninilchik have harvested fish in the Kenai River drainage under Federal subsistence regulations since 2007. In addition to the rod and reel fishery in Federal waters of the Kenai River, there exist three areas in the Kenai River drainage in which Federally-qualified subsistence users of Cooper Landing, Hope and Ninilchik may harvest salmon by dip net and rod and reel, as well as a separate community gillnet fishery for the residents of Ninilchik.

Russian River Falls

Cooper Landing and Hope residents have fished almost exclusively in the Russian River Falls area over the past nine years. Cooper Landing residents have reported a harvest of 8,609 Sockeye Salmon since 2007; 7,905 in the dip net fishery with an annual average of 878 fish, and 704 in the rod and reel fishery with an average of 89 fish (**Table 8**). Hope residents have reported a harvest of 2,357 Sockeye Salmon since 2007;

2,142 in the dip net fishery with an average of 238 fish, and 215 Sockeye Salmon in the dip net fishery with an annual average of 24 fish (**Table 9**). Ninilchik residents have harvested in the Russian River Falls area to a much lesser extent. They have utilized the dip net fishery in six of the nine years that it has been a harvest option, with a reported harvest of 155 Sockeye Salmon, and an annual average of 26 fish over the six years. They have utilized the rod and reel fishery three of the nine years (2007–2009), with a reported harvest of 281 Sockeye Salmon; an average of 94 for the three years (**Table 10**). There has been no reported harvest of Chinook Salmon in the Russian River Falls area under Federal regulation.

Kenai River below Skilak Lake, RM 45.5 to RM 48

For the years 2007–2015, a total of 30 Sockeye Salmon have been reported as harvested in this area, all by Ninilchik residents using dip nets, and all in the year 2009 (**Table 10**). There has been no reported harvest by Cooper Landing and Hope residents in this area (**Tables 8 & 9**). There has been no reported harvest of Chinook Salmon in this area under Federal regulation.

Kenai River, Moose Range Meadows, RM 26.5 to RM 29

Cooper Landing residents reported harvesting 44 Sockeye Salmon in the rod and reel fishery for the years 2011–2015, but have not reported harvest of any fish in the dip net fishery for this area (**Table 8**). Hope residents have not reported harvest of any fish in either the dip net or the rod and reel fisheries in this area (**Table 9**). In 2007, Ninilchik residents reported a harvest of 12 Sockeye Salmon in the dip net fishery in this area. There has been no reported harvest in the dip net fishery since. In the rod and reel fishery, Ninilchik residents reported a total harvest of 741 Sockeye Salmon for the years 2008–2015, an annual average of 93 fish. They also reported harvesting 5 Coho Salmon in 2008 (**Table 10**). There has been no reported harvest of Chinook Salmon in the Moose Range Meadows area under Federal regulation.

Table 8. Kenai River Federal Subsistence Salmon Harvest, 2007 – 2015, Cooper Landing Residents

Dip Net Fisheries

Year	Russian River Falls			Kenai River, RM 45.5 to 48			Moose Range Meadows			Total
	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	
2007	437	n/a	n/a	0	0	0	0	0	0	437
2008	960			0	0	0	0	0	0	960
2009	706			0	0	0	0	0	0	706
2010	622			0	0	0	0	0	0	622
2011	794			0	0	0	0	0	0	794
2012	998			0	0	0	0	0	0	998
2013	996			0	0	0	0	0	0	996
2014	1,216			0	0	0	0	0	0	1,216
2015	1,176			0	0	0	0	0	0	1,176
TOTAL	7,905									7,905
AVG	878									878

Rod and Reel Fisheries

Year	Upper Kenai/Russian River						Moose Range Meadows			Total
	Sockeye	Coho	Chinook				Sockeye	Coho	Chinook	
2007	169	5	n/a				0	0	0	174
2008	108	7					0	0	0	115
2009	46	9					0	0	0	55
2010	57	0					0	0	0	57
2011	46	0					6	0	0	52
2012	43	0					11	0	0	54
2013	49	4					12	0	0	61
2014	97	2					9	0	0	108
2015	89	0					6	0	0	95
TOTAL	704	27					44	0	0	771
AVG	78	3					5			86

Source: USFWS 2007 – 2015

Table 9. Kenai River Federal Subsistence Salmon Harvest, 2007 – 2015, Hope Residents

Dip Net Fisheries

Year	Russian River Falls			Kenai River, RM 45.5 to 48			Moose Range Meadows			Total
	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	
2007	85	n/a	n/a	0	0	0	0	0	0	85
2008	280			0	0	0	0	0	0	280
2009	103			0	0	0	0	0	0	103
2010	172			0	0	0	0	0	0	172
2011	159			0	0	0	0	0	0	159
2012	287			0	0	0	0	0	0	287
2013	252			0	0	0	0	0	0	252
2014	402			0	0	0	0	0	0	402
2015	402			0	0	0	0	0	0	402
TOTAL	2,142									2,142
AVG	238									238

Rod and Reel Fisheries

Year	Upper Kenai/Russian River						Moose Range Meadows			Total
	Sockeye	Coho	Chinook				Sockeye	Coho	Chinook	
2007	169	5	n/a				0	0	0	174
2008	6	0					0	0	0	6
2009	18	0					0	0	0	18
2010	0	0					0	0	0	0
2011	0	0					0	0	0	0
2012	0	0					0	0	0	0
2013	19	0					0	0	0	19
2014	3	0					0	0	0	3
2015	0	0					0	0	0	0
TOTAL	215	5								220
AVG	24	0.6								24

Source: USFWS 2007 – 2015

Table 10. Kenai River Federal Subsistence Salmon Harvest, 2007 – 2015, Ninilchik Residents

Dip Net Fisheries

Year	Russian River Falls			Kenai River, RM 45.5 to 48			Moose Range Meadows			Total
	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	Sockeye	Coho	Chinook	
2007	5	n/a	n/a	0	0	0	12	0	0	17
2008	41			0	0	0	0	0	0	41
2009	0			30	0	0	0	0	0	30
2010	10			0	0	0	0	0	0	10
2011	0			0	0	0	0	0	0	0
2012	0			0	0	0	0	0	0	0
2013	19			0	0	0	0	0	0	19
2014	54			0	0	0	0	0	0	54
2015	26			0	0	0	0	0	0	26
TOTAL	155			30			12			197
AVG	17			3			1.3			22

Rod and Reel Fisheries

Year	Upper Kenai/Russian River						Moose Range Meadows			Total
	Sockeye	Coho	Chinook				Sockeye	Coho	Chinook	
2007	169	5	n/a				0	0	0	174
2008	11	0					202	5	0	218
2009	101	0					93	0	0	194
2010	0	0					42	0	0	42
2011	0	0					84	0	0	84
2012	0	0					75	0	0	75
2013	0	0					61	0	0	61
2014	0	0					115	0	0	115
2015	0	0					69	0	0	69
TOTAL	281	5					741	5		1,032
AVG	31	0.6					82	0.6		115

Source: USFWS 2007 – 2015

Cultural Knowledge and Traditional Practices

The Kenai River watershed is within the traditional territory of the *Dena'ina* Athabaskans, which dates to around 1000 A.D. The area extends from Kachemak Bay on the south end of the Kenai Peninsula, west across Cook Inlet to Lake Clark and the Stony River and northeast to the Susitna Basin. Borders are shared with the traditional territory of the *Sugpiaq* (Alutiiq) which includes the southern portion of the Kenai Peninsula, bridging the *Sugpiaq* territories of Prince William Sound with Kodiak Island and the Alaska Peninsula (de Laguna 1934, Krauss 1982, Stanek 1980).

Non-Native settlement of the Kenai Peninsula began in the 18th century with the Russians and the fur trade, and later mining efforts in Kachemak Bay. At the end of the 19th century, commercial fishing brought about new settlements, such as the herring saltery at Seldovia in 1896. The next major non-Native settlement period began during the Gold Rush era at the end of the 19th century. Hope and Cooper Landing settlements are related to this period. Homesteading in the Homer region occurred from 1915 through 1940. With the construction of roads and local oil development after in the 1950s, the population of the Kenai Peninsula increased substantially through in-migration of people born outside Alaska.

From the early 1900s, the annual subsistence pattern of the *Dena'ina* included commercial fishing in the spring and summer at the mouth of the Kenai River before moving up-river in the fall to harvest Coho Salmon and freshwater fish, hunt moose, and trap furbearers. This cycle continued until the 1940s when the creation of the Kenai National Moose Range disrupted traditional harvest patterns. Despite new federal refuge enforcement efforts, many *Dena'ina* continued to access their Stepanka camps, long used settlements up the Kenai River near Skilak Lake (Fall et al. 2004:16–20).

Commercial and subsistence fishing were also an important aspect of the annual cycle of the Kenai Peninsula homesteaders. In freshwater, gillnets and seines were used in the Kenai, Skilak, and Tustumena Lakes to harvest lake trout, grayling, whitefish, and char. Trappers in the upper Kenai River area maintained gillnets and caught salmon and trout for personal use. Other uses mentioned were taking Coho Salmon through the ice in the winter and steelhead below Skilak Lake in the late 1940s and early 1950s (Fall et al. 2004:20-21). Andrew Berg, who lived from 1869 to 1939 and was a guide on the Kenai Peninsula, documented his use of subsistence resources including harvesting trout in Tustumena Lake and Dolly Varden, salmon, and whitefish at the mouth of Indian Creek (Cassidy and Titus 2003).

Subsistence fishing in the freshwaters of the Kenai Peninsula was prohibited from 1952 until the Federal Subsistence Board created a subsistence fishery in 2002 which mirrored the State sport fishing regulations. Since statehood, legal availability of fishery resources in Federal public waters has been defined by State sport fishing regulations, and these regulations do not provide for harvest of all species or harvest by traditional methods and means. In this area, preferred traditional methods and means include nets, an efficient method and means of harvest for subsistence users who traditionally harvest as much fish as they can process at once. Rod and reel is considered an authorized subsistence gear type under Federal subsistence regulations and under State regulations in some parts of the state. In some cases under State regulations, rod and reel has been recognized as traditional gear in places where fish fences or traps are no longer a legal means to harvest fish and rod and reel is the only legal alternative (Williams et al. 2005:31–32).

In 1952, gillnets were made illegal in many freshwaters, and the Kenai Peninsula *Dena'ina* ceased using gillnets during their fall occupation of their upriver harvest sites. The Stepanka fishery, that had been a

traditional, long-standing source of salmon for the *Dena'ina* (Kenaitze) Indians, was closed. As a result of this closure, snagging became the primary harvest method until it was made illegal in 1973. Local residents turned to sport fishing without snagging, and continued to fish the beaches of Cook Inlet with gillnets in the State subsistence fishery. In the 1970s, sport fishing had grown in popularity and the Kenai had become a favorite spot for fishing and recreation. The Kenai Peninsula is unique in that rural communities are interspersed among much larger nonrural communities. By the early 1980s the Alaska Board of Fisheries added more restrictions on subsistence and personal use fishing along the Cook Inlet beaches, closing beaches to subsistence gillnetting. By the mid-1990s, only two personal use fisheries remained at the mouth of the Kenai and Kasilof rivers (Fall et al. 2004:22–23; 30).

Regulations relating to areas, seasons, and methods have changed consistently over the past 54 years, and have become more restrictive, requiring residents to take different approaches to obtaining subsistence resources. For example, in the case of salmon, as regulations and conditions have changed, residents have adapted their traditional practices to continue to obtain salmon—trade it, buy it, or harvest it in new ways under various regulatory regimes (Georgette 1983:186–187). In 1993, as the result of a lawsuit filed by the Kenaitze Tribe, a State judge ordered the development of educational fisheries for the NTC, the Knik Tribal Council, the Native Village of Eklutna and the Kenaitze Tribe (Loshbaugh 1993:1, 14). The educational fishery provided another means for residents to harvest salmon using gillnets. The educational permits, however, were a compromise: “Villagers—who have traditionally focused on early-run king salmon will be catching mostly reds under the proposed permit” (Loshbaugh 1993:14).

Other Alternatives Considered

As currently written, Federal subsistence regulations for the Kenai and Kasilof rivers are confusing and at times contradictory. The Board may want to consider directing OSM to submit a regulatory proposal to review and revise the Cook Inlet subsistence fisheries regulatory section (§___.27(e)(10)(iv)) during the next fisheries regulatory cycle to clarify and simplify regulatory language in an effort to resolve unnecessary complexities and inconsistencies between the regulations for both rivers.

Effects of the Proposal

There are seven separate components to Fisheries Proposal FP17-10. All requested changes are to section §___.27(e)(10)(iv)(J), which authorizes the Kenai River community gillnet fishery. The request is for a complete rewrite of this regulatory section. If adopted, the following effects may occur:

- The fishing season would expand from the current June 15 to August 15 dates to a new May 1 to November 15 season.
- The primary USFWS contact (and issuer of the community gillnet permit) would switch from the Federal in-season manager to OSM.
- The operational plan requirement would be replaced with standard permit conditions.
- NTC would become the only organization authorized in Federal subsistence regulation to coordinate this fishery.

- The annual post season reporting requirement for the fishery would be removed.
- All fish harvested would have to be reported within 72 hours of leaving the gillnet location as a condition of the permit.
- A collaborative process would be established to inform and consult with NTC and the Council prior to potential closures or other Federal actions.

The alterations of dates for the fishing season would expand from the current June 15 to August 15 dates to a new May 1 to November 15 season. This would create a higher probability of harvest in general, harvest of fish species other than salmon, and harvest of salmon and resident fish in spawning phase conditions. While this would provide additional subsistence harvest opportunity for Federally qualified subsistence users from the community of Ninilchik, the expanded season would also increase the probability of harvest of spawning Rainbow Trout in the spring and spawning Chinook Salmon through the summer. Chinook Salmon, currently a species of concern for Federal and State managers, start entering the river in late May and begin staging for spawning in early July. They spawn from mid-July through the month of August in Moose Range Meadows, the area that was the subject of the draft operational plans and the location where the 2016 experimental community gillnet fishery (under FSA16-02) took place. The extended fishing season could increase the likelihood of regulatory conflict due to incidental catch of Rainbow Trout and Dolly Varden 18 inches in length or greater, or through harvest of salmon and resident species outside of dates allowed under existing fisheries regulations. It would not resolve the current regulatory conflict for Chinook Salmon fishing seasons that allow the community gillnet fishery between June 15 and August 15, but restrict Chinook Salmon harvest to July 16 through September 30.

The primary USFWS contact (and issuer of the community gillnet permit) would switch from the Federal in-season manager to OSM. The proponent was contacted to clarify this same request for proposal FP17-09, and confirmed that the request was to switch the primary contact from the in-season manager to OSM. If approved, the Federal Subsistence Board would take over the responsibilities of the Federal in-season manager by rescinding the current delegation of authority. The Board delegates its authority to agency field officials so that decisions can be more responsive and timely for Federally qualified subsistence users in real time situations and to address conservation and safety concerns at a local level. By no longer requiring the Federal in-season manager to issue the community gillnet permit, the interaction between the proponent and the Federal in-season manager would be diminished. Under this scenario, necessary management actions warranted during the fishery would have to go through the Federal Subsistence Management Program's special action request process. Although the special action request process is responsive, in-season fishery management in Alaska may require a more immediate response to protect continued viability of fish populations, to continue subsistence uses, or for issues of public safety. It often takes several weeks to process a special action request. OSM was established to support the Board and its decisions. OSM is not responsible for the management of Federal lands, nor is it identified in ANILCA Title VIII or the Environmental Impact Statement for the Subsistence Management for Federal Public Lands in Alaska as a decision making entity within the Federal Subsistence Management Program.

The operational plan requirement for the fishery would be replaced with standard permit conditions. The

operational plan describes how fishing time and fish will be offered and distributed among households and residents of Ninilchik. Replacing this requirement with static permit conditions would reduce the burden on the proponent prior to, during, and following the fishery each year. However, the removal of the operational plan requirement would decrease the ability of the Federal in-season manager to make annual adjustments to the fishery as necessary, based on the prior years' harvest. The Federal in-season manager's delegated authority would still allow for issuance of emergency special actions to: open and close Federal subsistence fishing periods or areas provided under codified regulations; specify methods and means; specify permit requirements; set harvest and possession limits; and close and re-open Federal waters to non-subsistence fishing. Removal of the operational plan could also limit the ability to address issues with distribution of harvested fish in the community, should any arise. Additionally, this change would substantially decrease the interaction between the proponent and the Federal in-season manager.

NTC would become the only organization authorized in Federal subsistence regulation to coordinate this fishery. Ninilchik is the largest rural community on the Kenai Peninsula and has a population of 1,476 people, within 682 households, where 16.2% of its population is Alaska Native (U.S. Census Bureau 2010). As a Federally-recognized tribe, NTC may not be representative of all residents of this relatively diverse community. Currently, three different organizations in Ninilchik (NTC, Ninilchik Native Descendants, and Ninilchik Emergency Services) are permitted by ADF&G to conduct educational fisheries. Authorizing NTC as the only organization allowed to coordinate a community gillnet fishery may discourage Federally-qualified subsistence users in the community that are not associated with NTC from participating in this subsistence opportunity. However, NTC has coordinated the operation of the Kasilof River experimental community gillnet fishery for the past two seasons and the Kenai River community gillnet fishery for a portion of the 2016 season.

The annual post season reporting requirement for the fishery would be removed. The proponent states that this requirement is "undue and excessively burdensome" and that it is "not required by other fisheries". The report provides the persons or households operating the gear, hours of operation, and number of each species caught and retained or released. Removing this requirement would decrease the burden on the proponent during and following each fishing season. This information is used to assess the various aspects of the fishery and inform management decisions, and removal of this requirement would make those tasks more challenging for the Federal in-season manager. This type of information also helps identify data gaps and priority information needs for future research.

All fish harvested would have to be reported within 72 hours of leaving the gillnet location as a condition of the permit. Specific timelines are not provided for this fishery in current regulation; however, 72 hours is the timeline provided for reporting harvest to the Federal in-season manager in the Kasilof River experimental community gillnet fishery. This addition would clarify reporting timelines for the fishery.

A collaborative process would be established to inform and consult with NTC and the Council prior to potential closures or other Federal actions. The creation of a collaborative decision making process prior to initiating actions on the fishery would give the proponent and the Council a greater influence over management than they currently have. In an effort to ensure that in-season management decisions are communicated broadly and fairly, the delegation of authority letter from the Federal Subsistence Board to

the Federal in-season manager (Federal Subsistence Board 2002; **Appendices B and C**) requires that “The Project Leader (Federal in-season manager) will ... notify/consult with local ADF&G managers, Regional Advisory Council members, and other affected Federal conservation unit managers concerning special actions being considered.” Through the delegation of authority, it is the intent of the Board that subsistence management by Federal officials be coordinated with the ADF&G and involves Regional Advisory Council representatives to conserve healthy fish and wildlife populations while providing for subsistence uses. However, due to statutory constraints outlined in the Federal Advisory Committee Act (FACA) that dictates the requirements necessary to convene a Council meeting, which would be needed for the Council to make a recommendation regarding the fishery, the timeframe required would likely render the Council’s involvement ineffective, as in-season management decisions are responsive to real-time conservation and safety concerns, and Council meetings require publication in the Federal Register (a time-consuming effort). Each letter of delegation explicitly stipulates criteria for the review of proposed special actions, guidelines for delegation, and reporting requirements. The Board strives to have complete adherence to these delegation requirements and works throughout the year to maintain relationships and open communications with relevant Councils, agencies, and departments. In addition, the Federal Subsistence Board’s *Government-to-Government Tribal Consultation Policy* already requires government to government consultation with Federally recognized tribes that may be affected by management actions, and the Ninilchik Traditional Council is a Federally recognized tribe. However, in-season management actions are exempted from this policy.

If the proposal is not adopted, the Kenai River community gillnet fishery would continue to be administered as originally adopted by the Board in 2015 and stipulated in Federal subsistence regulations. Regulatory conflicts created through adoption of this fishery will also remain in effect.

OSM PRELIMINARY CONCLUSION

Given the ongoing RFR process related to the Kenai River community gillnet fishery, OSM is offering two potential courses of action for Board consideration. Option 1 assumes that the RFR process is ongoing: either the Board has not reached a decision about the threshold analysis or has determined that one or more claims meet the threshold for further analysis. Option 2 assumes that the RFR process has been completed and the Kenai River community gillnet fishery regulations remain in place.

Option 1:

Defer Proposal FP17-10.

Justification

FP17-10, submitted by the Ninilchik Traditional Council, requests liberalization and changes to the administration of the community gillnet fishery in the Kenai River that was authorized by the Board in January of 2015, with its adoption of FP15-10. With simultaneous RFRs currently underway, it is recommended by OSM that any decisions on FP17-10 be deferred so as not to preclude any decisions that have yet to be made by the Board through the RFR process.

Option 2:

Overview

The proponent submitted Proposal FP17-10 asking the Board to address the following issues:

Issue 1

The proponent requests the Board expand the annual duration of the fishery to May 1 through November 15, from the current June 15 to August 15 season.

Points to Consider:

1. The requested expanded timeframe of May 1 through November 15 would create a higher probability of harvest in general, harvest of fish species other than salmon, exposure of salmon to harvest, and harvest of salmon in spawning phase conditions.
2. This would provide additional subsistence harvest opportunity for Federally qualified subsistence users from Ninilchik.
3. Regulatory conflicts with the community gillnet fishery would remain since:
 - a. The Chinook Salmon fishery currently occurs between July 16 and September 30;
 - b. The Sockeye Salmon fishery currently occurs between June 15 and August 15;
 - c. The Coho Salmon fishery currently occurs between July 16 and September 30;
 - d. The Pink Salmon fishery currently occurs between July 16 and September 30;
 - e. Incidental harvest of Rainbow Trout and Dolly Varden of 18 inches in length or greater would remain and possibly increase.
 - f. Kenai National Wildlife Refuge regulations at §36.39(i)(12) prohibit use or access between July 1 and August 15 to any portion of 25-foot wide public easements or the three designated public easement trails located parallel to the Homer Electric Association Right-of-Way from Funny River Road and Keystone Drive to the downstream limits of the public use easements.
4. In order to implement this request, §____.27(e)(10)(iv)(D)(2) would need to be modified to adjust seasons.

OSM Recommendation: Oppose. Expansion of fishery dates in this section would not fix current regulatory conflicts with harvest of Chinook Salmon outside of their season, harvest of Rainbow Trout and Dolly Varden 18 inches or longer, and Kenai National Wildlife Refuge riverbank closure areas. It would instead create additional regulatory conflicts with current seasonal dates provided for salmon.

Issue 2

The proponent requests the Board make OSM the issuer of the registration permit for the fishery rather than the Federal in-season manager.

Points to Consider:

1. Moving issuance of permits and management of the fishery to OSM would substantially slow the process as OSM does not currently have delegated authority over the fishery or the infrastructure to conduct in-season management of fisheries.
2. The Federal Subsistence Board would take over the responsibility of the Federal in-season manager by rescinding the delegated authority.
3. Absent the in-season manager, management of the fishery would be conducted through the Federal Subsistence Program's Special Action Request Process or section 805 appointment process.
4. Fishery management in Alaska may require a more immediate response than the Special Action Request process to protect continued viability of fish populations, continuation of subsistence uses, or for issues of public safety.

OSM Recommendation: Oppose. The Board delegates its authority to agency field officials so that decisions can be more responsive and timely in real time situations to address conservation and safety concerns at a local level. Running the fishery through OSM and the Board will not allow for that same timely response.

Issue 3

The proponent requests the Board replace the operational plan requirement of the permit with specific permit conditions.

Points to Consider:

1. The Board adopted Proposal FP15-10 by a 5-3 vote to authorize a community gillnet fishery on the Kenai River with the requirement of an approved operational plan to address any outstanding conservation concerns and logistics for the fishery prior to implementation each season.
2. Removal of the operational plan requirement would decrease the opportunity for the Federal in-season manager and community gillnet fishery operating organization to collaborate and make adjustments to the fishery as necessary, based on the prior years' harvest and any other issues that may arise.
3. This change would decrease the potential for collaboration between the proponent and the Federal in-season manager prior the start of the annual season.
4. The change could limit the ability to address issues with distribution of fish in the community and safety concerns, should any arise.

5. This change would decrease the burden on the proponent prior to the fishery each year.

OSM Recommendation: Oppose. The Board required an operational plan for this fishery to address conservation concerns and logistic issues prior to the start of this fishery each year. Issues clearly remain on both of these fronts, and so the operational plan should remain as well for now.

Issue 4

The proponent requests the Board name the Ninilchik Traditional Council as the coordinator of the community gillnet fishery in regulation.

Points to Consider:

1. The existing Kenai River community gillnet regulation provides flexibility to allow the coordination of the fishery change based on future needs of residents of Ninilchik.
2. Designating NTC in regulation as the organization allowed to coordinate a community gillnet fishery may discourage Federally qualified subsistence users in the community not associated with NTC from participating in the fishery.
3. This is effectively how NTC has conducted efforts for this fishery the past two seasons.
4. OSM is recommending making this change (specifying NTC as the coordinator of the fishery) for FP17-09 during the 5-year experimental period of the Kasilof River experimental community gillnet, with the intent to allow any concerns about NTC organizing the fishery to be voiced prior to a determination on whether to make that fishery permanent. As the Kenai River community gillnet fishery is not experimental in regulation and has no sunset provision, no such mechanism is in place.

OSM Recommendation: Oppose. OSM believes that this issue should be addressed for the experimental duration of the Kasilof River community gillnet fishery prior to making this change for the Kenai River community gillnet fishery to ensure there are no relevant reasons not to make this change.

Issue 5

The proponent requests the Board remove the annual report requirement.

Points to Consider:

1. The current regulation requires that after the season, the organizer of the fishery will provide written documentation of required evaluation information to the Federal fishery manager including, but not limited to, persons or households operating the gear, hours of operation, and number of each species caught and retained or released.
2. Removal would mean that much of the information provided to the Federal in-season manager and used to assess the fishery, including number of Federally qualified subsistence users participating in the fishery and any conservation impacts on non-target species, would no longer be required of

the proponent.

3. This would decrease the burden on the proponent during and following the fishery each year.
4. This would make the task of assessing the fishery and its impacts to non-target species more challenging for the Federal in-season manager and the Board each year.
5. Information provided in these types of reports helps to identify data gaps and set priority information needs for future research.

OSM Recommendation: Oppose. Given the regulatory conflicts and biological concerns that have been raised for this fishery, OSM believes that any additional information provided in an annual post season report would be important for assessing the fishery and helping to direct future research.

Issue 6

The proponent requests the Board add a required permit condition that NTC will report all fish harvested within 72 hours of leaving the gillnet location.

Points to Consider:

1. Specific reporting timelines are not provided for this fishery in current regulation.
2. A 72 hour reporting timeline would match the timeline in place for the Kasilof River experimental community gillnet fishery.
3. This may require more effort on the part of the proponent.

OSM Recommendation: Support. Inclusion of this reporting timeline in regulation would be consistent with the timeline for the other community gillnet fishery available to the residents of Ninilchik.

Issue 7

The proponent requests the Board establish a collective process through which NTC and the Southcentral Council are informed and consulted prior to any potential closures or other actions by the Federal in-season manager.

Points to Consider:

1. Statutory constraints outlined in the Federal Advisory Committee Act (FACA) dictate the necessity for convening a publically-noticed Council meeting, which would be required for the Council to make a recommendation regarding the fishery. The current structure of Title VIII only provides that the Councils may make recommendations to the Board, not to persons with delegated authority. However, consultation with Council chairs (not Councils as a whole) is part of the regulatory process in place for special action requests.
2. The creation of a collaborative decision making process prior to initiating actions on the fishery would give the proponent a greater influence over management than they currently have.

3. If consultation with the entire Council is desired, the timeframe required to convene a Council meeting would likely render the Council's involvement ineffective, as in-season management decisions are responsive to real time conservation and safety concerns, and Council meetings require publication in the Federal Register (a time-consuming effort).
4. In an effort to ensure that in-season management decisions are communicated broadly and fairly, the delegation of authority letter from the Federal Subsistence Board to the Federal in-season manager requires that "The Project Leader (Federal in-season manager) will ... notify/consult with local ADF&G managers, Regional Advisory Council members, and other affected Federal conservation unit managers concerning special actions being considered."
5. Through the delegation of authority, it is the intent of the Board that subsistence management by Federal officials be coordinated with the Alaska Department of Fish and Game and involve Regional Advisory Council representatives to conserve healthy fish and wildlife populations while providing for subsistence uses.
6. While operating under delegated authority from the Board, the Federal in-season manager is obligated to engage in tribal consultation consistent with the Board's *Government-to-Government Tribal Consultation Policy*. Under "Communication," that policy provides, "For in-season management decisions and special actions ... to the extent practicable, two-way communication will take place before decisions are implemented." As NTC happens to be both the party administering the community gillnet and a Federally recognized tribe that may be affected by management decision, government to government consultation with NTC should already be occurring pursuant to that policy. However, an exemption from this policy for in-season management decisions may prevent consultation during the fishery season.
7. Currently, regulations allow fishing during the specified time period (June 15 through August 15) unless closed or otherwise restricted by Federal special action. Additionally, fishing for each salmon species will end and the fishery will be closed by Federal special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action. These restrictions and closures by Federal special action are not provided for in the proposed regulation.

OSM Recommendation: Oppose. The Federal in-season manager, via delegated authority from the Board, is required to perform notification/consultation with affected Regional Advisory Council members and engage in government to government consultation with affected tribes. Additional regulatory language is unnecessary.

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WRITTEN PUBLIC COMMENTS

May 17, 2016

Michael Adams
PO Box 847/38053 Snug Harbor Road
Cooper Landing, AK 99572

Attn: Theo Matuskowitz Federal Subsistence Board
Office of Subsistence Management
1011 E. Tudor Rd., MS-121
Anchorage, Ak 99503-6199

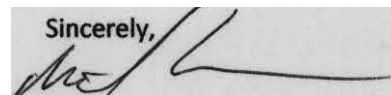
As a Cooper Landing resident and subsistence fisherman I oppose FP17-09 and FP17-10. These proposals attempt to liberalize the gill net fishing season and limits on the Kasilof and Kenai River while completely disregarding conservation measures intended to protect stocks of low abundance and species of concern.

FP17-09: Expanding the season for the gill net fishery on the Kasilof will result in increased steelhead mortality, a species of very low abundance that is currently very conservatively managed. It will also result in an increase in harvest of all river species including an increased catch of spawning king salmon, a species of declining abundance. By including language that allows retention of all bycatch the proposal seems to have the intent of targeting all species in the watershed regardless of abundance and without consideration of available scientific data or traditional knowledge.

FP-17-10: A liberalization of the gill net fishery on the Kenai River is unwarranted based on an existing meaningful priority through the use of expanded rod and reel limits and existing dip net fisheries. I fish the Kenai with these already existing methods and I can attest that they work. It also threatens to undermine the extensive management and conservation measures that have been implemented through the use of scientific data and an understanding of species abundance and spawning strength locality and timing. A gill net fishery located on some of the most essential spawning grounds in the Kenai watershed is by its very nature unsustainable. Expanding the season and limits for this fishery in the face of conservation concerns would have far reaching implications and reflects a lack of concern for the future of the fishery.

These proposals could result in unsustainable harvest of all species in what are arguably the Kenai Peninsula's two most important watersheds without concern for the future of the fisheries and the people who rely on them. A key to sustainable subsistence life is an understanding of species lifecycles and populations. To continually expand harvest opportunity without considering the short term and long term effects on the fishery is irresponsible and does not reflect the traditional values of subsistence and certainly does not reflect a respect for conservation.

Please vote no on FP17-09 and FP17-10 to ensure there are still sustainable numbers of fish, and therefore an opportunity for subsistence, in the years to come.

Sincerely,


Michael Adams

Chris Degernes
PO Box 683
Cooper Landing, AK 99572
Jaeger06@hotmail.com

May 22, 2016

Office of Subsistence Management
Attn: Regulations Specialist
1011 East Tudor Road, Mail Stop 121
Anchorage, Alaska 99503-6199

Re: Comments on Federal Subsistence Management Program 2017-2019 Fisheries Proposals Dear Mr.

Matuskowitz:

I have reviewed the specific proposals relating to regulation changes within the Cook Inlet area, specifically addressing the Kenai River. I support the recommendations found within FP 17-06, FP 17-07 and FP 17-08, while I oppose the proposals made within FP 17-09 and FP 17-10.

I am an authorized federal subsistence permittee residing in Cooper Landing and have utilized the dip net fishery at the Russian River Falls for a number of years. I believe that the conservation and sustainable management of our anadromous and resident fish is paramount to providing for the long term sustainability of our fisheries, thereby supporting our continued quality of life. If a particular method of harvest (i.e., gill net use) creates a risk to certain populations of fish, then it should be prohibited in favor of more discriminate type of harvest (i.e., rod and reel, dip net, etc.) Expediency and efficiency should not be factors in deciding what method of harvest may be permitted.

I urge that the new regulations delete permanently any provision authorizing gill nets on the Kenai River for subsistence harvest purposes, and that all Kenai River Chinook salmon are afforded protection while their numbers are at such historically low numbers. Thank you for considering my comments.

Sincerely, Chris

Degernes



Mckinney, Kayla
<kayla_mckinney@fws.gov>

Fwd: Cook Inlet Area Fisheries proposals

AK Subsistence. FW7 <subsistence@fws.gov> Wed. Jun 1. 2016 at 6:04 PM
To: Gene Peltola <gene_peltola@fws.gov>, Stewart Cogswell <stewart_cogswell@fws.gov>, George Pappas <george_pappas@fws.gov>, Jennifer Hardin <jennifer_hardin@fws.gov>, Ameer Howard <amee_howard@fws.gov>, Theo Matuskowitz <theo_matuskowitz@fws.gov>, Kayla Mckinney <kayla_mckinney@fws.gov>

----- Forwarded message -----

From: **George Heim**
<gheim2000@gmail.com> Date: Thu, May 26,
2016 at 7:33 PM
Subject: Cook Inlet Area Fisheries proposals
To: subsistence@fws.gov

To Whom It May Concern:

I am writing to express support for FP-17-06, FP-17-07, & FP-17-08 and to oppose FP-17-09, & FP-17-10.

The Cooper Landing Advisory Committee held a meeting on May 14th to discuss these proposals. Due to predictable schedule conflicts for the AC members at this time of year and the short notice between publishing the proposals and due date for comments, we were not able to convene a quorum. However, the members present were unanimous in supporting proposals to remove gill nets from the Kenai and to close a section of the Kenai River that is important for Chinook spawning activities and to oppose liberalization of gill nets in the Kasilof and to expand gill nets in the Kenai.

We were concerned about bycatch of non-target species in both waters including rainbow trout, dolly varden and king salmon in the Kenai and steelhead and king salmon in the Kasilof. Of particular concern was the possibility that rainbow trout in the Kenai and Steelhead in the Kasilof would be caught in the nets. Since there is no retention allowed for these species in those waters, and since any fish in a gill net is very likely to be killed persons operating the nets would be in violation of both State and Federal regulation and subject to penalties.

Obviously, this is not a desirable situation. Even if a fish is released from the net alive, it will have been injured and is likely to die after release. This would be wanton waste and should not be allowed.

Sincerely,

George Heim, President

907-599-2000
PO Box 725
Cooper Landing, AK 99572



Wednesday, May 25, 2016

ATTN: Theo Matuskowitz
Federal Subsistence Board
Office of Subsistence Management
1011 E. Tudor Road, MS-121 Anchorage, AK 99503-6199 Subsistence@fws.gov

FSB 2017 – 2019 Fisheries Proposals

Dear Federal Subsistence Board / Southcentral Regional Advisory Council;

Kenai River Sportfishing Association (KRSA) is a 501 c 3 charitable non-profit organization, with a focus on fishery conservation for the Kenai River, greater Cook Inlet and Alaska. We provide these comments on the FSB 2017 – 2019 Fisheries Proposals, specifically those for the Cook Inlet region, FP17-06 – 10.

KRSA supports fisheries management regulations that accomplish two objectives: 1) provide meaningful access and opportunity to subsistence, personal use, sport and commercial fisheries, and 2) follow necessary fishery conservation principles. With respect to time, area, methods and means for subsistence, personal use and sport fisheries within the Kenai River drainage, we support the use of selective gear to harvest fish, such as rod and reel and dip nets. We do not support the use of non-selective gear, such as gillnets, to harvest fish within the Kenai River drainage.

The reason is that selective gear, as opposed to non-selective gear, allows for the live release and high probability of survival for fish that are designated for non-retention for conservation purposes, such as the continued viability of specific fish stocks. Slot limits for fish stocks in fisheries management are similar to hunting restrictions, such as antler restrictions for moose (spike or fork antler, or 50-inch spread, or at least three brow tines on one antler). Judicial review on antler restrictions for subsistence moose hunting determined that a meaningful subsistence priority is not absolute and must be reasonably balanced with conservation issues and other uses.

Conservation based fishery regulations on the Kenai River include non-retention of slot-limit Chinook and of rainbow trout / Dolly Varden over 18 inches, for waters below Skilak Lake. Above Skilak Lake there is no retention of Chinook or rainbow trout / Dolly Varden over 16 inches. On the Kasilof River such regulations include the non-retention of Steelhead Trout.

As such, KRSA supports the adoption of FP17 – 06 and FP17 – 07, which would remove gillnets as a method and means for gear in subsistence fisheries on the Kenai River. We concur with the fisheries conservation rationale as outlined in these respective proposals for this change. FP17-08 is a complex proposal

that seeks to both streamline and change regulations, and we have no comment on each of the subcomponents at this time.

FP17-09 and FP17-10 seek to extend the window of time for use of a community gillnet (NTC) on the Kasilof and Kenai Rivers respectively. On the Kasilof River, the proposal seeks to change the use of a community gillnet from July 1 – July 31 to May 1 – November 15. We do not support the proposed expansion of the time frame due to fishery conservation concerns relating to the retention of Chinook salmon and Steelhead Trout during the expanded timeframe. On the Kenai River, the proposal seeks to change the use of a community gillnet from June 15 – August 15 to May 1 – November 15. We do not support the proposed expansion of time frame due to fishery conservation concerns relating to the retention of Chinook salmon, rainbow trout and Dolly Varden. The rationale of the fishery conservation concern is clearly outlined in the USFWS proposals FP17 – 07 and FP17 – 08.

We encourage both the Southcentral RAC and the Federal Subsistence Board remove the use of gillnets as gear for subsistence fisheries on the Kenai River, and to keep in place the time frame for its use on the Kasilof River. The justification is based on well documented fishery conservation issues that have been articulated thoroughly by both federal and state fishery professionals.

Thank you for your time and consideration on this matter.

Respectfully,

Ricky Gease, Executive Director
Kenai River Sportfishing Association

To the Members of the Southcentral Regional Advisory Council: Re:

Opposition to FP17-10

As a full time resident of Cooper Landing, I am writing to oppose the approval of the Proposal to Change Federal Subsistence Regulations FP17-10. This proposal by the Ninilchik Traditional Council to operate a community gillnet on the Kenai River for the harvest of all salmon species and retention of Dolly Varden and Rainbow Trout less than 18 inches violates the requirements of ANILCA §802. The use of a non-selective fishing tool like a gillnet in the Kenai River is not:

1. “consistent with sound management principles and the conservation of health populations of fish and wildlife”
2. “consistent with management of fish and wildlife in accordance with recognized scientific principles”. (ANILCA §802)

In addition, FP17-10 would also violate section §815 of ANILCA in that a gillnet “permits the level of subsistence uses of fish and wildlife within a conservation system unit to be inconsistent with the healthy populations”. (ANILCA §815)

Finally, FP17-10 violates ANILCA §801, subsection (4):

“In order to fulfill the policies and purposes of the Alaska Native Claims Settlement Act and as a matter of equity, it is necessary . . . **to protect and provide the opportunity for continued subsistence uses on the public land by Native and non-Native rural residents.**” (ANILCA §801, subsection (4))

Any decision by the Board that violates ANILCA and **threatens the healthy populations of fish in the Kenai River** aggrieves our priority, as subsistence users in Cooper Landing, to the continued use of these fish to maintain a subsistence tradition and lifestyle.

Sincerely, Kathryn L. Recken

19567 Rusty’s Way
PO Box 747
Cooper Landing, AK 99572 krecken@gmail.com



Mckinney, Kayla <kayla_mckinney@fws.gov>

Fwd: Opposition to FP 17-10

2 messages

AK Subsistence, FW7 <subsistence@fws.gov> Thu, May 26, 2016 at 1:28 PM
To: Gene Peltola <gene_peltola@fws.gov>, George Pappas <george_pappas@fws.gov>, Jennifer Hardin <jennifer_hardin@fws.gov>, Stewart Cogswell <stewart_cogswell@fws.gov>, Theo Matuskowitz <theo_matuskowitz@fws.gov>, Amee Howard <amee_howard@fws.gov>, Kayla Mckinney <kayla_mckinney@fws.gov>

----- Forwarded message ----- From:
Phil Weber <philphc@hotmail.com> Date:
Tue, May 24, 2016 at 3:15 PM Subject: Opposi-
tion to FP 17-10
To: "subsistence@fws.gov" <subsistence@fws.gov>

I am a qualified federal subsistence user. I am strongly opposed Proposal FP 17-10 "Fish and Shellfish Proposal 2016 Kenai River". This proposal will allow for the interception of salmon species for which I am qualified to subsistence fish thus reducing the amount of salmon that I will have access to. In addition, this proposal will not ensure the conservation of rainbow trout and dolly varden from gillnet fishing. And the proposal will cause damage to the fragile riparian habitat along the shores of the Kenai River.

Phil Weber PO

Box 738

Cooper Landing, AK 99572

Virus-free. www.avast.com

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OSM is in receipt of your comments.

Thank you

AK Subsistence, FW7 <subsistence@fws.gov> Thu, May 26, 2016 at 1:30 PM
To: Gene Peltola <gene_peltola@fws.gov>, Stewart Cogswell <stewart_cogswell@fws.gov>, Theo Matuskowitz <theo_matuskowitz@fws.gov>, Amee Howard <amee_howard@fws.gov>, George Pappas <george_pappas@fws.gov>, Jennifer Hardin <jennifer_hardin@fws.gov>, Kayla Mckinney <kayla_mckinney@fws.gov>

----- Forwarded message

----- From: <rebew@arctic.net>

Date: Tue, May 24, 2016 at 3:21 PM

Subject: Opposition to FP 17-10

To: subsistence@fws.gov

I am a qualified federal subsistence user. I am strongly opposed Proposal FP 17-10 “Fish and Shellfish Proposal 2016 Kenai River”. This proposal will allow for the interception of salmon species for which I am qualified to subsistence fish thus reducing the amount of salmon that I will have access to. In addition, this proposal will not ensure the conservation of rainbow trout and dolly varden from gillnet fishing. And the proposal will cause damage to the fragile riparian habitat along the shores of the Kenai River.

Janet Bentley Weber
PO Box 738
Cooper Landing, AK 99572

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OSM is in receipt of your comments.

Thank you

May 22, 2016

Comment on
FP17-08 + 09

Theo Matuskowitz
Federal Subsistence Board
Office of Subsistence Management
1011 E. Tudor Road, MS-121
Anchorage, Alaska 99503-6199

Dear Theo,

I am opposed to proposal FP17-07, Tenilchik's proposal to place a gill net across the Kenai River as well as FP17-08 that restricts when & where a person may take late run Chinook. In addition, I am opposed to proposal FP17-09 that requests that only residents of Tenilchik may harvest salmon, with a gill net on the Kaslof and Kenai Rivers. These proposals go against conservation efforts to maintain a healthy number of salmon for future generations on these rivers.

As a member of the Cooper Landing Community for the last twelve years I am grateful for the ability to subsistence fish through traditional means using rod and reel and dip net because these methods prove that we can maintain and conserve the Kenai River for salmon.

Thank you for the opportunity to have a voice in continuing to protect conservation efforts as well as subsistence fishing rights on the Kenai River.

Gratefully,
Joyce Koppert

Appendix A – State of Alaska Sustainable Salmon Fisheries Policy

5 AAC 39.222. Policy for the management of sustainable salmon fisheries

- (a) The Board of Fisheries (board) and Department of Fish and Game (department) recognize that
- (1) while, in the aggregate, Alaska's salmon fisheries are healthy and sustainable largely because of abundant pristine habitat and the application of sound, precautionary, conservation management practices, there is a need for a comprehensive policy for the regulation and management of sustainable salmon fisheries;
 - (2) in formulating fishery management plans designed to achieve maximum or optimum salmon production, the board and department must consider factors including environmental change, habitat loss or degradation, data uncertainty, limited funding for research and management programs, existing harvest patterns, and new fisheries or expanding fisheries;
 - (3) to effectively assure sustained yield and habitat protection for wild salmon stocks, fishery management plans and programs require specific guiding principles and criteria, and the framework for their application contained in this policy.
- (b) The goal of the policy under this section is to ensure conservation of salmon and salmon's required marine and aquatic habitats, protection of customary and traditional subsistence uses and other uses, and the sustained economic health of Alaska's fishing communities.
- (c) Management of salmon fisheries by the state should be based on the following principles and criteria:
- (1) wild salmon stocks and the salmon's habitats should be maintained at levels of resource productivity that assure sustained yields as follows:
 - (A) salmon spawning, rearing, and migratory habitats should be protected as follows:
 - (i) salmon habitats should not be perturbed beyond natural boundaries of variation;
 - (ii) scientific assessments of possible adverse ecological effects of proposed habitat alterations and the impacts of the alterations on salmon populations should be conducted before approval of a proposal;
 - (iii) adverse environmental impacts on wild salmon stocks and the salmon's habitats should be assessed;
 - (iv) all essential salmon habitat in marine, estuarine, and freshwater ecosystems and access of salmon to these habitats should be protected; essential habitats include spawning and incubation areas, freshwater rearing areas, estuarine and nearshore rearing areas, offshore rearing areas, and migratory pathways;
 - (v) salmon habitat in fresh water should be protected on a watershed basis, including appropriate management of riparian zones, water quality, and water quantity;
 - (B) salmon stocks should be protected within spawning, incubating, rearing, and migratory habitats;
 - (C) degraded salmon productivity resulting from habitat loss should be assessed, considered, and controlled by affected user groups, regulatory agencies, and boards when making conservation and allocation decisions;
 - (D) effects and interactions of introduced or enhanced salmon stocks on wild salmon stocks should be assessed; wild salmon stocks and fisheries on those stocks should be protected from adverse impacts from artificial propagation and enhancement efforts;
 - (E) degraded salmon spawning, incubating, rearing, and migratory habitats should be restored to natural levels of productivity where known and desirable;
 - (F) ongoing monitoring should be conducted to determine the current status of habitat and the effectiveness of restoration activities;

- (G) depleted salmon stocks should be allowed to recover or, where appropriate, should be actively restored; diversity should be maintained to the maximum extent possible, at the genetic, population, species, and ecosystem levels;
- (2) salmon fisheries shall be managed to allow escapements within ranges necessary to conserve and sustain potential salmon production and maintain normal ecosystem functioning as follows:
- (A) salmon spawning escapements should be assessed both temporally and geographically; escapement monitoring programs should be appropriate to the scale, intensity, and importance of each salmon stock's use;
 - (B) salmon escapement goals, whether sustainable escapement goals, biological escapement goals, optimal escapement goals, or inriver run goals, should be established in a manner consistent with sustained yield; unless otherwise directed, the department will manage Alaska's salmon fisheries, to the extent possible, for maximum sustained yield;
 - (C) salmon escapement goal ranges should allow for uncertainty associated with measurement techniques, observed variability in the salmon stock measured, changes in climatic and oceanographic conditions, and varying abundance within related populations of the salmon stock measured;
 - (D) salmon escapement should be managed in a manner to maintain genetic and phenotypic characteristics of the stock by assuring appropriate geographic and temporal distribution of spawners as well as consideration of size range, sex ratio, and other population attributes;
 - (E) impacts of fishing, including incidental mortality and other human-induced mortality, should be assessed and considered in harvest management decisions;
 - (F) salmon escapement and harvest management decisions should be made in a manner that protects nontarget salmon stocks or species;
 - (G) the role of salmon in ecosystem functioning should be evaluated and considered in harvest management decisions and setting of salmon escapement goals;
 - (H) salmon abundance trends should be monitored and considered in harvest management decisions;
- (3) effective management systems should be established and applied to regulate human activities that affect salmon as follows:
- (A) salmon management objectives should be appropriate to the scale and intensity of various uses and the biological capacities of target salmon stocks;
 - (B) management objectives should be established in harvest management plans, strategies, guiding principles, and policies, such as for mixed stock fishery harvests, fish disease, genetics, and hatchery production, that are subject to periodic review;
 - (C) when wild salmon stocks are fully allocated, new fisheries or expanding fisheries should be restricted, unless provided for by management plans or by application of the board's allocation criteria;
 - (D) management agencies should have clear authority in statute and regulation to
 - (i) control all sources of fishing mortality on salmon;
 - (ii) protect salmon habitats and control nonfishing sources of mortality;
 - (E) management programs should be effective in
 - (i) controlling human-induced sources of fishing mortality and should incorporate procedures to assure effective monitoring, compliance, control, and enforcement;
 - (ii) protecting salmon habitats and controlling collateral mortality and should incorporate procedures to assure effective monitoring, compliance, control, and enforcement;

- (F) fisheries management implementation and outcomes should be consistent with regulations, regulations should be consistent with statutes, and effectively carry out the purpose of this section;
- (G) the board will recommend to the commissioner the development of effective joint research, assessment, and management arrangements with appropriate management agencies and bodies for salmon stocks that cross state, federal, or international jurisdictional boundaries; the board will recommend the coordination of appropriate procedures for effective monitoring, compliance, control, and enforcement with those of other agencies, states, or nations;
- (H) the board will work, within the limits of its authority, to assure that
 - (i) management activities are accomplished in a timely and responsive manner to implement objectives, based on the best available scientific information;
 - (ii) effective mechanisms for the collection and dissemination of information and data necessary to carry out management activities are developed, maintained, and utilized;
 - (iii) management programs and decision-making procedures are able to clearly distinguish, and effectively deal with, biological and allocation issues;
- (I) the board will recommend to the commissioner and legislature that adequate staff and budget for research, management, and enforcement activities be available to fully implement sustainable salmon fisheries principles;
- (J) proposals for salmon fisheries development or expansion and artificial propagation and enhancement should include assessments required for sustainable management of existing salmon fisheries and wild salmon stocks;
- (K) plans and proposals for development or expansion of salmon fisheries and enhancement programs should effectively document resource assessments, potential impacts, and other information needed to assure sustainable management of wild salmon stocks;
- (L) the board will work with the commissioner and other agencies to develop effective processes for controlling excess fishing capacity;
- (M) procedures should be implemented to regularly evaluate the effectiveness of fishery management and habitat protection actions in sustaining salmon populations, fisheries, and habitat, and to resolve associated problems or deficiencies;
- (N) conservation and management decisions for salmon fisheries should take into account the best available information on biological, environmental, economic, social, and resource use factors;
- (O) research and data collection should be undertaken to improve scientific and technical knowledge of salmon fisheries, including ecosystem interactions, status of salmon populations, and the condition of salmon habitats;
- (P) the best available scientific information on the status of salmon populations and the condition of the salmon's habitats should be routinely updated and subject to peer review;
- (4) public support and involvement for sustained use and protection of salmon resources should be sought and encouraged as follows:
 - (A) effective mechanisms for dispute resolution should be developed and used;
 - (B) pertinent information and decisions should be effectively disseminated to all interested parties in a timely manner;
 - (C) the board's regulatory management and allocation decisions will be made in an open process with public involvement;

(D) an understanding of the proportion of mortality inflicted on each salmon stock by each user group, should be promoted, and the burden of conservation should be allocated across user groups in a manner consistent with applicable state and federal statutes, including AS 16.05.251 (e) and AS 16.05.258 ; in the absence of a regulatory management plan that otherwise allocates or restricts harvests, and when it is necessary to restrict fisheries on salmon stocks where there are known conservation problems, the burden of conservation shall be shared among all fisheries in close proportion to each fisheries' respective use, consistent with state and federal law;

(E) the board will work with the commissioner and other agencies as necessary to assure that adequately funded public information and education programs provide timely materials on salmon conservation, including habitat requirements, threats to salmon habitat, the value of salmon and habitat to the public and ecosystem (fish and wildlife), natural variability and population dynamics, the status of salmon stocks and fisheries, and the regulatory process;

(5) in the face of uncertainty, salmon stocks, fisheries, artificial propagation, and essential habitats shall be managed conservatively as follows:

(A) a precautionary approach, involving the application of prudent foresight that takes into account the uncertainties in salmon fisheries and habitat management, the biological, social, cultural, and economic risks, and the need to take action with incomplete knowledge, should be applied to the regulation and control of harvest and other human-induced sources of salmon mortality; a precautionary approach requires

(i) consideration of the needs of future generations and avoidance of potentially irreversible changes;

(ii) prior identification of undesirable outcomes and of measures that will avoid undesirable outcomes or correct them promptly;

(iii) initiation of any necessary corrective measure without delay and prompt achievement of the measure's purpose, on a time scale not exceeding five years, which is approximately the generation time of most salmon species;

(iv) that where the impact of resource use is uncertain, but likely presents a measurable risk to sustained yield, priority should be given to conserving the productive capacity of the resource;

(v) appropriate placement of the burden of proof, of adherence to the requirements of this subparagraph, on those plans or ongoing activities that pose a risk or hazard to salmon habitat or production;

(B) a precautionary approach should be applied to the regulation of activities that affect essential salmon habitat.

(d) The principles and criteria for sustainable salmon fisheries shall be applied, by the department and the board using the best available information, as follows:

(1) at regular meetings of the board, the department will, to the extent practicable, provide the board with reports on the status of salmon stocks and salmon fisheries under consideration for regulatory changes, which should include

(A) a stock-by-stock assessment of the extent to which the management of salmon stocks and fisheries is consistent with the principles and criteria contained in the policy under this section;

(B) descriptions of habitat status and any habitat concerns;

(C) identification of healthy salmon stocks and sustainable salmon fisheries;

(D) identification of any existing salmon escapement goals, or management actions needed to achieve these goals, that may have allocative consequences such as the

(i) identification of a new fishery or expanding fishery;

- (ii) identification of any salmon stocks, or populations within stocks, that present a concern related to yield, management, or conservation; and
 - (iii) description of management and research options to address salmon stock or habitat concerns;
- (2) in response to the department's salmon stock status reports, reports from other resource agencies, and public input, the board will review the management plan, or consider developing a management plan, for each affected salmon fishery or stock; management plans will be based on the principles and criteria contained in this policy and will
- (A) contain goals and measurable and implementable objectives that are reviewed on a regular basis and utilize the best available scientific information;
 - (B) minimize the adverse effects on salmon habitat caused by fishing;
 - (C) protect, restore, and promote the long-term health and sustainability of the salmon fishery and habitat;
 - (D) prevent overfishing; and
 - (E) provide conservation and management measures that are necessary and appropriate to promote maximum or optimum sustained yield of the fishery resource;
- (3) in the course of review of the salmon stock status reports and management plans described in (1) and (2) of this subsection, the board, in consultation with the department, will determine if any new fisheries or expanding fisheries, stock yield concerns, stock management concerns, or stock conservation concerns exist; if so, the board will, as appropriate, amend or develop salmon fishery management plans to address these concerns; the extent of regulatory action, if any, should be commensurate with the level of concerns and range from milder to stronger as concerns range from new and expanding salmon fisheries through yield concerns, management concerns, and conservation concerns;
- (4) in association with the appropriate management plan, the department and the board will, as appropriate, collaborate in the development and periodic review of an action plan for any new or expanding salmon fisheries, or stocks of concern; action plans should contain goals, measurable and implementable objectives, and provisions, including
- (A) measures required to restore and protect salmon habitat, including necessary coordination with other agencies and organizations;
 - (B) identification of salmon stock or population rebuilding goals and objectives;
 - (C) fishery management actions needed to achieve rebuilding goals and objectives, in proportion to each fishery's use of, and hazards posed to, a salmon stock;
 - (D) descriptions of new or expanding salmon fisheries, management concern, yield concern, or conservation concern; and
 - (E) performance measures appropriate for monitoring and gauging the effectiveness of the action plan that are derived from the principles and criteria contained in this policy;
- (5) each action plan will include a research plan as necessary to provide information to address concerns; research needs and priorities will be evaluated periodically, based on the effectiveness of the monitoring described in (4) of this subsection;
- (6) where actions needed to regulate human activities that affect salmon and salmon's habitat that are outside the authority of the department or the board, the department or board shall correspond with the relevant authority, including the governor, relevant boards and commissions, commissioners, and chairs of appropriate legislative committees, to describe the issue and recommend appropriate action.

(e) Nothing in the policy under this section is intended to expand, reduce, or be inconsistent with, the statutory regulatory authority of the board, the department, or other state agencies with regulatory authority that impacts the fishery resources of the state.

(f) In this section, and in implementing this policy,

(1) "allocation" means the granting of specific harvest privileges, usually by regulation, among or between various user groups; "allocation" includes quotas, time periods, area restrictions, percentage sharing of stocks, and other management measures providing or limiting harvest opportunity;

(2) "allocation criteria" means the factors set out in AS 16.05.251 (e) considered by the board as appropriate to particular allocation decisions under 5 AAC 39.205, 5 AAC 75.017, and 5 AAC 77.007;

(3) "biological escapement goal" or "(BEG)" means the escapement that provides the greatest potential for maximum sustained yield; BEG will be the primary management objective for the escapement unless an optimal escapement or inriver run goal has been adopted; BEG will be developed from the best available biological information, and should be scientifically defensible on the basis of available biological information; BEG will be determined by the department and will be expressed as a range based on factors such as salmon stock productivity and data uncertainty; the department will seek to maintain evenly distributed salmon escapements within the bounds of a BEG;

(4) "burden of conservation" means the restrictions imposed by the board or department upon various users in order to achieve escapement, rebuild, or in some other way conserve a specific salmon stock or group of stocks; this burden, in the absence of a salmon fishery management plan, will be generally applied to users in close proportion to the users' respective harvest of the salmon stock;

(5) "chronic inability" means the continuing or anticipated inability to meet escapement thresholds over a four to five year period, which is approximately the generation time of most salmon species;

(6) "conservation concern" means concern arising from a chronic inability, despite the use of specific management measures, to maintain escapements for a stock above a sustained escapement threshold (SET); a conservation concern is more severe than a management concern;

(7) "depleted salmon stock" means a salmon stock for which there is a conservation concern;

(8) "diversity", in a biological context, means the range of variation exhibited within any level of organization, such as among genotypes within a salmon population, among populations within a salmon stock, among salmon stocks within a species, among salmon species within a community, or among communities within an ecosystem;

(9) "enhanced salmon stock" means a stock of salmon that is undergoing specific manipulation, such as hatchery augmentation or lake fertilization, to enhance its productivity above the level that would naturally occur; "enhanced salmon stock" includes an introduced stock, where no wild salmon stock had occurred before, or a wild salmon stock undergoing manipulation, but does not include a salmon stock undergoing rehabilitation, which is intended to restore a salmon stock's productivity to a higher natural level;

(10) "escapement" means the annual estimated size of the spawning salmon stock; quality of the escapement may be determined not only by numbers of spawners, but also by factors such as sex ratio, age composition, temporal entry into the system, and spatial distribution within the salmon spawning habitat;

(11) "expanding fishery" means a salmon fishery in which effective harvesting effort has recently increased significantly beyond historical levels and where the increase has not resulted from natural fluctuations in salmon abundance;

(12) "expected yields" mean levels at or near the lower range of recent historic harvests if they are deemed sustainable;

- (13) "genetic" means those characteristics (genotypic) of an individual or group of salmon that are expressed genetically, such as allele frequencies or other genetic markers;
- (14) "habitat concern" means the degradation of salmon habitat that results in, or can be anticipated to result in, impacts leading to yield, management, or conservation concerns;
- (15) "harvestable surplus" means the number of salmon from a stock's annual run that is surplus to escapement needs and can reasonably be made available for harvest;
- (16) "healthy salmon stock" means a stock of salmon that has annual runs typically of a size to meet escapement goals and a potential harvestable surplus to support optimum or maximum sustained yield;
- (17) "incidental harvest" means the harvest of fish, or other species, that is captured in addition to the target species of a fishery;
- (18) "incidental mortality" means the mortality imposed on a salmon stock outside of directed fishing, and mortality caused by incidental harvests, interaction with fishing gear, habitat degradation, and other human-related activities;
- (19) "inriver run goal" means a specific management objective for salmon stocks that are subject to harvest upstream of the point where escapement is estimated; the inriver run goal will be set in regulation by the board and is comprised of the SEG, BEG, or OEG, plus specific allocations to inriver fisheries;
- (20) "introduced stock" means a stock of salmon that has been introduced to an area, or portion of an area, where that stock had not previously occurred; an "introduced salmon stock" includes a salmon stock undergoing continued enhancement, or a salmon stock that is left to sustain itself with no additional manipulation;
- (21) "management concern" means a concern arising from a chronic inability, despite use of specific management measures, to maintain escapements for a salmon stock within the bounds of the SEG, BEG, OEG, or other specified management objectives for the fishery; a management concern is not as severe as a conservation concern;
- (22) "maximum sustained yield" or "(MSY)" means the greatest average annual yield from a salmon stock; in practice, MSY is achieved when a level of escapement is maintained within a specific range on an annual basis, regardless of annual run strength; the achievement of MSY requires a high degree of management precision and scientific information regarding the relationship between salmon escapement and subsequent return; the concept of MSY should be interpreted in a broad ecosystem context to take into account species interactions, environmental changes, an array of ecosystem goods and services, and scientific uncertainty;
- (23) "mixed stock fishery" means a fishery that harvests fish from a mixture of stocks;
- (24) "new fishery" means a fishery that new units of effort or expansion of existing effort toward new species, areas, or time periods, results in harvest patterns substantially different from those in previous years, and the difference is not exclusively the result of natural fluctuations in fish abundance;
- (25) "optimal escapement goal" or "(OEG)" means a specific management objective for salmon escapement that considers biological and allocative factors and may differ from the SEG or BEG; an OEG will be sustainable and may be expressed as a range with the lower bound above the level of SET, and will be adopted as a regulation by the board; the department will seek to maintain evenly distributed escapements within the bounds of the OEG;
- (26) "optimum sustained yield" or "(OSY)" means an average annual yield from a salmon stock considered to be optimal in achieving a specific management objective other than maximum yield, such as achievement of a consistent level of sustained yield, protection of a less abundant or less

productive salmon stock or species, enhancement of catch per unit effort in sport fishery, facilitation of a nonconsumptive use, facilitation of a subsistence use, or achievement of a specific allocation;

(27) "overfishing" means a level of fishing on a salmon stock that results in a conservation or management concern;

(28) "phenotypic characteristics" means those characteristics of an individual or group of salmon that are expressed physically, such as body size and length at age;

(29) "rehabilitation" means efforts applied to a salmon stock to restore it to an otherwise natural level of productivity; "rehabilitation" does not include an enhancement, which is intended to augment production above otherwise natural levels;

(30) "return" means the total number of salmon in a stock from a single brood (spawning) year surviving to adulthood; because the ages of adult salmon (except pink salmon) returning to spawn varies, the total return from a brood year will occur over several calendar years; the total return generally includes those mature salmon from a single brood year that are harvested in fisheries plus those that compose the salmon stock's spawning escapement; "return" does not include a run, which is the number of mature salmon in a stock during a single calendar year;

(31) "run" means the total number of salmon in a stock surviving to adulthood and returning to the vicinity of the natal stream in any calendar year, composed of both the harvest of adult salmon plus the escapement; the annual run in any calendar year, except for pink salmon, is composed of several age classes of mature fish from the stock, derived from the spawning of a number of previous brood years;

(32) "salmon" means the five wild anadromous semelparous Pacific salmon species *Oncorhynchus* sp., except steelhead and cutthroat trout, native to Alaska as follows:

- (A) Chinook or king salmon (*O. tshawytscha*);
- (B) sockeye or red salmon (*O. nerka*);
- (C) coho or silver salmon (*O. kisutch*);
- (D) pink or humpback salmon (*O. gorbuscha*); and
- (E) chum or dog salmon (*O. keta*);

(33) "salmon population" means a locally interbreeding group of salmon that is distinguished by a distinct combination of genetic, phenotypic, life history, and habitat characteristics, comprised of an entire stock or a component portion of a stock; the smallest uniquely identifiable spawning aggregation of genetically similar salmon used for monitoring purposes;

(34) "salmon stock" means a locally interbreeding group of salmon that is distinguished by a distinct combination of genetic, phenotypic, life history, and habitat characteristics or an aggregation of two or more interbreeding groups which occur within the same geographic area and is managed as a unit;

(35) "stock of concern" means a stock of salmon for which there is a yield, management, or conservation concern;

(36) "sustainable escapement goal" or "(SEG)" means a level of escapement, indicated by an index or an escapement estimate, that is known to provide for sustained yield over a 5 to 10 year period, used in situations where a BEG cannot be estimated or managed for; the SEG is the primary management objective for the escapement, unless an optimal escapement or inriver run goal has been adopted by the board; the SEG will be developed from the best available biological information; and should be scientifically defensible on the basis of that information; the SEG will be determined by the department and will take into account data uncertainty and be stated as either a "SEG range" or "lower bound SEG"; the department will seek to maintain escapements within the bounds of the SEG range or above the level of a lower bound SEG;

(37) "sustainable salmon fishery" means a salmon fishery that persists and obtains yields on a continuing basis; characterized by fishing activities and habitat alteration, if any, that do not cause or lead to undesirable changes in biological productivity, biological diversity, or ecosystem structure and function, from one human generation to the next;

(38) "sustained yield" means an average annual yield that results from a level of salmon escapement that can be maintained on a continuing basis; a wide range of average annual yield levels is sustainable; a wide range of annual escapement levels can produce sustained yields;

(39) "sustained escapement threshold" or "(SET)" means a threshold level of escapement, below which the ability of the salmon stock to sustain itself is jeopardized; in practice, SET can be estimated based on lower ranges of historical escapement levels, for which the salmon stock has consistently demonstrated the ability to sustain itself; the SET is lower than the lower bound of the BEG and lower than the lower bound of the SEG; the SET is established by the department in consultation with the board, as needed, for salmon stocks of management or conservation concern;

(40) "target species" or "target salmon stocks" means the main, or several major, salmon species of interest toward which a fishery directs its harvest;

(41) "yield" means the number or weight of salmon harvested in a particular year or season from a stock;

(42) "yield concern" means a concern arising from a chronic inability, despite the use of specific management measures, to maintain expected yields, or harvestable surpluses, above a stock's escapement needs; a yield concern is less severe than a management concern, which is less severe than a conservation concern;

(43) "wild salmon stock" means a stock of salmon that originates in a specific location under natural conditions; "wild salmon stock" may include an enhanced or rehabilitated stock if its productivity is augmented by supplemental means, such as lake fertilization or rehabilitative stocking; "wild salmon stock" does not include an introduced stock, except that some introduced salmon stocks may come to be considered "wild" if the stock is self-sustaining for a long period of time;

(44) "action point" means a threshold value for some quantitative indicator of stock run strength at which an explicit management action will be taken to achieve an optimal escapement goal.

History: Eff. 9/30/2000, Register 155; am 11/16/2000, Register 156; am 6/22/2001, Register 158; am 6/10/2010, Register 194

Authority: AS 16.05.251

Appendix B – 2002 Delegation of Authority Letter



Federal Subsistence Board

3601 C Street, Suite 1030
Anchorage, Alaska 99503



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

FOREST SERVICE

FWS/OSM/C:/SonnevilInSeason

MAY - 3 2002

Mr. Gary Sonnevil, Project Leader
U.S. Fish and Wildlife Service
Kenai Fishery Resources Office
43655 Kalifornski Road
Kenai, Alaska 99611

Dear Mr. Sonnevil:

This letter delegates specific regulatory authority from the Federal Subsistence Board to you as Project Leader of the Kenai Fishery Resources Office to issue special actions when necessary to assure the conservation of healthy fish stocks and to provide for subsistence uses of fish in Federal waters subject to ANILCA Title VIII (Federal waters) in the Cook Inlet Area.

Overview

Federal managers are responsible for local management of subsistence fishing by qualified rural residents in Federal waters; this includes the authority to restrict all uses in Federal waters if necessary to conserve healthy fish stocks or to provide for subsistence uses in Federal waters. State managers are responsible for in-season management of State subsistence, commercial, recreational, and personal use fisheries in all waters.

It is the intent of the Federal Subsistence Board that subsistence fisheries management by Federal officials be coordinated with the Alaska Department of Fish and Game and involve Regional Advisory Council representatives to conserve healthy fish stocks while providing for subsistence uses. Federal managers are expected to cooperate with State managers and minimize disruption to resource users and existing agency programs, as agreed to under the Interim Memorandum of Agreement for Coordinated Fisheries and Wildlife Management for Subsistence Uses on Federal Public Lands in Alaska.

FEDERAL FISHERIES MANAGEMENT DELEGATION OF AUTHORITY

1. Delegation: The Project Leader of the Kenai Fishery Resources Office is hereby delegated authority to issue emergency regulations (special actions) affecting fisheries in Federal waters as outlined under **3. Scope of Delegation.**

2. Authority: This delegation of authority is established pursuant to 36 CFR 242.10(d)(6) and 50 CFR 100.10(d)(6), which states: “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 emergency special actions as defined by 36 CFR 242.19(d) and 50 CFR 100.19(d). Such an emergency action may not exceed 60 days, and may not be extended. This delegation permits you to open or close Federal subsistence fishing periods or areas provided under codified regulations. It also permits you to specify methods and means; to specify permit requirements; and to set harvest and possession limits for Federal subsistence fisheries. This delegation also permits you to close and re-open Federal waters to non-subsistence fishing, but 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 fish stocks or to continue subsistence uses.

All other proposed changes to codified regulations, such as customary and traditional use determinations, shall be directed to the Federal Subsistence Board.

The Federal waters subject to this delegated authority are those within the Cook Inlet Area (as described in the Subsistence Management Regulations for the Harvest of Fish and Shellfish on Federal Public Lands and Waters in Alaska). The Project Leader will coordinate all local fishery decisions with all affected Federal land managers.

4. Effective Period: This delegation of authority is effective until superseded or rescinded.

5. Criteria for Review of Proposed Special Actions: The Project Leader will use the following considerations to determine the appropriate course of action when reviewing proposed special actions.

1. Does the proposed special action fall within the geographic and regulatory scope of delegation?

2. Does the proposed special 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 annual regulatory cycle?
3. Does the supporting information in the proposed special action substantiate the need for the action?
4. Are the assertions in the proposed special action confirmed by available current biological information and/or by other affected subsistence users?
5. Is the proposed special action supported in the context of available historical information on stock status and harvests by affected users?
6. Is the proposed special action likely to achieve the expected results?
7. Have the perspectives of ADF&G managers and Regional Advisory Council representatives been fully considered in the review of the proposed special action?
8. Have the potential impacts of the proposed special action on all affected subsistence users within the drainage been considered?
9. Can public announcement of the proposed special action be made in a timely manner to accomplish the management objective?
10. After evaluating all information and weighing the merits of the special action against other actions, including no action, is the special action reasonable, rational and responsible?

6. Guidelines for Delegation:

1. The Project Leader will become familiar with the management history of the fisheries in the region, with the current State and Federal regulations and management plans, and be up-to-date on stock and harvest status information.
2. The Project Leader will review special action requests or situations that may require a special action and all supporting information to determine (1) if the request/situation falls within the scope of authority, (2) if significant conservation problems or subsistence harvest concerns are indicated, and (3) what the consequences of taking an action may be on potentially affected subsistence users and non-subsistence users. Requests not within the delegated authority of the Project Leader will be forwarded to the Federal Subsistence Board for consideration. The Project Leader will keep a record of all special action requests and their disposition.

3. The Project Leader will immediately notify the Federal Subsistence Board through Tom Boyd, Assistant Regional Director for Subsistence, U.S. Fish and Wildlife Service, and notify/consult with local ADF&G managers, Regional Advisory Council members, and other affected Federal conservation unit managers concerning special actions being considered.

4. The Project Leader will issue timely decisions. Users, affected State and Federal managers, law enforcement personnel, and Regional Advisory Council representatives should be notified before the effective date/time of decisions. If an action is to supersede a State action not yet in effect, the decision will be communicated to affected users, State and Federal managers, and Regional Advisory Council representatives at least 6 hours before the State action would be effective. If a decision is to take no action, the requestor will be notified immediately.

5. There may be unusual circumstances under which the Project Leader will determine that he/she should not exercise the authority delegated, but instead request that the Federal Subsistence Board should handle the special action request. In a similar vein, the Federal Subsistence Board may determine that a special action request should not be handled by the delegated official but by the Board itself (i.e. rescind the delegated authority for that specific action only). These options should be exercised judiciously and may only be initiated where sufficient time allows. Such decisions should not be considered where immediate management actions are necessary for fisheries conservation purposes.

7. Reporting: The Project Leader must provide to the Federal Subsistence Board 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.

8. Support Services: Administrative support for local fisheries management activities of the Project Leader will be provided by the Office of Subsistence Management, U. S. Fish and Wildlife Service, Department of the Interior.

This delegation of authority will provide subsistence users in the region a local point of contact and will facilitate a local liaison with State managers and other user groups. Timely local management decisions optimize the opportunity for users to harvest fish when and where they are available, without jeopardizing spawning escapement goals for specific stocks.

Should you have any questions about this delegation of authority, please feel free to contact Mr. Thomas H. Boyd, Assistant Regional Director for Subsistence, U. S. Fish and Wildlife Service, Office of Subsistence Management at toll-free 1-800-478-1456 or (907) 786-3888.

Sincerely,

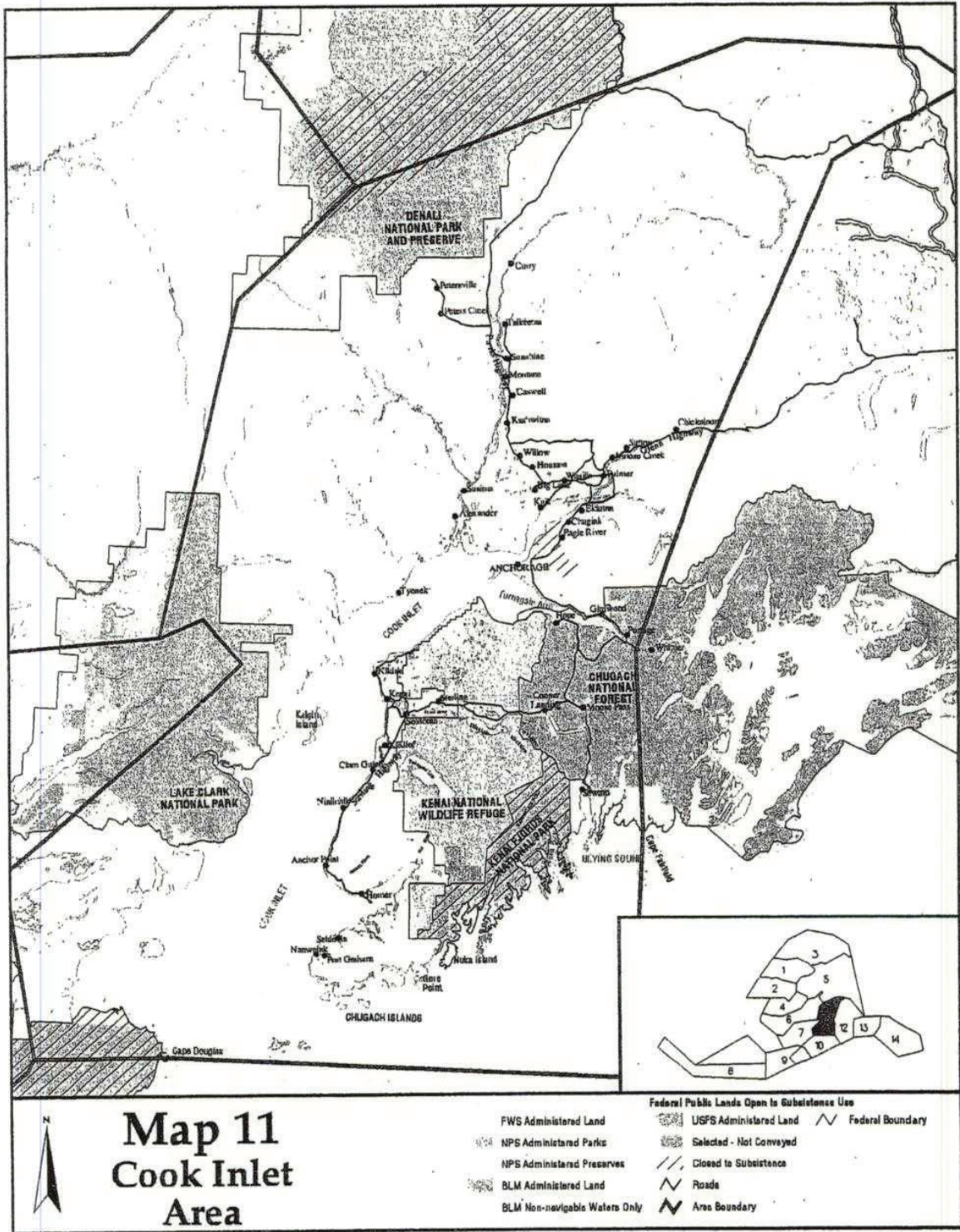


Mitch Demientieff, Chair
Federal Subsistence Board

Attachment: Map of the Cook Inlet Area

cc: Members of the Federal Subsistence Board
Mr. Ralph Lohse, Chair, Southcentral Alaska Subsistence Regional Advisory Council
Ms. Clare Swan, Member, Southcentral Alaska Subsistence Regional Advisory Council
Ms. Deb Liggett, Superintendent, Lake Clark/Katmai National Parks and Preserves
Mr. Steve Martin, Superintendent, Denali National Park and Preserve
Mr. Gary Candelaria, Superintendent, Wrangell-St. Elias National Park and Preserve
Mr. Robin West, Manager, Kenai National Wildlife Refuge
Mr. Greg Siekaniec, Manager, Alaska Maritime National Wildlife Refuge
Mr. Dave Gibbens, Chugach Forest Supervisor
Mr. Michael Kania, Seward District Ranger
Mr. Stanley Pruszenski, Assistant Regional Director - Law Enforcement, U.S. Fish and Wildlife Service
Mr. Frank Rue, Commissioner, Alaska Department of Fish and Game
Mr. Thomas H. Boyd, FWS Office of Subsistence Management

COOK INLET AREA



Appendix C – 2004 Reaffirmation of Delegated Authority Letter



United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE
Office of Subsistence Management
3601 C Street, Suite 1030
Anchorage, Alaska 99503

FWS/OSM/delegation

MAY 17 2004

Mr. Gary M. Sonnevil, Project Leader
U.S. Fish and Wildlife Service
Kenai Fishery Resources Office
P.O. Box 1670
Kenai, Alaska 99611

Dear Mr. Sonnevil:

This letter is to reaffirm your in-season fishery management delegation from the Federal Subsistence Board. In the "original" 2002 delegation letter, it was noted that, "This delegation of authority is effective until superseded or rescinded."

For your easy reference, I am attaching another copy of the original delegation letter. The Federal Subsistence Board made the delegation of authority to your position, so in some cases the name on the original delegation letter may differ from the person currently in that position. Please share the delegation information with staff who will be assisting you during the fishing season.

Joint news releases are used when State and Federal in-season managers agree on a course of action. Routine special actions can be handled locally. On the news release format, please list your name as the "Local Contact for Media".

Please notify Rod Campbell (rod_campbell@fws.gov or 786-3696) directly, if it is likely that an in-season special action/news release will generate far-reaching concerns and questions of the Federal Subsistence Board. If you have specific questions during the fishing season, please feel free to contact Rod.

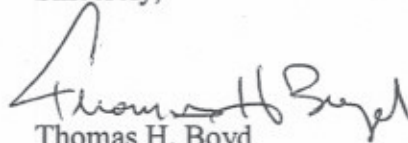
Please provide an electronic copy of all special actions and news releases (Federal and joint State-Federal) to this office c/o Maureen Clark (maureen_clark@fws.gov or 786-3953). Maureen will distribute these documents so that Federal Register requirements are met, news releases are posted on the Subsistence home page, and copies are provided to the Staff Committee, Federal

Mr. Gary M. Sonnevil, Project Leader

2

law enforcement staff, and requesting individuals from the media. Please notify Maureen when contacted by the media concerning subsistence fishery management actions.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas H. Boyd". The signature is written in a cursive style with a large initial "T".

Thomas H. Boyd
Assistant Regional Director

Enclosures

FP17-11 Executive Summary	
General Description	<p>Proposal FP17-11, requests that the residents of Dry Creek be added to the customary and traditional use determination for salmon in the Glennallen subdistrict of the Upper Copper River District.</p> <p><i>Submitted by the Dry Creek Community Corporation.</i></p>
Proposed Regulation	<p>Unit—Glennallen Subdistrict of the Upper Copper River District— Salmon</p> <p><i>Residents of the Prince William Sound Area and residents of Cantwell, Chickaloon, Chisana, Dot Lake, Dry Creek, Healy Lake, Northway, Tanacross, Tetlin, Tok, and those individuals living along the Alaska Highway from the U.S./Canada border to Dot Lake, along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.</i></p>
OSM Preliminary Conclusion	Support Proposal FP17-11.
Southcentral Regional Advisory Council Recommendation	
Eastern Interior Alaska Regional Advisory Council Recommendation	
Interagency Staff Committee Comments	
ADF&G Comments	
Written Public Comments	1 Oppose

**DRAFT STAFF ANALYSIS
FP17-11**

ISSUE

Proposal FP17-11, submitted by the Dry Creek Community Corporation, requests that the residents of Dry Creek be added to the customary and traditional use determination for salmon in the Glennallen subdistrict of the Upper Copper River District.

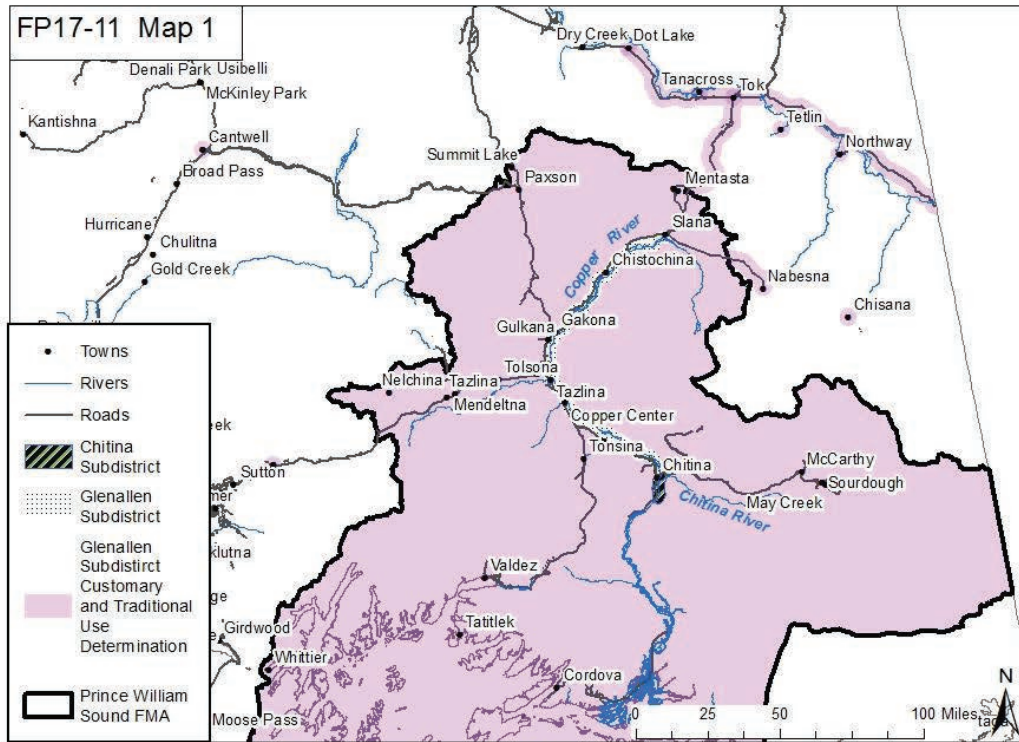
DISCUSSION

The Dry Creek Community Corporation is requesting the community of Dry Creek be added to the customary and traditional use determination for salmon in the Glennallen Subdistrict of the Upper Copper River District. The proponent states that residents of Dry Creek have harvested Copper River salmon for over forty years and are “well within the radius of those villages who are allowed to fish on Federal Land on the upper Copper River” (**Map 1**). In the past, harvest of Copper River salmon usually took place under a State subsistence permit at Chitina above the bridge by fish wheel, but in recent years the course of the Kotsina River changed, making access to the wheel site difficult and dangerous.

Existing Federal Regulation

**Unit—Glennallen Subdistrict of the Upper Copper River
District— Salmon**

Residents of the Prince William Sound Area and residents of Cantwell, Chickaloon, Chisana, Dot Lake, Healy Lake, Northway, Tanacross, Tetlin, Tok, and those individuals living along the Alaska Highway from the U.S./Canada border to Dot Lake, along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.



Map 1. Includes all communities with C&T for Salmon in the Glennallen Subdistrict as well as the location of Dry Creek.

Proposed Federal Regulation

**Unit—Glennallen Subdistrict of the Upper Copper River
District— Salmon**

*Residents of the Prince William Sound Area and residents of Cantwell, Chickaloon, Chisana, Dot Lake, **Dry Creek**, Healy Lake, Northway, Tanacross, Tetlin, Tok, and those individuals living along the Alaska Highway from the U.S./Canada border to Dot Lake, along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.*

Extent of Federal Public Lands/Waters

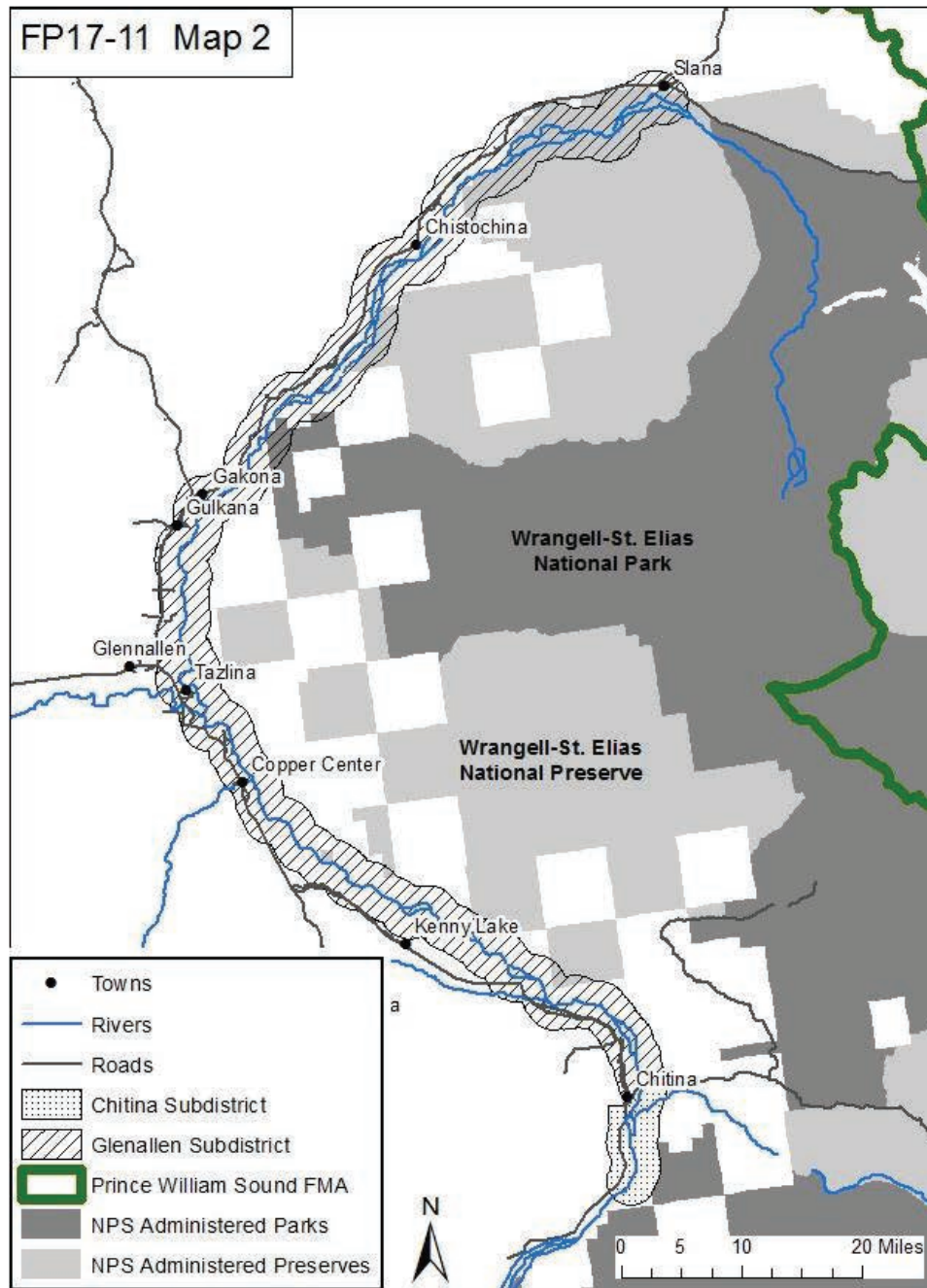
For purposes of this discussion, the phrase “Federal public waters” is defined as those waters described under 50 CFR 100.3(b). Federal public waters of the Copper River include all waters within the exterior boundaries of the Wrangell-St. Elias National Park and Preserve and the Chugach National Forest, and inland waters adjacent to these exterior boundaries. The Upper Copper River District is comprised of the Chitina Subdistrict and the Glennallen Subdistrict. The Chitina Subdistrict consists of all waters of the mainstem Copper River downstream of the southern edge of the Chitina-McCarthy Road Bridge to an east-west line crossing the Copper River approximately 200 yards upstream of Haley Creek, a distance of approximately 10 miles. The Glennallen Subdistrict consists of all waters of the mainstem Copper River from the lower edge of the mouth of the Slana River to the downstream edge of the Chitina-McCarthy Road Bridge, a distance of approximately 120 miles (**Map 2**).

Regulatory History

On October 1, 1999, Federal subsistence fishery management adopted the State subsistence fishery regulations. At that time, the State recognized the Glennallen Subdistrict as a subsistence fishery and classified the Chitina Subdistrict as a personal use fishery. In Federal regulations, residents of the Prince William Sound Area were listed as having customary and traditional use of salmon in the Glennallen subdistrict only. In December 2000, the Federal Subsistence Board (Board) made additional customary and traditional use determinations in the Glennallen subdistrict to include residents of Healy Lake, Dot Lake, Northway, Tanacross, Tetlin, Tok, and those individuals living along the Alaska Highway from the Alaskan/Canadian border to Dot Lake, and along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.

In December 2000, the Board also adopted Proposal FP01-15 which established a customary and traditional use determination for salmon in the Chitina Subdistrict. This action opened the Chitina Subdistrict for subsistence harvest of salmon by Chitina, Cantwell, Chistochina, Copper Center, Gakona, Gulkana, Mentasta, and Tazlina. The Board also adopted a modified version of Proposal FP01-16, submitted by the Copper River Native Association, which defined seasonal harvest limits as requested, and created a Federal subsistence fishing season from May 15 to Sept. 30.

In 2001, the Board adopted Proposal FP02-17 submitted by the Wrangell-St. Elias National Park Subsistence Resource Commission, requesting changes to the regulations in addition to a review of eligible subsistence fishers for the district. This proposal was divided into two separate proposals. Proposal FP02-17a added Chisana and Cantwell to the customary and traditional use determination for salmon in the Glennallen Subdistrict, and Chisana to the customary and traditional use determination for salmon in the Chitina Subdistrict. Proposal FP02-17b allowed those with customary and traditional use determination for salmon in the Chitina Subdistrict and/or those with customary and traditional use for salmon in the Glennallen Subdistrict to obtain a permit for each Subdistrict in the same year. Additionally, Proposal FP02-17b ensured the combined harvests from both districts would not exceed the harvest limit set for the Glennallen District, and allowed for multiple gear types to be specified on each



Map 2. Glennallen and Chitina Subdistricts – Demonstrates the Glennallen and Chitina Subdistricts of the Copper River, and the Batzulnetas fishery.

permit. During the same regulatory cycle, the Board adopted Proposal FP02-20 which allowed those households with a Batzulnetas subsistence salmon permit to be issued an additional permit for both Chitina and Glennallen Subdistricts in the same year.

In 2004, the Chickaloon Village Traditional Council submitted Proposals FP05-14 which requested that Chickaloon be added to the Chitina Subdistrict customary and traditional use determination for salmon, and FP05-15 requesting Chickaloon be added to the Glennallen Subdistrict. The Board adopted the proposals adding Chickaloon to the customary and traditional use determination for salmon in the Chitina and Glennallen Subdistricts as of the 2005 regulatory year.

Community Characteristics

Dry Creek is a Census Designated Place (CDP) located along the Alaska Highway in the Upper Tanana watershed north of Tok. Its southeastern border shares a boundary with the Dot Lake CDP and the Deltana CDP begins approximately five highway miles to the northwest. The most recent Federal census found 94 residents living within the Dry Creek CDP in 2010 (U.S. Census Bureau 2011). While conducting comprehensive subsistence surveys in 2012, the Alaska Department of Fish and Game, Division of Subsistence, verified 91 year-round residents living in a total of 30 households (Holen, Hazel & Koster 2012). In key respondent interviews conducted in 2012, residents of the Dry Creek corporate community recalled a population high of about 200 residents in the 1980s (Holen, Hazel & Koster 2012). At the time research was being conducted, the Division of Subsistence found the population had remained relatively stable over the previous 20 years.

As of 2012, the majority of Dry Creek residents belonged to an intentional faith-based communal settlement called the Living Word Ministry with additional households outside the community but still within the boundaries of the CDP. Of the 30 households identified as year-round residents within the CDP, 25 were occupied by members of the intentional community and five were occupied by surrounding neighbors (Holen, Hazel, & Koster 2012). Despite the distinction between the intentional community and its neighbors, residents express a sense of unity and cohesion and often come together to share labor, recreation, and to address area-wide concerns.

The community of Dry Creek was established in 1973 by four families from the contiguous United States who came to Alaska with the intention of living communally off the land and local wild resources. At the time of their arrival few if any members had experience with subsistence farming or hunting and virtually no experience homesteading in such an extreme northern climate. They had come to Alaska to learn, and to provide for themselves and their growing community. They acquired land through the State of Alaska's "Open to Entry" land offering program. The parcel was rough, wooded, and with no amenities aside from a few log cabins. As more people joined the original founders, families doubled up in the cramped cabins until more structures were built. By 1975 the community had grown to about 88 residents, all of whom helped to homestead the property and build homes and common structures; the most important of which was the large community building called "the tabernacle."

The community building serves as the center of communal life for Dry Creek. The large log-hewn structure is a church, kitchen, dining hall, mail room, common room, nursery and, at one time, the school house. In the early days, all meals were prepared and eaten in the community building. By 2012, and long after all residents had their own cabins and houses with kitchens, lunch and supper were still being served in the dining area (with the exception of Wednesday evenings and Saturdays, when residents were expected to eat meals in their own homes). In addition to communal meals, the community kitchen serves as the location for the processing of key resources like moose, caribou, and salmon, and where community grown foods are processed as well. Dry Creek makes its own dairy products like butter, cheese, and yogurt from dairy cows kept on the land.

The intentional community of Dry Creek has a number of enterprises that provided residents with wage employment and community resources. Logging and Milling Associates, LLC is a community-owned mill that produces lumber and milling by-products for resident projects and buildings as well as for sale across the state. S&K farms boards the domestic animals of others as well as Dry Creek farm animals. The farms have extended acres of hay, oats and barley, grazing lands and pastures, and approximately 40 acres of trees that are selectively harvested for mill needs. During 2012, according to ADF&G, many community residents were occupied with various tasks in settlement up-keep and administration including working the gardens, tending animals, teaching in the school house or overseeing the communal meals and meetings; only a few residents were actually employed outside of Dry Creek (Holen, Hazel, & Koster 2012).

Eight Factors for Determining Customary and Traditional Use

A community or area's customary and traditional use is generally exemplified through the following eight factors: (1) a long-term, consistent pattern of use, excluding interruptions beyond the control of the community or area; (2) a pattern of use recurring in specific seasons for many years; (3) a pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics; (4) the consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from the community or area; (5) a means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate; (6) a pattern of use which includes the handing down of knowledge of fishing and hunting skills, values, and lore from generation to generation; (7) a pattern of use in which the harvest is shared or distributed within a definable community of persons; and (8) a pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area. It should be noted that not all eight factors need to be addressed in order for a community to have a recognized customary and traditional use of a resource.

The Board makes customary and traditional use determinations based on a holistic application of these eight factors (50 CFR 100.16(b) and 36 CFR 242.16(b)). In addition, the Board takes into consideration

the reports and recommendations of any appropriate Regional Advisory Council regarding customary and traditional use of subsistence resources (50 CFR 100.16(b) and 36 CFR 242.16 (b)).

The research used to inform the following analysis was taken from the only comprehensive subsistence survey conducted in the Dry Creek CDP for the 2011 harvest year (Holen, Hazel, & Koster 2012). Standard forms of tracking harvest under the State sport, subsistence, or personal use permitting systems do not work for Dry Creek as the community mail address is located in Delta Junction.

The residents of the Dry Creek CDP *have a long-term, consistent pattern of Copper River salmon use* extending back to the early 1970s, soon after the founding of the intentional community. During the initial stages of homesteading, the early families established ties with Sapa, another faith-based community from the Copper River Basin, which is located within the Kenny Lake CDP. Long-time Dry Creek residents recall first using a fish wheel on the Copper River very near Sapa. At that time, a large group of men and women traveled to the wheel together to harvest, process, and can fish on the banks of the river. After Dry Creek's community house was built, the community's *means of handling, preparing, preserving, and storing fish* changed somewhat. Salmon are now harvested with only preliminary processing (heading, gutting, and filleting) conducted at the wheel site. The remainder are brought back to Dry Creek where freezing and canning are completed. When the harvesters return with the fish, most able-bodied members of the community put aside their immediate work until all the fish are processed and the community kitchen is cleaned. Both at the wheel and back in the kitchen, knowledge of harvesting and processing is shared from one generation to the next. Over the years, the fish wheel remained the preferred and most *efficient method* of harvest for Dry Creek.

In 2011, Dry Creek harvested approximately 358 salmon, most of which were Sockeye Salmon. Dry Creek harvesters usually make one trip down to the fish wheel at Chitina and try on average to harvest at least 300 salmon a season. In 2011, the first trip yielded poor results and so a second trip was made resulting in what residents reported was a slightly larger harvest in comparison to other years (Holen, Hazel, & Koster 2012:525). Because of Dry Creek's unique pattern of processing salmon as a group and preparing and sharing salmon for community meals, all households demonstrated what ADF&G estimated as high use of the salmon resource; 100%. For context, other eastern interior Tanana Valley communities surveyed for the same study demonstrated salmon use per household at 100% for Dot Lake, 69% for Tok, and 67% household use of salmon in Healy Lake (Holen, Hazel, & Koster 2012)

Residents of Dry Creek have a *consistent pattern of use that has recurred in specific seasons over the course of many years*. Subsistence activities are focused on the harvest of key wild resources during the most productive months of summer and fall for efficient and productive efforts intended to provide for all community members. In an average year, residents will make one or two trips to the Copper River to harvest salmon, travel to Valdez once a year to deep-sea fish for halibut, and organize hunting trips for moose and caribou. Neighbors and other residents of the Dry Creek CDP will occasionally join the intentional community residents in their hunting efforts. Not all attending the hunt actually harvest an animal, but all are present to help with the preliminary processing in the field and the transport of meat back to the community. Most Dry Creek CDP households also participate in the harvest and processing of

wild plants and berries, separate from those resources grown in the community gardens or at home. Additionally, households may hunt for migratory waterfowl in the spring or upland gamebirds year-round, or hunt and trap for small game and furbearers in season or fish on local lakes throughout the year. These last efforts are primarily for individual household use and are not considered major contributors to the community at large or the shared meals in the tabernacle. Most critical for, and unique to this community in the region, is the use of horses to access the Macomb Plateau controlled use area where they harvest moose and caribou.

Dry Creek's seasonal round of harvest activities also demonstrates *a pattern of use which relates to reliance upon a diversity of fish and wildlife resources of the area*. In 2011, Dry Creek households used an average of approximately 11 wild harvested resources with at least one household using a maximum of 33 different resources total. The top resources harvested by edible weight included moose at 92 lb per person, Sockeye Salmon (17 lb), caribou (14 lb), low-bush cranberry (8 lb), and Rainbow Trout at 2 lb per person, among others (Holen, Hazel, & Koster 2012:494-500). The total estimated amount of wild foods harvested by Dry Creek in 2011 was 12,767 lb, or about 140 lb per person. As noted in the paragraph above, most of these resources were harvested locally, with community members traveling the farthest to harvest salmon and deep-sea fish.

The *pattern of sharing and distribution* of wild resources in Dry Creek is quite distinctive. The majority of wild resources are harvested and processed communally and shared daily through community meals. In addition to community meals, the distribution of all cooperatively harvested and grown foods to every family and household is essential for community survival. All households participate in some stage of food production, whether hunting, gathering, gardening, animal husbandry, or the various efforts of food processing, preservation and storage. These products of communal labor are stored in the shared facilities and made available for residents to use in their own homes as well as in the preparation of shared daily meals in the community building. Residents take turns preparing meals in the community kitchen for all members. It is during shared meals that moose, salmon, and wild berries are eaten most regularly. Residents of the intentional community as well as Dry Creek CDP neighbors, also cook wild foods harvested on their own or with others in their own homes. In this way, sharing and receiving is seen as intrinsic to the community, and something that almost everyone does in some way, whether or not they actually harvested the food themselves.

Effects of the Proposal

If the Board adopts this proposal, the community of Dry Creek would have an opportunity to harvest salmon under Federal subsistence management regulations on inland waters within or adjacent to Federal public lands in the Copper River watershed. Residents would have access to other fish wheels in Federal waters along the Copper River such as a fish wheel in Slana, which is significantly closer to Dry Creek, in addition to their traditional harvest location of Chitina above the bridge. Regardless of location or the type of regulations under which the community would fish, the average annual community harvest of 300 to 500 fish would likely not change.

If the Board does not recognize the customary and traditional use of Copper River salmon by the rural residents of Dry Creek, the community would not be able to fish in Slana, but would continue to harvest under State regulations at Chitina above the bridge.

OSM PRELIMINARY CONCLUSION

Support Proposal FP17-11.

Justification

Dry Creek has a recognizable long-term pattern of harvesting salmon in the Copper River watershed, extending back over 40 years, with unique patterns of processing, sharing, and distribution. Salmon is the second most harvested resource in the community and residents rely heavily upon salmon to meet their subsistence needs. The amount of salmon harvested from the Copper River by Dry Creek would likely remain unchanged; however, the rural residents of Dry Creek would be given greater opportunity to harvest salmon under Federal subsistence management regulations on inland waters within or adjacent to Federal public lands that are closer to their community.

LITERATURE CITED

Holen, D., S. M. Hazell, and D. S. Koster, editors. 2012. Subsistence harvests and uses of wild resources by communities in the eastern Interior of Alaska. Alaska Department of Fish and Game, Division of Subsistence Technical Paper No. 372. Anchorage, Alaska.

U.S. Census Bureau. 2011. 2010 Census. U.S. Census Bureau, Washington, D.C.
<http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>

Appendix A – Public Comment on FP17-11

Corporate Headquarters
PO Box 649
Glennallen, Alaska 99588
Office: (907) 822-3476
Fax: (907) 822-3495



Anchorage Office
110 W 38th Avenue, Suite 100
Anchorage, Alaska 99503
Office: (907) 868-8250
Fax: (907) 868-8285

Our Culture unites us; Our Land Sustains us; Our People are Prosperous

May 5, 2016

Federal Subsistence Board
ATTN: Theo Matuskowitz
Office of Subsistence Management
1011 E. Tudor Road, MS-121
Anchorage, Alaska 99503-6199

Dear Mr. Matuskowitz:

We, the Ahtna Tene Nene' C&T Committee, are opposed to FP17-11 to include residents of Dry Creek to have a positive Customary and Traditional Use Determination for Salmon in the Glennallen Subdistrict and Chitina Subdistrict of the Upper Copper River District.

Customary and traditional uses of Salmon, in which a long term, continuous, re-occurring pattern of use has not occurred, the community of Dry Creek does not meet criteria for C&T uses and should not be granted a positive C&T Determination for Salmon in the Glennallen Subdistrict and Chitina Subdistrict of the Upper Copper River District.

In FP17-11, fishing in the Upper Copper River District and Kotsina River has only occurred in the last few years, **the proposal states, "In recent years the subsistence harvest has occurred primarily at Chitina, and "in recent years the Kotsina Rivermaking access to the fish wheels very difficult and also dangerous.**

Over the last 40 years, residents who live in the Living Word Ministry settlement **may have** received Salmon from SAPA, a disbanded religious settlement in Kenny Lake, but that does not constitute meeting the requirements for C&T criteria. They also **may have** helped SAPA with preserving Salmon, but that does not mean that they have practiced C&T from year to year, nor does it mean that have passed on knowledge or stories about fishing in the Upper Copper River District.

It is our understanding that Living Word Ministry Inc. submitted FP17-11 on behalf of the community of Dry Creek. WP17-11 was submitted by Dry Creek Community Corporation.

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According to ADFG's report, entitled, *Subsistence Harvests and Uses of Wild Resources by Communities in the Eastern Interior of Alaska*, 2011, four families settled at Living Word Ministry Inc. in 1973, through land granted SOA Open to Entry land offering program. It is a religious settlement that was established in 1973 by 4 families.

Most religious organizations take sabbatical leave for one to three years to raise monies for their livelihood. They usually leave and return after several years. Customary and traditional uses cannot be practiced in a continuous method over several years and skills cannot be handed down from generation to generation if residents are leaving off and on to the lower forty-eight states to raise monies to support their families.

Living Word Ministry settlement began with 4 families and has increased in membership over the years. The question is whether these 88 residents who now live in this settlement are descendants of the original 4 families. **Is this settlement an evolving settlement in which "corporate residents" come and leave the settlement every few years?**

And do they have customary and traditional use patterns of the resources that is consistent, long term, and re-occurring in specific seasons for numerous years. Are they handing down fishing and hunting skills, knowledge, lores and values from generation to generation?

If the residents are leaving and moving back to an area, and new members are moving into the Living Word Ministry settlement, the community of Dry Creek does not meet the criteria of C&T uses and patterns of fish and wildlife resources, and do not qualify to have a positive C&T Determination for Salmon in the Upper Copper River District. Residents of a religious settlement that is made up of residents who stay for a few years and move elsewhere do not meet C&T patterns and uses of fish and wildlife resources.

As FP17-11 states only in "recent years has Dry Creek Community fished in the Upper Copper River District! The community of Dry Creek have not harvested Salmon in the Upper Copper River District continuously for many years. They have not practiced C&T uses in a continuous generational to generational pattern in which skills, lore's and stories are passed on. They have not fished continuously in the Upper Copper River in a re-occurring seasons.

We have a concern that residents of Dry Creek community will be trespassing on Ahtna, Inc. and other private lands in the Chitina Subdistrict areas and Glennallen Subdistrict areas. Access to the Copper River to place a fish wheel or to have a fishing site to the fish wheel in the Copper River is minimal. Trespass on Ahtna, Inc. lands is an ongoing concern to Ahtna, Inc., trespass occurs continuously during the fishing and hunting season.

We oppose a positive C&T Determination for Salmon in the Upper Copper River District to residents of Dry Creek. We do not agree that they have re-occurring patterns and uses of Salmon that is continuous, re-occurring seasonally from year to year, passing on of knowledge, skills, lore's, and stories of Salmon uses in the Upper Copper River District.

Sincerely,

Gloria Stecker
for Roy S. Ewan

Roy S. Ewan, Chairperson

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FISHERIES RESOURCE MONITORING PROGRAM SOUTHCENTRAL ALASKA OVERVIEW

BACKGROUND

Beginning in 1999, the Federal government assumed expanded management responsibility for subsistence fisheries on Federal public lands in Alaska under the authority of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). Expanded subsistence fisheries management introduced substantial new informational needs for the Federal system. Section 812 of ANILCA directs the Departments of the Interior and Agriculture, cooperating with the State of Alaska and other Federal agencies, to undertake research on fish and wildlife and subsistence uses on Federal public lands. To increase the quantity and quality of information available for management of subsistence fisheries, the Fisheries Resource Monitoring Program (Monitoring Program) was established within the Office of Subsistence Management (OSM). The Monitoring Program was envisioned as a collaborative interagency, interdisciplinary approach to enhance existing fisheries research and monitoring, and effectively communicate information needed for subsistence fisheries management on Federal public lands.

To implement the Monitoring Program, a collaborative approach is utilized in which five Federal agencies (U.S. Fish and Wildlife Service, Bureau of Land Management, National Park Service, Bureau of Indian Affairs, and U.S. Forest Service) work with the Alaska Department of Fish and Game, Regional Advisory Councils, Alaska Native Organizations, and other organizations. An interagency Technical Review Committee provides scientific evaluation of project proposals submitted for funding consideration. The Regional Advisory Councils provide strategic priorities and recommendations, and public comment is invited. The Interagency Staff Committee also provides recommendations. The Federal Subsistence Board takes into consideration recommendations and comments from the process, and forwards the successful proposals on to the Assistant Regional Director of OSM for final approval and funding.

During each biennial funding cycle, the Monitoring Program budget funds ongoing multi-year projects (2, 3 or 4 years) as well as new projects. Budget guidelines are established by geographic region (**Table 1**). The regional guidelines were developed by the Federal Subsistence Board using six criteria that included level of risk to species, level of threat to conservation units, amount of subsistence needs not being met, amount of information available to support subsistence management, importance of a species to subsistence harvest and level of user concerns with subsistence harvest. Budget guidelines provide an initial target for planning; however they are not final allocations and will be adjusted annually as needed.

Table 1. Regional allocation guideline for Fisheries Resource Monitoring Funds.

Region	Department of Interior Funds	Department of Agriculture Funds
Northern	17%	0%
Yukon	29%	0%
Kuskokwim	29%	0%
Southwest	15%	0%
Southcentral	5%	33%
Southeast	0%	67%
Inter-regional	5%	0%

Two primary types of research projects are solicited for the Monitoring Program including Harvest Monitoring/Traditional Ecological Knowledge (HMTEK) and Stock, Status and Trends (SST), although projects that combine these approaches are also encouraged. Definitions of the two project types are listed below:

- **Stock Status and Trends Studies (SST)** - These projects address abundance, composition, timing, behavior, or status of fish populations that sustain subsistence fisheries with linkage to Federal public lands.
- **Harvest Monitoring and Traditional Ecological Knowledge (HMTEK)** - These projects address assessment of subsistence fisheries including quantification of harvest and effort, and description and assessment of fishing and use patterns.

PRIORITY INFORMATION NEEDS

OSM staff works with the Regional Advisory Councils, Federal and State fishery managers and land managers to ensure the Monitoring Program focuses on the highest priority information needs for management of Federal subsistence fisheries. Input from the Regional Advisory Councils is used to develop the Priority Information Needs by identifying issues of local concerns and knowledge gaps related to subsistence fisheries. The Priority Information Needs provide a framework for evaluating and selecting project proposals. Successful project proposal selection may not be limited to the identified Priority Information Needs but project proposals not addressing a priority information need must include compelling justification with respect to strategic importance.

PROJECT EVALUATION PROCESS

In the current climate of increasing conservation concerns and subsistence needs, it is imperative that the Monitoring Program prioritizes high quality projects that address critical subsistence questions. Projects are selected for funding through an evaluation and review process that is designed to advance projects that are strategically important for the Federal Subsistence Program, technically sound, administratively competent, promote partnerships and capacity building, and are cost effective.

Five criteria are used to evaluate project proposals:

1. **Strategic Priority** - Studies must be responsive to identified issues and priority information needs. All projects must have a direct linkage to Federal public lands and/or waters to be eligible for funding under the Monitoring Program.
2. **Technical-Scientific Merit** - Technical quality of the study design must meet accepted standards for information collection, compilation, analysis, and reporting.

3. **Investigator Ability and Resources** - Investigators must demonstrate that they are capable of successfully completing the proposed study by providing information on the ability (training, education, and experience) and resources (technical and administrative) they possess to conduct the work.
4. **Partnership-Capacity Building** - Partnerships and capacity building are priorities of the Monitoring Program. ANILCA mandates that rural residents be afforded a meaningful role in the management of Federal subsistence fisheries. Investigators are requested to include a strategy for integrating local capacity development in their investigation plans.
5. **Cost Benefit** – Each proposal is evaluated for “best value” and overall project costs.

PROJECTS FUNDED UNDER THE MONTORING PROGRAM

Since the inception of the Monitoring Program in 2000, 48 projects have been funded in the Southcentral Alaska (**Table 2**).

Table 2. Fisheries Resource Monitoring Program projects funded in the Southcentral Region from 2000 to 2016.

Project Number	Project Title	Project Cost
00-013	Tanada Creek Salmon Escapement	\$138,000
00-034	Miles Lake Sonar Improvement	\$ 89,914
00-035	Coghill Coho Salmon Weir	\$ 93,648
00-038	Copper Creek Dolly Varden Assessment	\$ 38,500
00-041	Turnagain Arm Eluachon Subsistence Use and Assessment	\$196,897
01-020	Copper River Chinook Salmon Feasibility of Abundance Estimate	\$778,330
01-021	Lower Copper River In-season Abundance Estimate	\$509,975
01-035	Copper River Steelhead Harvest Monitoring	\$ 27,426
01-110	Copper River Non-salmon Species Harvest and Use	\$170,583
01-148	Copper River Steelhead Stock Status	\$524,100
01-217	Copper River Groups Capacity Building Workshop	\$ 35,912
02-015	Copper River Chinook Salmon Radio Telemetry	\$600,200
02-028	Chugach Region TEK Mapping	\$ 57,800
02-075	Eulachon Subsistence Harvest Opportunities	\$ 49,200
02-077	Upper Copper River Increasing GIS Capabilities	\$ 14,600
03-001	Copper River Steelhead Population Biology	\$390,000
03-010	Upper Copper River C&T Subsistence Fish Harvests GIS Atlas	\$ 64,601
03-033	Billy's Hole, PWS Salmon Stock Assessment	\$273,100
03-045	Cook Inlet Subsistence Fisheries Harvest Assessment	\$128,566
04-501	Long Lake Sockeye Salmon Escapement	\$ 53,340
04-502	Tanada Creek Salmon Escapement	\$187,500
04-503	Copper River Chinook Salmon Abundance Estimate	\$964,235

04-506	Lower Copper River In-season Abundance Estimate	\$194,939
04-507	Copper River Chinook Salmon Genetics	\$ 51,000
04-553	Copper River Salmon Runs Traditional Knowledge of Long Term	\$206,415
05-501	Copper River Sockeye Salmon Spawning Distribution	\$675,418
05-502	Copper River Steelhead Abundance	\$ 73,269
06-502	Copper River Sockeye Salmon In-river Abundance	\$ 90,897
07-501	Tanada and Copper Lakes Burbot Abundance	\$117,025
07-502	Tanada Creek Salmon Weir	\$246,828
07-503	Copper River Chinook and Sockeye Salmon Abundance	\$1,112,275
07-505	Long Lake Salmon Weir	\$ 59,071
07-506	Tutsumena Lake Coho Salmon Spawning Assessment	\$ 12,500
07-507	Kasilof Watershed Coho Salmon Radio Telemetry	\$324,000
07-509	Kasilof Watershed Steelhead Trout Radio Telemetry	\$ 44,600
08-501	Copper River Sockeye Salmon Abundance	\$391,194
08-502	Tutsumena Lake Coho Salmon Assessment	\$400,847
08-503	Kasilof River Steelhead Radio Telemetry	\$164,200
08-504	Crooked and Nikoli Creeks Steelhead Weirs	\$ 98,130
10-502	Tanada Creek Salmon Assessment	\$267,243
10-503	Copper River Chinook Salmon Assessment	\$1,492,126
10-505	Long Lake Salmon Assessment	\$ 59,565
10-552	Copper River Subsistence Harvest Validation	\$449,316
12-500	Copper River Chinook Salmon RFID Feasibility	\$152,754
12-550	Upper Copper River Changing Environments and Subsistence	\$168,542
14-501	Long Lake Adult Salmon Abundance and Run Timing	\$ 55,435
14-503	Tanada Creek Salmon Abundance and Run Timing	\$312,844
14-505	Copper River Chinook Salmon In-river Abundance Estimate	\$1,626,610
Total		\$14,233,470



Native Village of Eyak

2003 -2016 Chinook Salmon Escapement Data for the Copper River *Fall Southcentral RAC Meeting October 2016*

Table 1. Estimated in-river abundance with total run size, harvest at river mouth, in-river harvest, and system-wide escapement of Chinook salmon the Copper River, 2003-2016

Year	In-River Abundance (a)	In-River Abundance St. Error (a)	Total Run Size	Harvest at River Mouth (b)	In-river harvest (b)	System-Wide Escapement (b)
2003	44,764	12,506	92,485	47,721	10,721	34,043
2004	40,564	4,650	80,405	54,652	9,919	30,645
2005	30,333	1,529	66,080	35,747	8,805	<u>21,528</u>
2006	67,789	4,779	99,639	31,850	9,335	58,454
2007	46,349	3,283	87,678	41,329	11,784	34,565
2008	41,343	2,166	53,838	12,495	8,858	32,485
2009	32,401	2,365	42,996	10,595	4,620	27,781
2010	22,323	2,492	33,181	10,858	5,552	<u>16,771</u>
2011	33,889	3,329	53,889	20,000	5,896	27,993
2012	31,452	5,242	44,312	12,860	3,541	27,911
2013	32,581	4,425	42,880	10,299	4,390	28,191
2014	24,158	2,100	35,322	11,164	3,318	<u>20,840</u>
2015	32,306	3,977	N/A	N/A	N/A	N/A
2016	18,329 – Preliminary Estimate Only			N/A	N/A	N/A

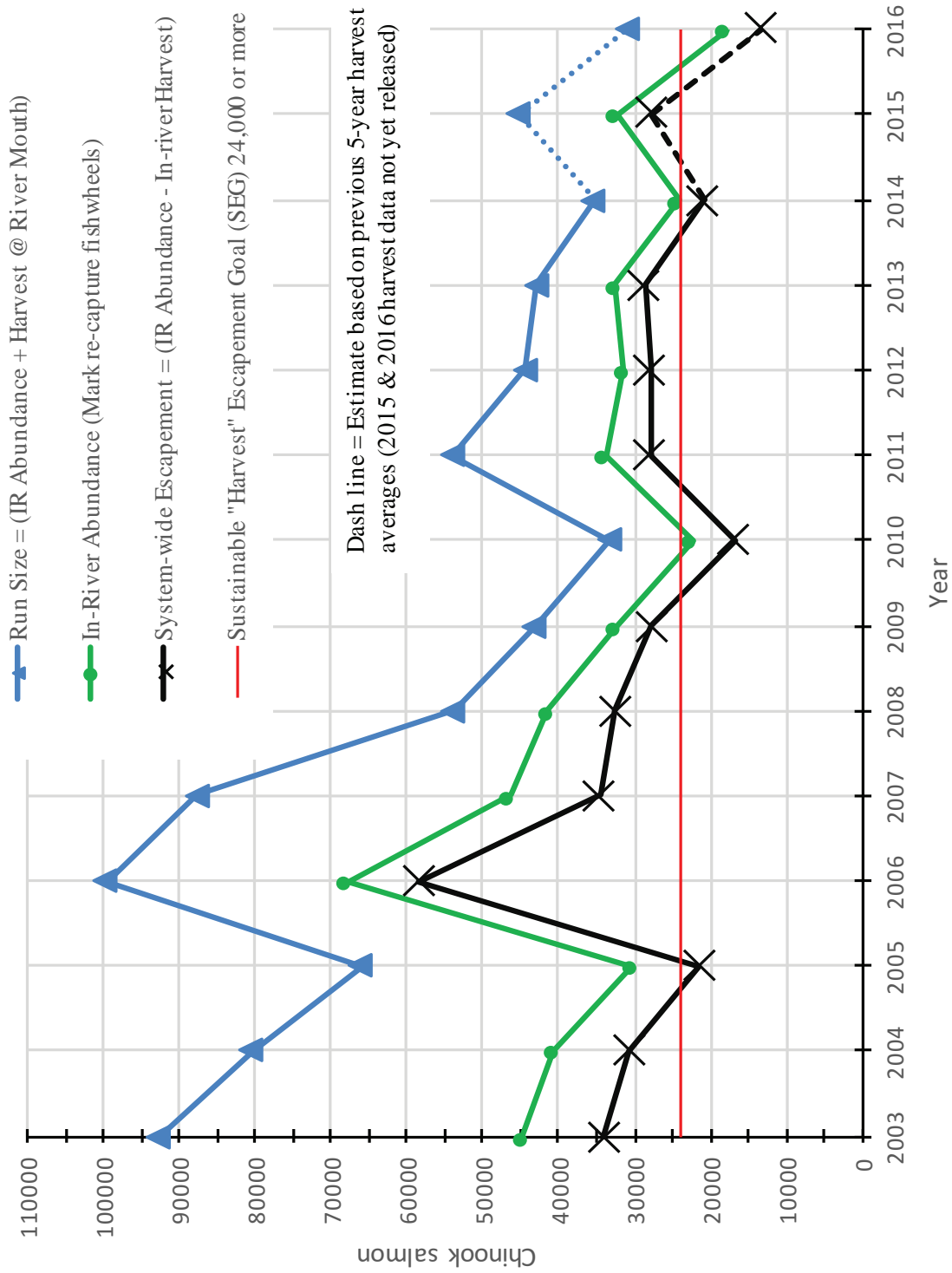
5 - Year Average In-River Harvest (2011 - 2014) = 4,433

a) Data obtained from NVE's Mark Re-capture fishwheel study to estimate in-river abundance through Baird Canyon on the lower Copper River, past all commercial fisheries but before in-river harvest occurs (e.g. subsistence, personal use, and sport fisheries) Citation: Piche. M.J., J.C. Whissel, and J.J. Smith. 2016. Estimating the in-river abundance of Copper River Chinook salmon, 2015 annual report. U.S. Fish and Wildlife Service, Office of Subsistence Management, Fisheries Resource Monitoring Program (Study No. 14-505), Anchorage, Alaska.

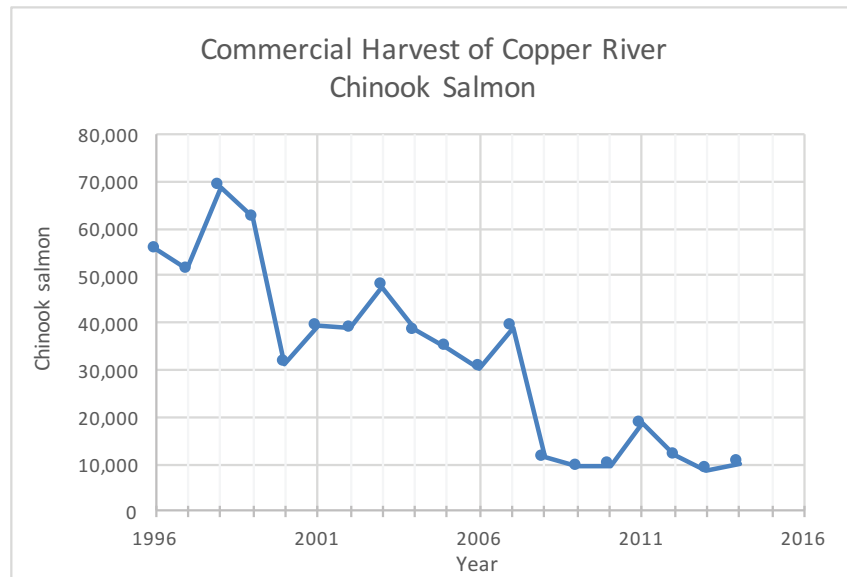
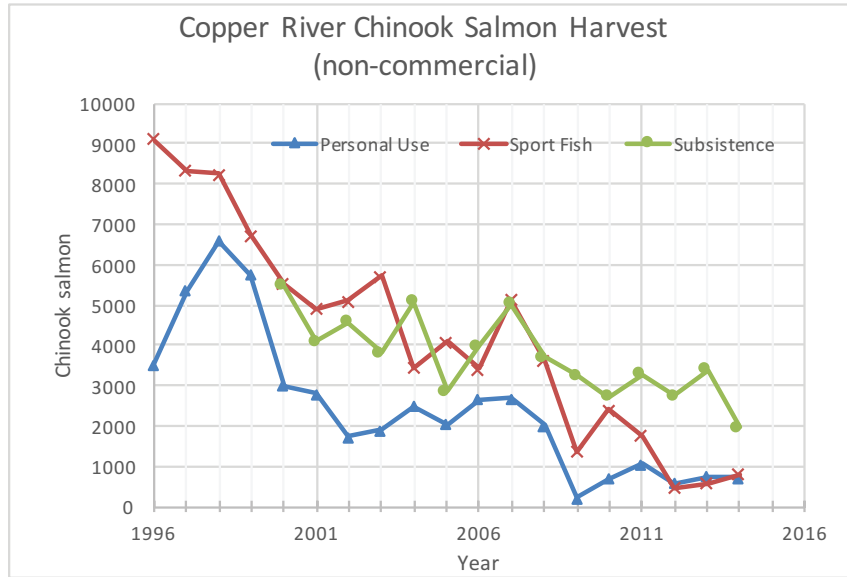
b) Data obtained from ADF&G Commercial Fisheries Division Cordova Office Publication: Citation: Wiese, A., T. Shieridan., J. Botz., S. Moffitt., and R. Brenner. 2015. 2014 Prince William Sound Area Finfish Management Report. ADF&G Division of Commercial Fisheries. Fishery Management Report No. 15-34.

Daily in-season data available to the public at <http://eyak.fishscan.com/Summary/DailySummary.aspx>
 NVE's Chinook Escapement Monitoring Annual Reports available by request from USFW-OSM
 FRMP funded by U.S. Fish and Wildlife Service, Office of Subsistence Management

NVE's Copper River Chinook Salmon Monitoring Program (est. 2003)



Daily in-season data available to the public at <http://eyak.fishscan.com/Summary/DailySummary.aspx>
 NVE's Chinook Escapement Monitoring Annual Reports available by request from USFW-OSM
 FRMP funded by U.S. Fish and Wildlife Service, Office of Subsistence Management



Data in charts obtained from:

Piche, M.J., J.C. Whissel, and J.J. Smith. 2016. Estimating the in-river abundance of Copper River Chinook salmon, 2015 annual report. U.S. Fish and Wildlife Service, Office of Subsistence Management, Fisheries Resource Monitoring Program (Study No. 14-505), Anchorage, Alaska.

Piche, M.J., J.C. Whissel, and J.J. Smith. In-Prep. Estimating the in-river abundance of Copper River Chinook salmon, 2016 annual report. U.S. Fish and Wildlife Service, Office of Subsistence Management, Fisheries Resource Monitoring Program (Study No. 14-505), Anchorage, Alaska.

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 FRMP funded by U.S. Fish and Wildlife Service, Office of Subsistence Management

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MEMORANDUM OF UNDERSTANDING

For

Coordinated Interagency Fish and Wildlife Management for Subsistence Uses on Federal
Public Lands in Alaska

between the

Federal Subsistence Board

(U.S. Fish and Wildlife Service, USDA Forest Service, National Park Service, Bureau of
Land Management, Bureau of Indian Affairs, and Secretarial Appointees)

and

State of Alaska

(Alaska Department of Fish and Game (ADF&G) and Alaska Board of Fisheries and
Alaska Board of Game (State Boards))

I. PREAMBLE

This Memorandum of Understanding (MOU) between the Federal Subsistence Board and the State of Alaska establishes guidelines to coordinate management of subsistence uses of fish and wildlife resources on Federal public lands in Alaska.

WHEREAS, the Secretaries of Agriculture and the Interior (Secretaries), by authority of the Alaska National Interest Lands Conservation Act (ANILCA) and other laws of Congress, regulations, and policies, are responsible for ensuring that the taking of fish and wildlife for nonwasteful subsistence uses on Federal public lands, as discussed in ANILCA §802(2) and defined in ANILCA §803, shall be accorded priority over the taking on such lands of fish and wildlife for other purposes as provided for in ANILCA §804; and that the Secretaries are responsible for protecting and providing the opportunity for rural residents of Alaska to engage in a subsistence way of life on Federal public lands in Alaska, consistent with the conservation of healthy populations of fish and wildlife and recognized scientific principles; and that these lands are defined in ANILCA §102 and Federal regulation (36 CFR Part 242 and 50 CFR Part 100); and that the Secretaries primarily implement this priority through the Federal Subsistence Board, providing for public participation through Regional Advisory Councils and Subsistence Resource Commissions as authorized by ANILCA §805 and §808 and Federal regulations (above); and,

WHEREAS, the State of Alaska, under its laws and regulations, is responsible for the management, protection, maintenance, enhancement, rehabilitation, and extension of the fish and wildlife resources of the State of Alaska on the sustained yield principle, subject to preferences among beneficial uses, such as providing a priority for subsistence harvest and use of fish and wildlife (where such uses are customary and traditional), and implements its program through the State Boards and the ADF&G, providing for public participation

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through Advisory Committees authorized in the State's laws and regulations (Alaska Statutes Title 16; Alaska Administrative Code Title 5) and through Alaska Administrative Procedure Act; and,

WHEREAS, ANILCA, Title VIII, authorizes the Secretaries to enter into cooperative agreements in order to accomplish the purposes and policies of Title VIII, and the Federal Subsistence Board and the State of Alaska believe it is in the best interests of the fish and wildlife resources and the public to enter into this Memorandum of Understanding;

THEREFORE, the signatories endorse coordination of Federal and State regulatory processes and the collection and exchange of data and information relative to fish and wildlife populations and their use necessary for subsistence management on Federal public lands. This MOU forms the basis for such cooperation and coordination among the parties with regard to subsistence management of fish and wildlife resources on Federal public lands.

II. PURPOSE

The purpose of this MOU is to provide a foundation and direction for coordinated interagency fish and wildlife management for subsistence uses on Federal public lands, consistent with specific Federal and State authorities as stated above, that will protect and promote the sustained health of fish and wildlife populations, ensure conservation of healthy populations and stability in fish and wildlife management, and include meaningful public involvement. The signatories hereby enter this MOU to accomplish this purpose and to establish guidelines for subsequent agreements and protocols to implement coordinated management of fish and wildlife resources used for subsistence purposes on Federal public lands in Alaska.

III. GUIDING PRINCIPLES

- 1) Ensure conservation of fish and wildlife resources while providing for continued uses of fish and wildlife, including a priority for subsistence uses, through interagency subsistence management and regulatory programs that promote coordination, cooperation, and exchange of information between Federal and State agencies, regulatory bodies, Regional Advisory Councils, Subsistence Resource Commissions, State Advisory Committees, state and local organizations, tribes and/or other Alaska Native organizations, and other entities;
- 2) Recognize that wildlife management activities on Federal public lands, other than the subsistence take and use of fish and wildlife remain within the authority of the individual land management agencies.
- 3) Use the best available information, including scientific, cultural and local knowledge and knowledge of customary and traditional uses, for decisions regarding fish and wildlife management for subsistence uses on Federal public lands;

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- 4) Avoid duplication in research, monitoring, and management;
- 5) Involve subsistence and other users in the fisheries and wildlife management planning processes;
- 6) Promote stability in fish and wildlife management and minimize unnecessary disruption to subsistence and other uses of fish and wildlife resources; and
- 7) Promote clear and enforceable hunting, fishing, and trapping regulations.

**IV. THE FEDERAL SUBSISTENCE BOARD AND STATE OF ALASKA
MUTUALLY AGREE**

- 1) To cooperate and coordinate their respective research, monitoring, regulatory, and management actions to help ensure the conservation of fish and wildlife populations for subsistence use on Federal public lands.
- 2) To recognize that fish and wildlife population data and information, including local knowledge of customary and traditional uses, are important components of successful implementation of Federal responsibilities under ANILCA Title VIII.
- 3) To recognize a Federal priority for rural residents on Federal public lands for subsistence uses of fish and wildlife resources. Additionally, to allow for other uses of fish and wildlife resources when harvestable surpluses are sufficient, consistent with ANILCA and Alaska Statute 16.05.
- 4) To recognize that cooperative funding agreements implementing the provisions of this MOU be negotiated when necessary and as authorized by ANILCA §809 and other appropriate statutory authorities. Federal funding agreements for cooperative research and monitoring studies of subsistence resources with organizations representing local subsistence users and others are, and will continue to be, an important component of information gathering and management programs.
- 5) To recognize that Federal and State scientific standards for conservation of fish and wildlife populations are generally compatible. When differences interpreting data are identified, the involved agencies should appoint representatives to seek resolution of the differences.
- 6) To cooperatively pursue the development of information to clarify Federal and State regulations for the public.
- 7) To recognize that the signatories establish protocols or other procedures that address data collection and information management, data analysis and review, in-season fisheries and wildlife management, and other key activities and issues jointly agreed upon that affect subsistence uses on Federal public lands. (See Appendix)

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- 8) To have Federal and State staff work cooperatively with Regional Advisory Councils, Subsistence Resource Commissions, State Advisory Committees, tribes and other stakeholders, as appropriate, to review data analyses associated with regulatory proposals, harvest assessment and monitoring studies, and subsistence resource management.
- 9) To designate liaisons for policy and program communications and coordination between the Federal and State programs.
- 10) To provide adequate opportunity for the appropriate Federal and State agencies to review analyses and justifications associated with special actions and emergency orders affecting subsistence uses on Federal public lands, prior to implementing such actions. Where possible and as required, Federal and State agencies will provide advance notice to Regional Advisory Council, Subsistence Resource Commission, and/or State Advisory Committee representatives, tribes and other interested members of the public before issuing special actions or emergency orders. Where conservation of the resource or continuation of subsistence uses is of immediate concern, the review shall not delay timely management action.
- 11) To cooperatively review existing, and develop as needed, Federal subsistence management plans and State fish and wildlife management plans that affect subsistence uses on Federal public lands. Provide an opportunity for Regional Advisory Council, Subsistence Resource Commission and/or State Advisory Committee representatives, tribes and other public to participate in the review. Consider Federal, State and cooperative fish and wildlife management plans as the initial basis for any management actions so long as they provide for subsistence priorities. Procedures for management plan reviews and revisions will be developed by the respective Federal and State Boards in a protocol.
- 12) To use the State's harvest reporting and assessment systems supplemented by information from other sources to monitor subsistence uses of fish and wildlife resources on Federal public lands. In some cases, Federal subsistence seasons, harvest limits, or data needs necessitate separate Federal subsistence permits and harvest reports.
- 13) To ensure that local residents, tribes and other users will have meaningful involvement in subsistence wildlife and fisheries regulatory processes that affect subsistence uses on Federal public lands.

V. GENERAL PROVISIONS

- 1) No member of, or Delegate to, Congress shall be admitted to any share or part of this document, or to any benefit that may arise from it.
- 2) This MOU is complementary to and is not intended to replace the Master Memoranda of Understanding between the individual Federal agencies and ADF&G, with the exception of specific Federal responsibilities for subsistence uses of fish and wildlife on

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Federal public lands. Supplemental protocols to this document may be developed to promote further interaction and coordination among the parties.

- 3) Nothing herein is intended to conflict with Federal, State, or local laws or regulations.
- 4) Nothing in this MOU enlarges or diminishes each party's existing responsibilities and authorities.
- 5) Upon signing, the parties shall each designate an individual and an alternate to serve as the principal contact or liaison for implementation of this MOU.
- 6) This MOU becomes effective upon signing by all signatories and will remain in force until such time as the Secretary of the Interior determines that the State of Alaska has implemented a subsistence management program in compliance with Title VIII of ANILCA, or, signatories terminate their participation in this MOU by providing 60 days written notice. Termination of participation by one signatory has no impact on this MOU's effectiveness between the remaining signatories.
- 7) Regional Advisory Councils, Subsistence Resource Commissions and State Advisory Committees will be asked annually to provide comments to the signatories concerning Federal/State coordination. The signatories will meet annually or more frequently if necessary, to review coordinated programs established under this MOU, to consider Regional Advisory Council, Subsistence Resource Commission and State Advisory Committee comments, and to consider modifications to this MOU that would further improve interagency working relationships. Any modifications of this MOU shall be made by mutual consent of the signatories, in writing, signed and dated by all parties.
- 8) Nothing in this document shall be construed as obligating the signatories to expend funds or involving the United States or the State of Alaska in any contract or other obligations for the future payment of money, except as may be negotiated in future cooperative funding agreements.
- 9) This MOU establishes guidelines and mutual management goals by which the signatories shall coordinate, but does not create legally enforceable obligations or rights.
- 10) This MOU does not restrict the signatories from participating in similar agreements with other public or private agencies, tribes, organizations, and individuals.

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SIGNATORIES

In WITNESS THEREOF, the parties hereto have executed this MOU as of the last
date written bellow.

Commissioner
Alaska Department of Fish and Game
Date:

Chair of the Federal Subsistence Board
Date:

Chair
Alaska Board of Fisheries
Date:

Regional Director
U.S. Fish and Wildlife Service
Date:

Chair
Alaska Board of Game
Date:

Regional Forester
USDA Forest Service
Date:

Regional Director
National Park Service
Date:

State Director
Bureau of Land Management
Date:

Regional Director
Bureau of Indian Affairs
Date:

Member of the Federal Subsistence Board
Date:

Member of the Federal Subsistence Board
Date:

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APPENDIX

SCOPE FOR PROTOCOLS AND/OR PROCEDURES

- 1) Joint technical committees or workgroups may be appointed to develop protocols and/or procedures.
- 2) Individual protocols and/or procedures should:
 - a. Be developed by an interagency committee. The committee shall involve, as appropriate, Regional Advisory Council, Subsistence Resource Commissions and/or State Advisory Committee representatives and other Federal/State regional or technical experts.
 - b. Identify the subject or topic of the protocol and provide justification.
 - c. Identify the parties to the protocol.
 - d. Identify the process to be used for implementing the protocol.
 - e. Provide for appropriate involvement of Regional Advisory Councils, Subsistence Resource Commissions and/or State Advisory Committees, tribes and/or other Alaska Native organizations, governmental organizations, and other affected members of the public when implementing protocols.
 - f. Specify technical committee or workgroup memberships.
 - g. Develop a timeline to complete tasks.
 - h. Identify funding obligations of the parties.
 - i. Define the mechanism to be used for review and evaluation.
- 3) Protocols or procedures require concurrence by the land agencies party to the specific protocols as appropriate and prior to implementation.

ANNUAL REPORTS

Background

ANILCA established the Annual Reports as the way to bring regional subsistence uses and needs to the Secretaries' attention. The Secretaries delegated this responsibility to the Board. Section 805(c) deference includes matters brought forward in the Annual Report.

The Annual Report provides the Councils an opportunity to address the directors of each of the four Department of Interior agencies and the Department of Agriculture Forest Service in their capacity as members of the Federal Subsistence Board. The Board is required to discuss and reply to each issue in every Annual Report and to take action when within the Board's authority. In many cases, if the issue is outside of the Board's authority, the Board will provide information to the Council on how to contact personnel at the correct agency. As agency directors, the Board members have authority to implement most of the actions which would effect the changes recommended by the Councils, even those not covered in Section 805(c). The Councils are strongly encouraged to take advantage of this opportunity.

Report Content

Both Title VIII Section 805 and 50 CFR §100.11 (Subpart B of the regulations) describe what may be contained in an Annual Report from the councils to the Board. This description includes issues that are not generally addressed by the normal regulatory process:

- an identification of current and anticipated subsistence uses of fish and wildlife populations within the region;
- an evaluation of current and anticipated subsistence needs for fish and wildlife populations from the public lands within the region;
- a recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs related to the public lands; and
- recommendations concerning policies, standards, guidelines, and regulations to implement the strategy.

Please avoid filler or fluff language that does not specifically raise an issue of concern or information to the Board.

Report Clarity

In order for the Board to adequately respond to each Council's annual report, it is important for the annual report itself to state issues clearly.

- If addressing an existing Board policy, Councils should please state whether there is something unclear about the policy, if there is uncertainty about the reason for the policy, or if the Council needs information on how the policy is applied.
- Council members should discuss in detail at Council meetings the issues for the annual report and assist the Council Coordinator in understanding and stating the issues clearly.

- Council Coordinators and OSM staff should assist the Council members during the meeting in ensuring that the issue is stated clearly.

Thus, if the Councils can be clear about their issues of concern and ensure that the Council Coordinator is relaying them sufficiently, then the Board and OSM staff will endeavor to provide as concise and responsive of a reply as is possible.

Report Format

While no particular format is necessary for the Annual Reports, the report must clearly state the following for each item the Council wants the Board to address:

1. Numbering of the issues,
2. A description of each issue,
3. Whether the Council seeks Board action on the matter and, if so, what action the Council recommends, and
4. As much evidence or explanation as necessary to support the Council's request or statements relating to the item of interest.

**Department of the Interior
U. S. Fish and Wildlife Service**

Southcentral Alaska Subsistence Regional Advisory Council

Charter

1. **Committee's Official Designation.** The Council's official designation is the Southcentral Alaska Subsistence Regional Advisory (Council).
2. **Authority.** The Council is renewed by virtue of the authority set out in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3115 (1988)), and under the authority of the Secretary of the Interior, in furtherance of 16 U.S.C. 410hh-2. The Council is regulated by the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. Appendix 2.
3. **Objectives and Scope of Activities.** The objective of the Council is to provide a forum for the residents of the Region with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal lands and waters in the Region.
4. **Description of Duties.** The Council has authority to perform the following duties:
 - a. Recommend the initiation of, review, and evaluate proposals for regulations, policies, management plans, and other matters relating to subsistence uses of fish and wildlife on public lands within the Region.
 - b. Provide a forum for the expression of opinions and recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife on public lands within the Region.
 - c. Encourage local and regional participation in the decisionmaking process affecting the taking of fish and wildlife on the public lands within the Region for subsistence uses.
 - d. Prepare an annual report to the Secretary containing the following:
 - (1) An identification of current and anticipated subsistence uses of fish and wildlife populations within the Region.
 - (2) An evaluation of current and anticipated subsistence needs for fish and wildlife populations within the Region.

- (3) A recommended strategy for the management of fish and wildlife populations within the Region to accommodate such subsistence uses and needs.
 - (4) Recommendations concerning policies, standards, guidelines, and regulations to implement the strategy.
 - e. Appoint one member to the Wrangell-St. Elias National Park Subsistence Resource Commission and two members to the Denali National Park Subsistence Resource Commission in accordance with Section 808 of the Alaska National Interest Lands Conservation Act (ANILCA).
 - f. Make recommendations on determinations of customary and traditional use of subsistence resources.
 - g. Make recommendations on determinations of rural status.
 - h. Provide recommendations on the establishment and membership of Federal local advisory committees.
5. **Agency or Official to Whom the Council Reports.** The Council reports to the Federal Subsistence Board Chair, who is appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture.
 6. **Support.** The U.S. Fish and Wildlife Service will provide administrative support for the activities of the Council through the Office of Subsistence Management.
 7. **Estimated Annual Operating Costs and Staff Years.** The annual operating costs associated with supporting the Council's functions are estimated to be \$160,000, including all direct and indirect expenses and 1.15 staff years.
 8. **Designated Federal Officer.** The DFO is the Subsistence Council Coordinator for the Region or such other Federal employee as may be designated by the Assistant Regional Director – Subsistence, Region 7, U.S. Fish and Wildlife Service. The DFO is a full-time Federal employee appointed in accordance with Agency procedures. The DFO will:
 - Approve or call all of the advisory committee's and subcommittees' meetings,
 - Prepare and approve all meeting agendas,
 - Attend all committee and subcommittee meetings,
 - Adjourn any meeting when the DFO determines adjournment to be in the public interest, and
 - Chair meetings when directed to do so by the official to whom the advisory committee reports.

9. **Estimated Number and Frequency of Meetings.** The Council will meet 1-2 times per year, and at such times as designated by the Federal Subsistence Board Chair or the DFO.
10. **Duration.** Continuing.
11. **Termination.** The Council will be inactive 2 years from the date the Charter is filed, unless prior to that date it is renewed in accordance with the provisions of Section 14 of the FACA. The Council will not meet or take any action without a valid current charter.
12. **Membership and Designation.** The Council's membership is composed of representative members as follows:

Thirteen members who are knowledgeable and experienced in matters relating to subsistence uses of fish and wildlife and who are residents of the Region represented by the Council. To ensure that each Council represents a diversity of interests, the Federal Subsistence Board in their nomination recommendations to the Secretary will strive to ensure that nine of the members (70 percent) represent subsistence interests within the Region and four of the members (30 percent) represent commercial and sport interests within the Region. The portion of membership representing commercial and sport interests must include, where possible, at least one representative from the sport community and one representative from the commercial community.

The Secretary of the Interior will appoint members based on the recommendations from the Federal Subsistence Board and with the concurrence of the Secretary of Agriculture.

Members will be appointed for 3-year terms. A vacancy on the Council will be filled in the same manner in which the original appointment was made. Members serve at the discretion of the Secretary.

Council members will elect a Chair, Vice-Chair, and Secretary for a 1-year term.

Members of the Council will serve without compensation. However, while away from their homes or regular places of business, Council and subcommittee members engaged in Council, or subcommittee business, approved by the DFO, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service under Section 5703 of Title 5 of the United States Code.

13. **Ethics Responsibilities of Members.** No Council or subcommittee member will participate in any specific party matter in which the member has a direct financial interest in a lease, license, permit, contract, claim, agreement, or related litigation with the Department.

14. **Subcommittees.** Subject to the DFO's approval, subcommittees may be formed for the purpose of compiling information and conducting research. However, such subcommittees must act only under the direction of the DFO and must report their recommendations to the full Council for consideration. Subcommittees must not provide advice or work products directly to the Agency. The Council Chair, with the approval of the DFO, will appoint subcommittee members. Subcommittees will meet as necessary to accomplish their assignments, subject to the approval of the DFO and the availability of resources.

15. **Recordkeeping.** Records of the Council, and formally and informally established subcommittees or other subgroups of the Council, shall be handled in accordance with General Records Schedule 6.2, and other approved Agency records disposition schedule. These records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. 552.



Secretary of the Interior

NOV 20 2015

Date Signed

DEC 03 2015

Date Filed

applicants by the proposed priority would be limited to paperwork burden related to preparing an application for a discretionary grant program that is using the priority in its competition. Because the costs of carrying out activities would be paid for with program funds, the costs of implementation would not be a burden for any eligible applicants, including small entities.

Regulatory Flexibility Act

Certification: For these reasons as well, the Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Intergovernmental Review: Some of the programs affected by this proposed priority are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., Braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

John B. King, Jr.,
Secretary of Education.

[FR Doc. 2016-13456 Filed 6-7-16; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[Docket No. FWS-R7-SM-2015-0159;
FXRS1261070000167-FF07J00000; FBMS#
4500088147]

RIN 1018-BB22

**Subsistence Management Regulations
for Public Lands in Alaska—
Applicability and Scope; Tongass
National Forest Submerged Lands**

AGENCY: Forest Service, Agriculture;
Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. District Court for Alaska in its October 17, 2011, order in *Peratrovich et al. v. United States and the State of Alaska*, 3:92-cv-0734-HRH (D. Alaska), enjoined the United States “to promptly initiate regulatory proceedings for the purpose of implementing the subsistence provisions in Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) with respect to submerged public lands within Tongass National Forest” and directed entry of judgment. To comply with the order, the Federal Subsistence Board (Board) must initiate a regulatory proceeding to identify those submerged lands within the Tongass National Forest that did not pass to the State of Alaska at statehood and, therefore, remain Federal public lands subject to the subsistence provisions of ANILCA.

Following the Court’s decision, the Bureau of Land Management (BLM) and the USDA–Forest Service (USDA–FS) started a review of hundreds of potential pre-statehood (January 3, 1959) withdrawals in the marine waters of the Tongass National Forest. In April and October of 2015, BLM submitted initial lists of submerged public lands to the Board. This proposed rule would add those submerged parcels to the subsistence regulations to ensure compliance with the Court order. Additional listings will be published as BLM and the USDA–FS continue their review of pre-statehood withdrawals.

DATES: *Public comments:* Comments on this proposed rule must be received or postmarked by August 8, 2016.

Public meetings: The Federal Subsistence Regional Advisory Councils

(Councils) will hold public meetings to receive comments on this proposed rule on several dates between September 28 and November 2, 2016, and make recommendations to the Federal Subsistence Board. The Board will discuss and evaluate proposed regulatory changes during a public meeting in Anchorage, AK, in January 2017. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

ADDRESSES: *Public meetings:* The Federal Subsistence Board and the Federal Subsistence Regional Advisory Councils’ public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

Public comments: You may submit comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov> and search for FWS-R7-SM-2015-0159, which is the docket number for this rulemaking.

- *By hard copy:* U.S. mail or hand-delivery to: USFWS, Office of Subsistence Management, 1011 East Tudor Road, MS 121, Attn: Theo Matuskowitz, Anchorage, AK 99503-6199.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Review Process section below for more information).

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Eugene R. Peltola, Jr., Office of Subsistence Management; (907) 786-3888 or subsistence@fws.gov. For questions specific to National Forest System lands, contact Thomas Whitford, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743-9461 or twhitford@fs.fed.us.

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of ANILCA (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. The Secretaries published temporary regulations to carry out this program in the **Federal Register** on June 29, 1990 (55 FR 27114), and published final regulations in the **Federal Register**

on May 29, 1992 (57 FR 22940). The program regulations have subsequently been amended a number of times. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, "Parks, Forests, and Public Property," and Title 50, "Wildlife and Fisheries," at 36 CFR 242.1–242.28 and 50 CFR 100.1–100.28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife. Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Federal Subsistence Management Program (Program). The Board comprises:

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, National Park Service;
- The Alaska State Director, Bureau of Land Management;
- The Alaska Regional Director, Bureau of Indian Affairs;
- The Alaska Regional Forester, U.S. Forest Service; and
- Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.

Through the Board, these agencies and public members participate in the development of regulations for subparts C and D, which, among other things, set forth program eligibility and specific harvest seasons and limits.

In administering the program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Regional Advisory Council (Council). The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Council members represent varied geographical, cultural, and user interests within each region.

Public Review Process—Comments and Public Meetings

The Federal Subsistence Regional Advisory Councils have a substantial role in reviewing this proposed rule and making recommendations for the final rule. The Federal Subsistence Board, through the Councils, will hold public meetings on this proposed rule at the

following locations in Alaska, on the following dates:

- Region 1—Southeast Regional Council, Petersburg, October 4, 2016
- Region 2—Southcentral Regional Council, Anchorage, October 18, 2016
- Region 3—Kodiak/Aleutians Regional Council, Cold Bay, September 28, 2016
- Region 4—Bristol Bay Regional Council, Dillingham, October 26, 2016
- Region 5—Yukon-Kuskokwim Delta Regional Council, Bethel, October 12, 2016
- Region 6—Western Interior Regional Council, McGrath, October 11, 2016
- Region 7—Seward Peninsula Regional Council, Nome, November 1, 2016
- Region 8—Northwest Arctic Regional Council, Selawik, October 5, 2016
- Region 9—Eastern Interior Regional Council, Fort Yukon, October 25, 2016
- Region 10—North Slope Regional Council, Barrow, November 1, 2016

A public notice of specific dates, times, and meeting locations will be published in local and statewide newspapers prior to each meeting. Locations and dates may change based on weather or local circumstances. The Regional Advisory Council's agenda determines the length of each Council meeting based on workload.

The Board will discuss and evaluate submitted comments and public testimony on this proposed rule during a public meeting scheduled for January 2017 in Anchorage, Alaska. The Federal Subsistence Regional Advisory Council Chairs, or their designated representatives, will present their respective Councils' recommendations at the Board meeting. Additional public testimony may be provided to the Board on this proposed rule at that time. At that public meeting, the Board will deliberate and make final recommendations to the Secretaries on this proposed rule.

You may submit written comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. If you submit a comment via <http://www.regulations.gov>, your entire comment, including any personal identifying information, will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we

used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays, at: USFWS, Office of Subsistence Management, 1011 East Tudor Road, Anchorage, AK 99503.

Reasonable Accommodations

The Federal Subsistence Board is committed to providing access to these meetings for all participants. Please direct all requests for sign language interpreting services, closed captioning, or other accommodation needs to Deborah Coble, 907-786-3880, subsistence@fws.gov, or 800-877-8339 (TTY), seven business days prior to the meeting you would like to attend.

Tribal Consultation and Comment

As expressed in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," the Federal officials that have been delegated authority by the Secretaries are committed to honoring the unique government-to-government political relationship that exists between the Federal Government and Federally Recognized Indian Tribes (Tribes) as listed in 75 FR 60810 (October 1, 2010). Consultation with Alaska Native corporations is based on Public Law 108-199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108-447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: "The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175."

The Alaska National Interest Lands Conservation Act does not provide specific rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, because tribal members are affected by subsistence fishing, hunting, and trapping regulations, the Secretaries, through the Board, will provide Federally recognized Tribes and Alaska Native corporations an opportunity to consult on this proposed rule.

The Board will engage in outreach efforts for this proposed rule, including a notification letter, to ensure that Tribes and Alaska Native corporations are advised of the mechanisms by which they can participate. The Board provides a variety of opportunities for consultation: Proposing changes to the existing rule; commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Advisory Council meetings; engaging in dialogue

at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process. The Board will commit to efficiently and adequately providing an opportunity to Tribes and Alaska Native corporations for consultation in regard to subsistence rulemaking.

The Board will consider Tribes' and Alaska Native corporations' information, input, and recommendations, and address their concerns as much as practicable.

Jurisdictional Background and Perspective

The *Peratrovich* case dates back to 1992 and has a long and involved procedural history. The plaintiffs in that litigation raised the question of which marine waters in the Tongass National Forest, if any, are subject to the jurisdiction of the Federal Subsistence Management Program. In its May 31, 2011, order, the U.S. District Court for Alaska (Court) stated that "it is the duty of the Secretaries [Agriculture & Interior] to identify any submerged lands (and the marine waters overlying them) within the Tongass National Forest to which the United States holds title." It also stated that, if such title exists, it "creates an interest in [the overlying] waters sufficient to make those marine waters public lands for purposes of [the subsistence provisions] of ANILCA."

Most of the marine waters within the Tongass National Forest were not initially identified in the regulations as public lands subject to the subsistence priority based upon a determination that the submerged lands were State lands, and later through reliance upon a disclaimer of interest filed by the United States in *Alaska v. United States*, No. 128 Orig., 546 U.S. 413 (2006). In that case, the State of Alaska had sought to quiet title to all lands underlying marine waters in southeast Alaska, which includes most of the Tongass National Forest. Ultimately, the United States disclaimed ownership to most of the submerged lands in the Tongass National Forest. The Supreme Court accepted the disclaimer by the United States to title to the marine waters within the Tongass National Forest, excepting from that disclaimer several classes of submerged public lands that generally involve small tracts. *Alaska v. United States*, 546 U.S. at 415.

When the United States took over the subsistence program in Alaska in 1990, the Departments of the Interior and Agriculture stated in response to comments on the scope of the program during promulgation of the interim

regulations that "the United States generally does not hold title to navigable waters and thus navigable waters generally are not included within the definition of public lands" (55 FR 27115; June 29, 1990). That position was changed in 1999 when the subsistence priority was extended to waters subject to a Federal reserved water right following the *Katie John* litigation. The Board identified certain submerged marine lands that did not pass to the State and, therefore, where the subsistence priority applied. However, the Board did not attempt to identify each and every small parcel of submerged public lands and thereby marine water possibly subject to the Federal Subsistence Management Program because of the potentially overwhelming administrative burden. Instead the Board invited the public to petition to have submerged marine lands included. Over the years, several small areas of submerged marine lands in the Tongass National Forest have been identified as public lands subject to the subsistence priority.

In its May 31, 2011, order, the Court stated that the petition process was not sufficient and found that "concerns about costs and management problems simply cannot trump the congressional policy that the subsistence lifestyle of rural Alaskans be preserved as to public lands." The Court acknowledged in its order that inventorying all these lands could be an expensive undertaking, but that it is a burden "necessitated by the 'complicated regulatory scheme' which has resulted from the inability of the State of Alaska to implement Title VIII of ANILCA." The Court then "enjoined" the United States "to promptly initiate regulatory proceedings for the purpose of implementing the subsistence provisions in Title VIII of ANILCA with respect to submerged public lands within Tongass National Forest" and directed entry of judgment.

The BLM and USDA-FS started a time- and resource-consuming review of hundreds of potential pre-statehood (January 3, 1959) withdrawals in the marine waters of the Tongass National Forest. Both agencies are reviewing their records to identify dock sites, log transfer sites, and other areas that may not have passed to the State at statehood. The review process is ongoing and expected to take quite some time.

Developing the Applicability and Scope; Tongass National Forest Submerged Lands Proposed Regulations

In April and October of 2015, BLM submitted initial listings of parcels of

submerged public lands to the Board. This proposed rule will add those listings to the subsistence regulations to ensure compliance with the Court's order. Additional listings will be published as BLM and USDA-FS continue their reviews of pre-statehood withdrawals. In addition, this proposed rule would make nonsubstantive changes to 36 CFR 242.3 and 50 CFR 100.3 to correct errors, such as misspellings and punctuation errors, which occur in the existing regulations.

Because this proposed rule concerns public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

Compliance With Statutory and Regulatory Authorities

National Environmental Policy Act

A Draft Environmental Impact Statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA § 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final § 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Federal Subsistence Management

Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of the subsistence program regulations was conducted in accordance with § 810. This evaluation also supported the Secretaries' determination that the regulations will not reach the "may significantly restrict" threshold that would require notice and hearings under ANILCA § 810(a).

Paperwork Reduction Act of 1995 (PRA)

This proposed rule does not contain any new collections of information that require Office of Management and Budget (OMB) approval under the PRA (44 U.S.C. 3501 *et seq.*) OMB has reviewed and approved the collections of information associated with the subsistence regulations at 36 CFR 242 and 50 CFR 100, and assigned OMB Control Number 1018-0075. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Regulatory Planning and Review (Executive Order 12866)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this proposed rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires

preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this proposed rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that two million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of \$3.00 per pound, this amount would equate to about \$6 million in food value statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this proposed rule is not a major rule. It will not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these proposed regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

The Secretaries have determined that these proposed regulations meet the applicable standards provided in §§ 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

The Alaska National Interest Lands Conservation Act, Title VIII, does not provide specific rights to tribes for the subsistence taking of wildlife, fish, and shellfish. However, the Secretaries, through the Board, will provide Federally recognized Tribes and Alaska Native corporations an opportunity to consult on this proposed rule. Consultation with Alaska Native corporations are based on Public Law 108-199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108-447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: "The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175."

The Secretaries, through the Board, will provide a variety of opportunities for consultation: commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process.

Executive Order 13211

This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. However, this proposed rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these proposed regulations under the guidance of Gene Peltola of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by:

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Mary McBurney, Alaska Regional Office, National Park Service;
- Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;

- Trevor Fox, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Thomas Whitford, Alaska Regional Office, USDA—Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

Proposed Regulation Promulgation

For the reasons set out in the preamble, the Secretaries propose to amend 36 CFR part 242 and 50 CFR part 100 as set forth below.

PART—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

■ 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart A—General Provisions

■ 2. In subpart A of 36 CFR part 242 and 50 CFR part 100, amend § 3 as follows:

- a. In paragraph (a), remove the word “or” and in its place add the word “of” and remove the word “poortion” and in its place add the word “portion”;
- b. In paragraph (b)(1)(iii), remove the word “A” and in its place add the word “All”;
- c. In paragraph (b)(1)(v), remove the word “Latitute” and in its place add the word “Latitude”;
- d. In paragraph (b)(2), remove “70 10’” and in its place add “70°10’” and remove “145 51’” and in its place add “145°51’”;
- e. In paragraph (b)(3), remove the word “cape” and in its place add the word “Cape”, remove the word “Latitute” and in its place add the word “Latitude”, and remove “161 46’” and in its place add “161°46’”; and
- f. Revise paragraph (b)(5) to read as set forth below:

§ 3 Applicability and scope.

* * * * *

(5) Southeastern Alaska, including the:

(i) Makhnati Island Area: Land and waters beginning at the southern point of Fruit Island, 57°02'35" north latitude, 135°21'07" west longitude as shown on

United States Coast and Geodetic Survey Chart No. 8244, May 21, 1941; from the point of beginning, by metes and bounds; S. 58° W., 2,500 feet, to the southern point of Nepovorotni Rocks; S. 83° W., 5,600 feet, on a line passing through the southern point of a small island lying about 150 feet south of Makhnati Island; N. 6° W., 4,200 feet, on a line passing through the western point of a small island lying about 150 feet west of Makhnati Island, to the northwestern point of Signal Island; N. 24° E., 3,000 feet, to a point, 57°03'15" north latitude, 134°23'07" west longitude; East, 2,900 feet, to a point in course No. 45 in meanders of U.S. Survey No. 1496, on west side of Japonski Island; southeasterly, with the meanders of Japonski Island, U.S. Survey No. 1,496 to angle point No. 35, on the southwestern point of Japonski Island; S. 60° E., 3,300 feet, along the boundary line of Naval reservation described in Executive Order No. 8216, July 25, 1939, to the point of beginning, and that part of Sitka Bay lying south of Japonski Island and west of the main channel, but not including Aleutski Island as revoked in Public Land Order 925, October 27, 1953, described by metes and bounds as follows: Beginning at the southeast point of Japonski Island at angle point No. 7 of the meanders of U.S. Survey No. 1496; thence east approximately 12.00 chains to the center of the main channel; thence S. 45° E. along the main channel approximately 20.00 chains; thence S. 45° W. approximately 9.00 chains to the southeastern point of Aleutski Island; thence S. 79° W. approximately 40.00 chains to the southern point of Fruit Island; thence N. 60° W. approximately 50.00 chains to the southwestern point of Japonski Island at angle point No. 35 of U.S. Survey No. 1496; thence easterly with the meanders of Japonski Island to the point of beginning including Charcoal, Harbor, Alice, Love, and Fruit islands and a number of smaller unnamed islands.

(ii) Tongass National Forest:

(A) Beacon Point, Frederick Sound, and Kupreanof Island are shown on the U.S. Coast and Geodetic Survey Chart No. 8210—Sheet No. 16. The reference location is marked as 57 south, 79 east, CRM, SEC 8, U.S. Survey No. 1604. The point begins on the low-water line at N. 63° W., true and approximately 1,520 feet from Beacon Point beacon; thence due south true 1,520 feet; thence true East 1,800 feet, more or less to an intersection with a low-water line; thence following, is the low-water line round the point to point of the beginning (Approx. Long. 133°00' W. Lat. 56°56¼' N.).

(B) Bushy Island and Snow Passage are shown on the U.S. Coast and Geodetic Survey Chart, labeled No. 8160—Sheet No. 12. The reference location is marked as 64 south, 80 east, CRM, SEC. 31/32 on the map labeled, USS 1607. The point begins on a low-water line about ¼ nautical miles and southwesterly from the northwest point of the island, from which a left tangent to an island that is 300 yards in diameter and 100 yards offshore, bears the location—N. 60° W., true; thence S. 60° E., true and more or less 2,000 feet to an intersection with a low-water line on the easterly side of the island; thence forward along the winding of the low-water line northwesterly and southwesterly to the point of the beginning, including all adjacent rocks and reefs not covered at low water (Approx. Long. 132°58' W. Lat. 56°16½' N.).

(C) Cape Strait, Frederick Sound, and Kupreanof Island are shown on the U.S. Coast and Geodetic Survey Chart No. 8210—Sheet No. 16. The reference location is marked as 56 south, 77478 east, CRM, on the map labeled as USS 1011. It begins at a point on a low-water line that is westerly from the lighthouse and distant 1,520 feet in a direct line from the center of the concrete pier upon which the light tower is erected; thence South 45° E., true by 1,520 feet; thence east true by 1,520 feet, more or less to an intersection with the low-water line; thence north-westerly and westerly, following the windings of the low-water line to the point of beginning (Approx. Long. 133°05' W. Lat. 57°00' N.).

(D) Point Colpoys and Sumner Strait are shown on the U.S. Coast and Geodetic Survey Chart No. 8160—Prince of Wales Island—Sheet No. 12. The reference location is marked as 64 south, 78 east, CRM, SECs. 10, 11, 12 on the map labeled as USS 1634. Location is north of a true east-and-west line running across the point to 1,520 feet true south from the high-water line at the northernmost extremity. Map includes all adjacent rocks and ledges not covered at low water and also includes two rocks awash about 1¼ nautical miles east and South and 75° East, respectively, from the aforementioned point (Approx. Long. 133°12' W. Lat. 56°20' N.).

(E) Vank Island and Stikine Strait are shown on the U.S. Coast and Geodetic Survey Chart No. 8160—Sheet No. 18. Located at 62 south, 82 east, CRM, SEC 34, on the map labeled as USS 1648. This part of the island is lying south of a true east-and-west line that is drawn across the island from low water to low water. Island is 760 feet due North from

the center of the concrete pier upon which the structure for the light is erected (Approx. Long. 132°35' W. Lat. 56°27' N.).

(F) High Point, and Woronkofski Island, Alaska, are shown on the U.S. Coast and Geodetic Survey Chart No. 8160—Sheet No. 18. The location begins at a point on low water at the head of the first bight easterly of the point and about 1/8 nautical mile distant therefrom; thence south true 1,520 feet; thence west true 1,100 feet, more or less to an intersection with the low-water line; thence northerly and easterly, following the windings of the low-water line to point of the beginning (Approx. Long. 132°33' W. Lat. 56°24' N.).

(G) Key Reef and Clarence Strait are shown on the U.S. Coast and Geodetic Survey Chart No. 8160—Sheet No. 11. The reef lies 1 3/4 miles S. 80° E., true, from Bluff Island and becomes awash at extreme high water. Chart includes all adjacent ledges and rocks not covered at low water (Approx. Long. 132°50' W. Lat. 56°10' N.).

(H) Low Point and Zarembo Island, Alaska, are shown on U.S. Coast and Geodetic Survey Chart No. 8160—Sheet No. 22. The location begins at a point on a low-water line that is 760 feet in a direct line, easterly, from the center of Low Point Beacon. The position is located on a point of shoreline about 1 mile easterly from Low Point; thence S. 35°, W true 760 feet; thence N. 800 feet and W. 760 feet, more or less, to an intersection with the low-water line to the point of beginning (Approx. Long. 132°55 1/2' W. Lat. 56°27 1/2' N.).

(I) McNamara Point and Zarembo Island, Alaska, are shown on U.S. Coast and Geodetic Survey Chart No. 8160—Sheet No. 25. Location begins at a point on a low-water line that is 1,520 feet in a direct line, northerly, from McNamara Point Beacon—a slatted tripod structure; thence true east 1,520 feet; thence true south, more or less, 2,500 feet to an intersection with the low-water line; thence northwesterly and northerly following the windings of the low-water line to the point of the beginning (Approx. Long. 133°04' W. Lat. 56°20' N.).

(J) Mountain Point and Wrangell Narrows, Alaska, are shown on the U.S. Coast and Geodetic Survey Chart No. 8170—Sheet No. 27. The location begins at a point on a low-water line southerly from the center of Mountain Point Beacon and distant there from 1,520 feet in a direct line; thence true west 1,520 feet; thence true north, more or less, 3,480 feet to an intersection with the low-water line; thence southeasterly and southerly following the windings of the low-water line to the point of the

beginning (Approx. Long. 132°57 1/2' W. Lat. 56°44' N.).

(K) Angle Point, Revillagigedo Channel, and Bold Island are shown on the U.S. Coast and Geodetic Survey Chart No. 8075—Sheet No. 3. The reference location is marked as 76 south, 92 east, CRM, USS 1603. The location begins at a point on a low-water line abreast of the lighthouse on Angle Point, the southwestern extremity of Bold Island; thence easterly along the low-water line to a point that is 3,040 feet in a straight line from the beginning point; thence N. 30° W. True 3,040 feet; thence true west to an intersection with the low-water line, 3,000 feet, more or less; thence southeasterly along the low-water line to the point of the beginning (Approx. Long. 131°26' W. Lat. 55°14' N.).

(L) Cape Chacon, Dixon Entrance, and Prince of Wales Island are shown on the U.S. Coast and Geodetic Survey Chart No. 8074—Sheet No. 29. The reference location is marked as 83 south, 89 and 90 east, CRM, USS 1608. The location begins at a point at the low-water mark on the shore line of Dixon Entrance from which the southern extremity of Cape Chacon bears south 64° true East and approximately 3/4 nautical miles; thence N. 45° true East and about 1 nautical mile, more or less, to an intersection with a low-water line on the shore of Clarence Strait; thence southerly, following the meanderings of the low-water line of the shore, to and around Cape Chacon, and continuing to the point of the beginning. Reference includes all adjacent islands, islets, rocks, and reefs that are not covered at the low-water line (Approx. Long. 132° W. Lat. 54°42' N.).

(M) Lewis Reef and Tongass Narrows are shown on the U.S. Coast and Geodetic Survey Chart No. 8094—Sheet No. 71. The reference location is marked as 75 south, 90 east, CRM, SEC 9. The area point begins at the reef off of Lewis Point and partly bare at low water. This part of the reef is not covered at low water and lies on the northeast side of a true northwest-and-southeast line that is located 300 feet true southwest from the center of the concrete pier of Lewis Reef Light (Approx. Long. 131°44 1/2' W. Lat. 55°22'25" N.).

(N) Lyman Point and Clarence Strait are shown on the U.S. Coast and Geodetic Survey, Chart No. 8076—Sheet No. 8. The reference location is marked as 73 south, 86 east, CRM, SEC 13, on a map labeled as USS 2174 TRC. It begins at a point at the low-water mark. The aforementioned point is 300 feet in a direct line easterly from Lyman Point light; thence due south 300 feet; thence due west to a low-water mark 400 feet,

more or less; thence following the winding of the low-water mark to place of beginning (Approx. Long. 132°18' W. Lat. 35°35' N.).

(O) Narrow Point, Clarence Strait, and Prince of Wales Island are shown on the U.S. Coast and Geodetic Survey Chart No. 8100—Sheet No. 9. The reference location is marked as 70 south, 84 east, CRM, on a map labeled as USS 1628. The point begins at a point on a low-water line about 1 nautical mile southerly from Narrow Point Light, from which point a left tangent to a high-water line of an islet about 500 yards in diameter and about 300 yards off shore, bears south 30° true East; thence north 30° W., true 7,600 feet; thence N. 60° E., 3,200 feet, more or less to an intersection with a low-water line; thence southeasterly, southerly, and southwesterly, following the winding of the low-water line to the point of the beginning. The map includes all adjacent rocks not covered at low water (Approx. Long. 132°28' W. Lat. 55°47 1/2' N.).

(P) Niblack Point, Cleveland Peninsula, and Clarence Strait, Alaska, are shown on the U.S. coast and Geodetic Survey Chart No. 8102—Sheet No. 6, which is the same sheet used for Caamano Point. The location begins at a point on a low-water line from which Niblack Point Beacon, a tripod anchored to three concrete piers, bears southeasterly and is 1,520 feet in a direct line; thence true northeast 1,520 feet; thence true southeast 3,040 feet; thence true southwest at 600 feet, more or less, to an intersection with a low-water line; thence northwesterly following the windings of the low-water line to the point of the beginning (Approx. Long. 132°07' W. Lat. 55°33' N.).

(Q) Rosa Reef and Tongass Narrows are shown on the U.S. Coast and Geodetic Survey Chart No. 8094—Sheet No. 71. The reference location is marked as 74 south, 90 east, CRM, SEC 31. That part of the reef is not covered at low water and lies east of a true north-and-south line, located 600 feet true west from the center of the concrete pier of Rosa Reef Light. The reef is covered at high water (Approx. Long. 131°48' W. Lat. 55°24'15" N.).

(R) Ship Island and Clarence Strait are shown on the U.S. Coast and Geodetic Survey Chart No. 8100—Sheet No. 9. The reference location is marked as south, 8 east, CRM, SEC 27. The point begins as a small island on the northwesterly side of the Clarence Strait, about 10 nautical miles northwesterly from Caamano Point and 1/4 mile off the shore of Cleveland Peninsula. The sheet includes all

adjacent islets and rocks not connected to the main shore and not covered at low water (Approx. Long. 132°12' W. Lat. 55°36' N.).

(S) Spire Island Reef and Revillagigedo Channel are shown on the U.S. Coast and Geodetic Survey Chart No. 8075—Sheet No. 3. The reference location is marked as 76 south, 92 east, CRM, SEC 19. The detached reef, covered at high water and partly bare at low water, is located northeast of Spire Island. Spire Island Light is located on the reef and consists of small houses and lanterns surmounting a concrete pier. See chart for “Angle Pt.” (Approx. Long. 131°30' W. Lat. 55°16' N.).

(T) Surprise Point and Nakat Inlet are shown on the U.S. Coast and Geodetic Survey Chart No. 8051—Sheet No. 1. The reference location is marked as 80 south, 89 east, CRM. This point lies north of a true east-and-west line. The true east-and-west line lies 3,040 feet true south from the northernmost extremity of the point together with adjacent rocks and islets (Approx. Long. 130°44' W. Lat. 54°49' N.).

(U) Caamano Point, Cleveland Peninsula, and Clarence Strait, Alaska, are shown on the U.S. Coast and Geodetic Survey Chart No. 8102—Sheet No. 6. Location consists of everything apart of the extreme south end of the Cleveland Peninsula lying on a south side of a true east-and-west line that is drawn across the point at a distance of 800 feet true north from the southernmost point of the low-water line. This includes off-lying rocks and islets that are not covered at low water (Approx. Long. 131°59' W. Lat. 55°30' N.).

(V) Meyers Chuck and Clarence Strait, Alaska, are shown on the U.S. and Geodetic Survey Chart No. 8124—Sheet No. 26. The small island is about 150 yards in diameter and located about 200 yards northwest of Meyers Island (Approx. Long. 132°16' W. Lat. 55°44½' N.).

(W) Round Island and Cordova Bay, Alaska, are shown on the U.S. coast and Geodetic Survey Chart No. 8145—Sheet No. 36. The Southwestern Island of the group is about 700 yards long, including off-lying rocks and reefs that are not covered at low water (Approx. Long. 132°30½' W. Lat. 54°46½' N.).

(X) Mary Island begins at a point that is placed at a low-water mark. The aforementioned point is southward 500 feet from a crosscut on the side of a large rock on the second point below Point Winslow and Mary Island; thence due west ¾ mile, statute; thence due north to a low-water mark; thence following the winding of the low water

to the place of the beginning (Approx. Long. 131°11'00" W. Lat. 55°05'55" N.).

(Y) Tree Point starts a point of a low-water mark. The aforementioned point is southerly ½ mile from extreme westerly point of a low-water mark on Tree Point, on the Alaska Mainland; thence due true east, ¾ mile; thence due north 1 mile; thence due west to a low-water mark; thence following the winding of the low-water mark to the place of the beginning (Approx. Long. 130°57'44" W. Lat. 54°48'27" N.).

* * * * *

Dated: May 31, 2016.

Dated: February 17, 2016.

Sally Jewell,

Secretary of the Interior.

Beth G. Pendleton,

Regional Forester USDA—Forest Service.

[FR Doc. 2016–13374 Filed 6–7–16; 8:45 am]

BILLING CODE 3410–11–4333–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0247; FRL–9947–40–Region 4]

Air Plan Approval; South Carolina; Prong 4—2008 Ozone, 2010 NO₂, SO₂, and 2012 PM_{2.5}

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve the portions of revisions to the South Carolina State Implementation Plan (SIP), submitted by the South Carolina Department of Health and Environmental Control (SC DHEC), addressing the Clean Air Act (CAA or Act) visibility transport (prong 4) infrastructure SIP requirements for the 2008 8-hour Ozone, 2010 1-hour Nitrogen Dioxide (NO₂), 2010 1-hour Sulfur Dioxide (SO₂), and 2012 annual Fine Particulate Matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, commonly referred to as an “infrastructure SIP.” Specifically, EPA is proposing to conditionally approve the prong 4 portions of South Carolina’s July 17, 2008, 8-hour Ozone infrastructure SIP submission; April 30, 2014, 2010 1-hour NO₂ infrastructure SIP submission; May 8, 2014, 2010 1-hour SO₂ infrastructure SIP submission; and December 18, 2015,

2012 annual PM_{2.5} infrastructure SIP submission. All other applicable infrastructure requirements for these SIP submissions have been or will be addressed in separate rulemakings.

DATES: Comments must be received on or before July 8, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No EPA–R04–OAR–2016–0247 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Sean Lakeman of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Lakeman can be reached by telephone at (404) 562–9043 or via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as the requirements for monitoring, basic program requirements, and legal



THE STATE
of ALASKA
GOVERNOR BILL WALKER

Department of Natural Resources

DIVISION OF MINING, LAND AND WATER

DIRECTOR'S OFFICE

550 W. 7th Avenue, Suite 1070

Anchorage, AK 99501-3576

Man: 907.269.8600

Fax: 907.269.8904

August 8, 2016

US Fish and Wildlife Service
Office of Subsistence Management
1011 East Tudor Road
MS 121
Attn: Theo Matuskowitz
Anchorage, AK 99503-6199

VIA ELECTRONICALLY & US MAIL

Re: Docket No. FWS-R7-SM-2015-0159

Dear Mr. Matuskowitz:

The State of Alaska reviewed the June 8, 2016 Federal Register Notice regarding the proposed rule to add certain submerged parcels of land to the subsistence management regulations for public lands in Alaska as indicated by the above-mentioned docket number. The proposed rule intends to identify and add the following submerged lands as "lands within the Tongass National Forest that did not pass to the State of Alaska at Statehood" and, therefore, are subject to the subsistence provisions of ANILCA:

(5) Southeastern Alaska, including the:

(i) Makhnati Island Area: Land and waters beginning at the southern point of Fruit Island, 57°02'35" north latitude, 135°21'07" west longitude as shown on United States Coast and Geodetic Survey Chart No. 8244, May 21, 1941; from the point of beginning, by metes and bounds; S. 58° W., 2,500 feet, to the southern point of Nepovorotni Rocks; S. 83° W., 5,600 feet, on a line passing through the southern point of a small island lying about 150 feet south of Makhnati Island; N. 6° W., 4,200 feet, on a line passing through the western point of a small island lying about 150 feet west of Makhnati Island, to the northwestern point of Signal Island; N. 24° E., 3,000 feet, to a point, 57°03'15" north latitude, 134°23'07" west longitude; East, 2,900 feet, to a point in course No. 45 in meanders of U.S. Survey No. 1496, on west side of Japonski Island; southeasterly, with the meanders of Japonski Island, U.S. Survey No. 1,496 to angle point No. 35, on the southwestern point of Japonski Island; S. 60° E., 3,300 feet, along the boundary line of Naval reservation described in Executive Order No. 8216, July 25, 1939, to the point of beginning, and that part of Sitka Bay lying south of Japonski Island and west of the main channel, but not including Aleutski Island as revoked in Public Land Order 925, October 27, 1953, described by metes and bounds as follows: Beginning at the southeast point of Japonski Island at angle point No. 7 of the meanders of U.S. Survey No. 1496; thence east approximately 12.00 chains to the center of the main channel; thence S. 45° E. along the main channel approximately 20.00 chains; thence S. 45° W. approximately 9.00 chains to the southeastern point of Aleutski Island; thence S. 79° W. approximately 40.00 chains to the southern point of Fruit Island; thence N. 60° W. approximately 50.00 chains to the southwestern point of Japonski Island at angle point No. 35 of U.S. Survey No.

Docket No. FWS-R7-SM-2015-0159
USFWS Letter of Objection
August 8, 2016
Page 2

1496; thence easterly with the meanders of Japonski Island to the point of beginning including Charcoal, Harbor, Alice, Love, and Fruit islands and a number of smaller unnamed islands.

The State of Alaska objects to the inclusion of these above-described lands as being identified as remaining in Federal public ownership. Title to the above-described lands has already passed to and is held by the State of Alaska by virtue of the Patent issued February 15, 1968 as Patent No. 50-68-0194 and by virtue of the Patent issued May 11, 1990 as Patent No. 50-90-0267. These lands are no longer part of the federal public domain. Rather, they are state-owned lands, managed and controlled by the State of Alaska.

The State of Alaska does not oppose or object to the inclusion of the remainder of lands identified as Federal public lands subject to the subsistence provisions of ANILCA.

Thank you for your consideration.

Sincerely,



Kristin A. Hess
Division Operations Manager
State of Alaska
Department of Natural Resources
Division of Mining, Land & Water

Winter 2017 Regional Advisory Council Meeting Calendar

February-March 2017

Meeting dates and locations are subject to change.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Feb. 5	Feb. 6 <i>Window Opens</i>	Feb. 7	Feb. 8 NS — Barrow	Feb. 9	Feb. 10	Feb. 11
		EI — Fairbanks				
Feb. 12	Feb. 13	Feb. 14	Feb. 15 YKD — Bethel	Feb. 16	Feb. 17	Feb. 18
	SC — Anchorage					
Feb. 19	Feb. 20 PRESIDENT'S DAY HOLIDAY	Feb. 21 WI — Fairbanks	Feb. 22 K/A — Kodiak	Feb. 23	Feb. 24	Feb. 25
Feb. 26	Feb. 27	Feb. 28 BB — Naknek	Mar. 1	Mar. 2 NWA — Kotzebue	Mar. 3	Mar. 4
Mar. 5	Mar. 6 SP — Nome	Mar. 7	Mar. 8	Mar. 9	Mar. 10	Mar. 11
Mar. 12	Mar. 13	Mar. 14 SE — Saxman	Mar. 15	Mar. 16	Mar. 17 <i>Window Closes</i>	Mar. 18

Fall 2017 Regional Advisory Council Meeting Calendar

August - November 2017

Meeting dates and locations are subject to change.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Aug. 20	Aug. 21 Window Opens	Aug. 22	Aug. 23	Aug. 24	Aug. 25	Aug. 26
Aug. 27	Aug. 28	Aug. 29	Aug. 30	Aug. 31	Sept. 1	Sept. 2
Sept. 3	Sept. 4 LABOR DAY HOLIDAY	Sept. 5	Sept. 6	Sept. 7	Sept. 8	Sept. 9
Sept. 10	Sept. 11	Sept. 12	Sept. 13	Sept. 14	Sept. 15	Sept. 16
Sept. 17	Sept. 18	Sept. 19 KARAC - Cold Bay	Sept. 20	Sept. 21	Sept. 22	Sept. 23
Sept. 24	Sept. 25	Sept. 26	Sept. 27	Sept. 28	Sept. 29	Sept. 30
Oct. 1	Oct. 2	Oct. 3	Oct. 4	Oct. 5	Oct. 6	Oct. 7
Oct. 8	Oct. 9 COLUMBUS DAY HOLIDAY	Oct. 10	Oct. 11	Oct. 12	Oct. 13	Oct. 14
Oct. 15	Oct. 16	Oct. 17	Oct. 18	Oct. 19	Oct. 20	Oct. 21
Oct. 22	Oct. 23	Oct. 24	Oct. 25	Oct. 26	Oct. 27	Oct. 28
Oct. 29	Oct. 30	Oct. 31	Nov. 1	Nov. 2	Nov. 3	Nov. 4
Nov. 5	Nov. 6	Nov. 7	Nov. 8	Nov. 9	Nov. 10 Window Closes VETERANS DAY HOLIDAY	Nov. 11



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

Federal Subsistence Board

1011 East Tudor Road, MS121
Anchorage, Alaska 99503



FOREST SERVICE

AUG 15 2016

FWS/OSM 16063.CJ

Mr. Richard Greg Encelewski, Chair
Southcentral Alaska Subsistence
Regional Advisory Council
P.O. Box 39066
Ninilchik, Alaska 99639

Dear Mr. Encelewski:

Enclosed with this letter is a report of the Federal Subsistence Board's non-consensus agenda action items at its April 12-14, 2016 meeting regarding proposed changes to subsistence wildlife regulations and customary and traditional use determinations. In total, the Board accepted the recommendations of the Subsistence Regional Advisory Councils – in whole or with modifications – in 67 of the 69 proposals on the agenda. Details of these actions and the Board's deliberations are contained in the meeting transcripts. Copies of the transcripts may be obtained by calling our toll free number, 1-800-478-1456, and are available online at the Office of Subsistence Management website, <http://alaska.fws.gov/asm/index.cfml>.

The Board uses a consensus agenda on those proposals where there is agreement among the affected Subsistence Regional Advisory Council(s), the Interagency Staff Committee, and the Alaska Department of Fish and Game concerning a proposed regulatory action. These proposals were deemed non-controversial and did not require a separate discussion. The consensus agenda items for the Southcentral Alaska Subsistence Regional Advisory Council were proposals WP16-12 (adopted), WP16-14 (adopted), WP16-15 (rejected), WP16-16 (rejected), WP16-17 (adopted), WP16-18 (adopted), and WP16-68 (adopted).


The Federal Subsistence Board appreciates the Southcentral Alaska Subsistence Regional Advisory Council's active involvement in and diligence with the regulatory process. The ten Regional Advisory Councils continue to be the foundation of the Federal Subsistence Management Program, and the stewardship shown by the Regional Advisory Council chairs and their representatives at the Board meeting was noteworthy.

Mr. Encelewski

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If you have any questions regarding the summary of the Board's actions, please contact Donald Mike, Council Coordinator, at 907-786-3629.

Sincerely,



Tim Towarak
Chair

Enclosure

cc: Federal Subsistence Board
Southcentral Alaska Subsistence Regional Advisory Council members
Eugene R. Peltola, Jr., Assistant Regional Director, Office of Subsistence Management
Stewart Cogswell, Acting Deputy Assistant Regional Director
Office of Subsistence Management
Carl Johnson, Council Coordination Division Chief, Office of Subsistence Management
Interagency Staff Committee
Administrative Record

FEDERAL SUBSISTENCE BOARD ACTION REPORT

April 12-14, 2016

William A. Egan Civic and Convention Center, Anchorage, Alaska

SOUTHCENTRAL REGION PROPOSALS

Proposal WP16-10a

DESCRIPTION: Submitted by Andy McLaughlin of Chenega Bay, this proposal requested that rural residents of Unit 6D be included in the customary and traditional use determination for moose in Unit 6D.

COUNCIL RECOMMENDATIONS: **Support**

BOARD ACTION: **Adopted**

JUSTIFICATION: Residents of Unit 6D have shown a history of traditional use of moose. Adoption of the proposal gives the residents of Unit 6D a positive C&T use determination for moose in Unit 6D and also provides an opportunity to harvest moose if a season is established.

Proposal WP16-10b

DESCRIPTION: Submitted by Andy McLaughlin of Chenega Bay, this proposal requested that rural residents of Unit 6D be included in the customary and traditional use determination for moose in Unit 6D which will be addressed in the analysis of proposal WP16-10a. Proposal WP16-10b, which requests that a Sept. 1-Dec. 31 season be established in Unit 6D for the harvest of one bull moose, will only be considered if the Board adopts WP16-10a and recognizes the customary and traditional uses of residents of Unit 6D for moose in Unit 6D.

COUNCIL RECOMMENDATIONS: **Support**

BOARD ACTION: **Rejected**

JUSTIFICATION: The proposal was rejected due to a tie vote. If proposal WP16-10b were adopted, it would have established a moose season in Unit 6D. No viable moose is identified in Unit 6D and recent surveys did not result in any counts. Conservation concerns exist for resident moose in that portion of Unit 6D.

Proposal WP16-11

DESCRIPTION: Submitted by Andy McLaughlin of Chenega Bay, this proposal requested a buck-only season be established in Unit 6D with a season of Jan. 1 – 31, and a harvest limit of 1 buck.

COUNCIL RECOMMENDATIONS: **Support with modification** that only an unused harvest ticket may be used during the Jan. 1 – 31 buck season in Unit 6D.

The modified regulation should read:

Units 6—Deer

*4 deer; however antlerless deer may be taken only from Oct. 1– Aug. 1–Dec. 31
Dec. 31.*

Unit 6D—1 buck

Jan. 1–Jan. 31

***Only unused harvest ticket may be used during Jan. 1–Jan. 31
buck season***

BOARD ACTION: **Adopted with modification**

JUSTIFICATION: The Board adopted the proposal consistent with the recommendation of the Council. Adopting the proposal allows subsistence hunters to harvest one buck in Unit 6D during the January 1-31 season if the hunters limit was not filled during the early season of Aug 1-Dec 31. Targeting of bucks will not increase the total season harvest limit and does not affect non-subsistence users.

Proposal WP16-13

DESCRIPTION: Submitted by Andy McLaughlin of Chenega Bay, this proposal requested that Federally qualified rural residents be required to obtain a Federal registration permit to harvest black bears in Unit 6D from Sept. 10 through June 30.

COUNCIL RECOMMENDATIONS: **Support with OSM modification**

BOARD ACTION: **Adopted with modification**

JUSTIFICATION: The Board adopted WP16-13 with an amendment for a joint permit with the seasons specified September 1 – June 30, one permit for Federally-qualified users and non-Federally-qualified users. The single permit will reduce regulatory complexity and will use the State permit system for collecting hunt reports used to manage black bear populations.

Proposal WP16-19

DESCRIPTION: Submitted by the Ahtna Heritage Foundation, this proposal requested permission to harvest either 1 bull moose or 2 caribou between Jul. 15 and Aug. 31 by Federal registration permit for the Ahtna Heritage Foundation's Culture Camp.

COUNCIL RECOMMENDATIONS: **Support with modification.** The Council struck the July 15 – August 31 dates in the proposed regulation, but supported a date of 15 days prior to the Cultural camp start date, until the conclusion of the camp. In addition, if no harvest occurs, an additional Cultural camp can be scheduled and the permit will be valid 15 days prior to the start of the camp.

BOARD ACTION: **Adopted with modification**

JUSTIFICATION: The Board adopted the proposal as modified by the Office of subsistence Management. Through the delegation of authority, the proposal will allow for a greater flexibility for Ahtna Heritage Foundation and land managers to address change in camp dates and logistical issues faced annually.

Proposal WP16-20

DESCRIPTION: Submitted by Eastern Interior Alaska Subsistence Regional Advisory Council, this proposal requested that the harvest limit for sheep in Unit 11 be modified from 1 sheep to 1 ram with a $\frac{3}{4}$ curl horn or larger.

COUNCIL RECOMMENDATIONS: **Oppose**

BOARD ACTION: **Adopted with modification**

JUSTIFICATION: The Board adopted WP16-20 with amendment to allow the harvest of Dall sheep in Unit 11 during the regular season to one ram. Allowing harvest of one ram will protect the ewe sheep population without restricting subsistence users and continue to provide subsistence opportunity for local subsistence users to harvest any ram. Limiting the harvest to only $\frac{3}{4}$ curl would unnecessarily restrict subsistence users.

Subsistence Regional Advisory Councils

U.S. Fish and Wildlife Service
c/o Office of Subsistence Management
1011 East Tudor Road M/S 121
Anchorage, Alaska 99503

RAC 15083.RL

AUG 25 2016

Mr. Tim Towarak, Chair
Federal Subsistence Board
c/o U.S. Fish and Wildlife Service
Office of Subsistence Management
1011 E. Tudor Road, Mail Stop 121
Anchorage, Alaska 99503

Dear Chairman Towarak:

The ten Federal Subsistence Regional Advisory Councils (Councils) appreciated the opportunity to meet in Anchorage for a joint session on March 7-8, 2016. The meeting was extremely informative, and the Council members were unanimous in finding value in hearing summary reports from each Council. While there were numerous concerns that were specific to each region, it was very enlightening to hear there were several subsistence concerns that were common to all regions.

The Councils would like to inform the Federal Subsistence Board (Board) of the issues that resonated with each of the Councils. Although many of these issues have been brought up previously by individual Councils in their annual reports, we would like to take this opportunity to jointly bring these requests to the Board as a collective voice:

1. We request the Board seek an increase in funding to meet the programmatic requirements of operating as a Regional Advisory Council. Reduced program funding has made it difficult for us to do our business. One example is our inability to regularly meet in the remote communities we are appointed to represent. We are currently restricted to hub communities, with only occasional opportunities to meet in non-hub communities.
2. We request the Board seek an increase in funding for conducting fish and wildlife population assessments and monitoring. The data collected in these projects are essential for us to continue to make recommendations on managing these resources appropriately. Initiate funding for a wildlife resource monitoring program was identified as an issue of concern during the Secretarial Review, but has not been acted upon due to lack of funding.
3. We request the Board seek an avenue for having a designated subsistence seat on the North Pacific Fisheries Management Council. The representative for such a seat

Chairman Towarak

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should have experience on a Council. The Councils have expressed this recently to the Board, asking that the Board forward the request to the Secretary of Commerce. The response, however, did not address the underlying concern.

4. We request the Board develop a program that will allow each of the ten Councils a mechanism to engage youth in the subsistence regulatory process. This would be in line with the Secretary of the Interior's implementation of a Play Learn Serve and Work Program, oriented toward developing youth programs. The Secretary specifically created a position in Alaska to facilitate implementation of that program.
5. We request the Board engage in formal rulemaking that includes giving deference to the Councils not only in taking of fish and wildlife, but also for other regulatory issues affecting subsistence users in our regions such as non-rural and customary and traditional use determinations. While this is currently the policy of the Board, there is no assurance that a future Board would implement policy unless it is clear in regulation.
6. The identification of priority information needs is the basis for soliciting fisheries projects for the Fisheries Resource Monitoring Program. The Councils appreciate recent efforts to make the development of those priorities more accessible and successful. The Councils request the Board to continue to support the provision of adequate technical support that will enable us to make meaningful recommendations.
7. Bringing all the Councils together allows the effective sharing of information between council members and allows the councils to identify common concerns for big picture issues. The Councils request the Board engage the Office of Subsistence Management to allow the periodic planning of joint council meetings. It is the recommendation of the Councils that such joint sessions occur at least once every five years.

In summary, we feel the joint Council meeting was very successful and will enable Council members the experiences and training necessary for us to be more effective and productive members of our Councils. We have made new friends and established contacts within the greater subsistence management community that will allow us to communicate more effectively among ourselves and with the staff. Thank for your making this opportunity available to us.

Sincerely,



Michael Bangs, Chair
Southeast Alaska Subsistence
Regional Advisory Council

Chairman Towarak

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Richard G. Encelewski, Chair
Southcentral Alaska Subsistence
Regional Advisory Council



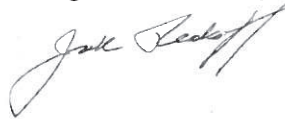
Speridon M. Simeonoff, Chair
Kodiak/Aleutians Subsistence
Regional Advisory Council



Molly Chythlook, Chair
Bristol Bay Subsistence
Regional Advisory Council



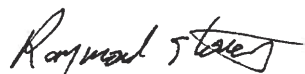
Lester Wilde, Sr., Chair
Yukon-Kuskokwim Delta Subsistence
Regional Advisory Council



Jack Reakoff, Chair
Western Interior Alaska Subsistence
Regional Advisory Council



Louis Green, Chair
Seward Peninsula Subsistence
Regional Advisory Council



Raymond Stony, Chair
Northwest Arctic Subsistence
Regional Advisory Council

Chairman Towarak

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Sue Entsminger, Chair
Eastern Interior Alaska Subsistence
Regional Advisory Council



Rosemary Ahtuanguaruak, Acting Chair
North Slope Subsistence
Regional Advisory Council

cc: Federal Subsistence Board
Southeast Alaska Subsistence Regional Advisory Council
Southcentral Alaska Subsistence Regional Advisory Council
Kodiak/Aleutians Subsistence Regional Advisory Council
Bristol Bay Subsistence Regional Advisory Council
Yukon-Kuskokwim Delta Subsistence Regional Advisory Council
Western Interior Alaska Subsistence Regional Advisory Council
Seward Peninsula Subsistence Regional Advisory Council
Northwest Arctic Subsistence Regional Advisory Council
Eastern Interior Alaska Subsistence Regional Advisory Council
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Office of Subsistence Management
Carl Johnson, Council Coordination Division Chief, Office of Subsistence Management
Chris Mckee, Wildlife Division Chief, Office of Subsistence Management
Mitch Ellis, Director of Refuges, Alaska Region, U.S. Fish and Wildlife Service
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